

Anant Bind and anr. Vs. State of Bihar

Anant Bind and anr. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/125822

Court : Patna

Decided On : Jan-19-2000

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 52 of 1993

Appellant : Anant Bind and anr.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : D.P.S. Choudhary, J. 1. This jail appeal has been preferred on behalf of both the appellants against the Judgment and order dated 19th of August, 1992 passed by the Additional Sessions Judge, Buxar in Sessions Trial No. 258 of 1991/65 of 1991 convicting both the appellants under Sections 395 and 307 of the Indian Penal Code and sentencing each of them to undergo R.I. for 10 years and 7 years respectively. Their sentences were ordered to run concurrently.

2. The brief fact of the prosecution ca

Judgement :

D.P.S. Choudhary, J.

1. This jail appeal has been preferred on behalf of both the appellants against the Judgment and order dated 19th of August, 1992 passed by the Additional

Sessions Judge, Buxar in Sessions Trial No. 258 of 1991/65 of 1991 convicting both the appellants under Sections 395 and 307 of the Indian Penal Code and sentencing each of them to undergo R.I. for 10 years and 7 years respectively. Their sentences were ordered to run concurrently.

2. The brief fact of the prosecution case is that on 14.9.1990 at about 7. p.m., the informant Bashisht Sah was at his shop. 8-10 dacoits entered his shop and started assaulting him. The informant ran his house to save his life. The dacoits chased him and entered his house. They assaulted Sarswati Devi, wife of the informant and also his brother. It is further alleged that appellant Gauri Bind gave lathi blow to the informant and when his father Munna Devi tried to save him, some of the dacoits fired on her. The dacoits took away Rs. 4,000/- in cash and also other articles, both from the house and shop of the informant. In the light of 'Diya' the informant and family members identified both the appellants. On the next day, the fardbeyan of the informant, was recorded by S.I. Jugal Ram of Rajpur P.S., on the basis of which formal F.I.R. (Ext. 2) was drawn up and investigation took up. The injured were sent to State Dispensary for treatment. P.W. 5 (Dr. Umashankar Singh) examined them and submitted injury report (Ext. 1 series). After completing the investigation, the I.O. submitted the charge-sheet and after commitment, the Trial proceeded in the Court below.

3. The case of the defence is that they have been falsely implicated in this case because of previous enmity.

4. The prosecution, in all examined seven witnesses, out of which P.W. 6 (Raj Narayan Singh) and P.W. 7 (Vijay Narayan Rai) are formal witnesses. P.W. 4 (Bashist Sah) is the informant. P.W. 1 (Mona Devi) is mother of the informant. P.W. 2 (Sarswati Devi) is wife of the informant and P.W. 3 (Shivshankar Sah) is his brother. As stated above, P.W. 5 (Dr. Umashankar Singh) is the Doctor.

5. The informant (P.W. 4) stated that on the date of occurrence at about 7.00 p.m. he was in his shop. 8-10 dacoits entered his shop and started abusing him. He identified both the appellants in the light of 'Diya'. To save his life, he fled into his house, but the dacoits chased him. They assaulted him, his mother and brother. They took away Rs. 4,000/- in cash and other articles. The evidence of the

informant finds corroboration from the evidence of P.Ws. 1, 2 and 3. They are all eye-witnesses of the occurrence and family members. They were also injured when tried to save the informant from assault. They stated that appellant Anant Bind had fired upon Mona Devi (P.W. 2). These witnesses also claimed to have identified both the appellants in the light of 'Diya'.

6. P.W. 5 (Dr. Umashankar Singh) who examined the injured and submitted injury reports (Ext. 1 series) stated that he examined Mona Devi on 15.9.1990 and found the following injuries on her person-

(i) Five pellet mark with clotted mark near left nipple with severe tenderness.

(ii) Complaint of pain all over body.

In the opinion of the Doctor, both injuries were simple and injury No. (i) was caused by fire-arm. He also examined Shiv Shankar Sah and Sarswati Devi and found swelling and tenderness on their persons caused by hard and blunt substance.

7. On the basis of the evidence discussed above, the trial Court has come to the finding that accused appellants had fired causing injury to Mona Devi and accordingly held them guilty under Section 307 of the I.P.C. On the basis of the evidence discussed above the trial Court has further held that there is consistent evidence of the informant and corroborated by other witness including that of the Doctor that both the appellants along with other dacoits entered his shop and house, assaulted them and looted valuables and accordingly, they were also convicted under Section 395 of the I.P.C.

8. The learned appellants lawyer submitted that the informant stated that on hulla, local witnesses had assembled there but none of them has been examined. Only the family members have deposed. It is an admitted fact that none of the villagers has deposed either on the point of dacoity or on the point of causing injury to the family members of the informant, but as stated above, most of the witnesses, who are family members of the informant, are also injured witnesses. Therefore, they are competent to depose both on the factum of dacoity as well as the injuries

caused to them at the hand of the dacoits. The appellants' lawyer further submitted that source of identification is doubtful and the alleged occurrence took place at about 7-8 p.m. In this context, the evidence of the informant and other P.Ws. discussed above is consistent that they have identified both the appellants in the light of Diya which was burning in the shop. The shop was opened at the time of occurrence, hence the burning of Diya in the shop was natural. Therefore, the prosecution has been able to prove the source of identification beyond all reasonable doubt.

9. In the last, it was submitted on behalf of the appellants that both the accused-appellants surrendered in the Court below on 24.9.1990 and since then they are in jail custody. They were neither allowed bail by the trial Court nor by the High Court. By now, they have remained in custody for more than nine years, hence, a lenient view may be taken and the period of sentence may be modified to the period already undergone.

10. From the impugned Judgment, it appears that both the appellants are young persons aged about 21-22 years. They are in jail custody since 24.9.1990. After remission in their period of sentence as per the Jail Manual, it is possible that they might have released by now. In view of the facts and circumstances of the case, their period of sentence is modified to the period already undergone. The Jail authority is directed to release both the appellants at once if not required in any other case.

11. With this modification in the Judgment and order of the Court below the appeal is dismissed.