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Court : Patna

Decided On : Oct-29-1997

Judge : Loknath Prasad, J.

Appeal No. : Criminal Appeal No. 47 of 1993(R)

Appellant : Ratan Kumar and anr.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

Loknath Prasad, J.

1. This appeal is directed against the order dated 18th January, 1993 passed in Sessions Trial No. 202/91 by Sri S.K. Sharma, 4th Additional Sessions Judge, Dhanbad, thereby and thereunder both the appellants were found guilty under Section 395, I.P.C. and they were convicted and sentenced to undergo rigorous imprisonment for six years each.

2. The prosecution case, in short, is that on 15.11.90 at about 10.45 p.m. when the informant Basuki Singh, driver of bus bearing No. BPU 3392 came near Lodhriya bridge on Gobindpur-Giridih road, he found the road blocked and a jeep was also standing on the road and similarly one Raj Transport Bus and a truck were also

standing and several dacoits were looting the articles of the passengers and the drivers. The informant tried to escape by taking his bus behind, but in the meantime the dacoits came and they exploded a bomb, due to that a passenger Bhagwan Rout and one Umakant sustained injury. The dacoits looted cash, writ watches an various articles of the passenger, the details of the same had been furnished in the FIR and further the dacoits also caused injury to the jeep driver and two others and they looted the passengers of the Raj transport bus and that of the occupants of the truck and after the looting the dacoits escaped away. Immediately thereafter, a police jeep came from Tundi P.S. and the informant gave his fardbayan on the spot and gave details version as mentioned above. The police after recording the fardbayan instituted this case and referred some 'of the injured to Tundi hospital for treatment. During investigating, the police recovered some stolen articles from the appellants and other accused persons and suspects were put on T.I. Parade and these two appellants were identified by a witness. The police after completing investigation submitted charge-sheet under Sections 395, 412, IPC against several accused persons.

3. These two appellants and Nimai Rawani, Nandu Shaw, Kishun Mandal were facing trial in the Court below and all of them claimed themselves innocent and their only defence was that they had been falsely implicated in this case by the police and nothing had been recovered from their possession. So their case was more or less that of false implication. The trial Court found these two appellants guilty under Section 395, IPC and other three accused persons facing trial alongwith the appellants were not found guilty and they were acquitted of the charges levelled against them. Being aggrieved and dissatisfied with this order of conviction, these two appellants preferred this appeal and has challenged the findings of the Court below on various grounds.

4. Now the only question for consideration is if these two appellants alongwith others took part in this road hold up case which took place in the night of 15.11.90. Admittedly the appellants had not challenged the factum of dacoity and they had simply challenged the factum of their participation. Moreover, from the evidence of P.W. 9 James Bara, Jeep driver P.W. 10 Basuki Singh driver of the bus P.W. 11 Shamsur Rahman coupled with the evidence of P.W. 12 the I.O., this fact is well

proved that about 15-16 dacoits blocked the Gobindpur-Giridih road near Lodhria bridge which resulted in the stoppage of the vehicle from both side. It has come in evidence that the dacoits were with fire arms. Lathi and other weapons and they exploded bomb and the passengers including driver and conductor of the bus of the informant and the occupants of the jeep and also the occupants of the truck bearing No. BHM 9101 were looted of their cash amount in the shape of currency notes, wrist watches and various other articles after causing hurt to them. From the evidence of the doctor who has figured as P.W. 8, this fact is also well proved that on the next day of the occurrence, that is, on 16.11.90 he examined James Bara, the occupant of the jeep i.e. P.W. 9, Bhagwan Raut, the passenger of the bus and found various injuries on their persons. So the factum of this dacoity which took place in the night of 15.11.90 on a road near Lodhria bridge is well proved.

5. Now the question for consideration is if these two appellants alongwith others had taken part in this occurrence as alleged. No doubt these appellants were also charged of as stolen properties in the shape of currency notes and wrist watches were recovered from their possession. From the evidence of P.W. 12 Krishnadeo Singh the I.O. and the seizure list Ext. 6 it can be said that new currency notes. 11 in number, having a serial No. from IP 695256 to 695275 were recovered from the house of the appellant, Ratan Kumar,as pointed out by him in presence of P.W. 7 and others. Similarly, some currency notes and wrist watches were also recovered from the house of Bablu as evident from Ext. 6/1. these appellants were acquitted so far charges under Section 412, IPC were concerned on technical ground because the seizure list was not prepared according to law and it does not contain the signature of the I.O. or even actual date and time in the seizure had not been mentioned. However, both the appellants were found guilty under Section 395, IPC by the Court below.

6. On the point of identification of both the appellants, admittedly, P.W. 11 Shamsur Rahman identified these two appellants in the T.I. Parade. P.W. 11 had consistently stated that on the relevant night i.e. on 15.11.90 he alongwith his family members with all the articles were going on a truck bearing No. BHM 9101 and the truck had to stop near the bridge on Tundi road where several dacoits

came and assaulted him and his family members and took away cash amount of Rs. 500/- from him and writ swatch and a bag was also taken away containing new currency notes and as per his habit he noted down the number of the currency notes prior to the journey, that is, Ext. 8 and he handed over the same to the I.O. It is also his evidence that he identified these two appellants before the Magistrate and at the time of occurrence, the appellant Ratan was holding a lathi and Bablu a revolver. The evidence of this important witness was criticised by the learned Counsel for the appellant mainly on the ground that it has not been disclosed in the FIR that this witness was also present at the time of occurrence and his articles were also looted. But on perusal of the evidence of the I.O. and other witnesses, it is clear that immediately after the occurrence, P.W. 12 came to the P.O. on getting information and recorded Fardbayan and he also found this witness P.W. 11 there and he too was looted by the dacoits and his statement was immediately recorded on the spot. In the FIR also it has been mentioned that truck was standing and the occupants of the truck were also looted. In that view of the matter, there is no two opinion that this witness alongwith his family members were travelling in a truck which was also involved in this dacoty.

7. It was further contended that so far the appellants are concerned, the identification of P.W. 11 is solitary identification. In that view of the matter, it may not be relied upon or at least benefit of doubt may be given to ths appellants.

8. Now the law is well settled that only the prudence requires corroboration and even a single witness if wholly reliable can be believed and conviction can be recorded. Admittedly P.W. 11 is a responsible man being a clerk in P.W. Deptt. and he is a victim and was coming from Munghyr side in a truck with his family members belongings and practically he has got no connection or enmity with the appellants, In that view of the matter, the false implication can be ruled out. The identification appears o be natural because it is the evidence of this witness and that of other witnesses that head light of all the vehicles were burning and so there was sufficient light and this also finds corroboration from the evidence of P.W. 9, the occupant of the jeep because he has said in his evidence that one of the dacoits asked him to switch off the headlight and subsequently the headlights were broken by the dacoits. So there was sufficient means for identification. P.W.

11 identified both the appellants correctly and also described in detail as to the weapons they were holding. So no doubt it is a single identification, that of very reliable and independent witness.

9. Moreover, though the identification is solitary, but there are other circumstances which supports the identification P.W. 11 and the identification also appears to be genuine and correct for the reason that the appellants were arrested on 25.1.90 and they were put on T.I. Parade on 10.12.90 and P.W. 7 conducted the T.I. Parade according to Rule and prepared the T.I. Chart, that is, Ext. 2. So practically there was no delay in putting these appellants in the T.I. Parade. Moreover, from the possession of both the appellants, money in the shape of currency note had been recovered as evident from Ext. 6 and 6/1 and new currency note in serial order as per list given by P.W. 11 had been recovered from the possession of the appellant Ratan Kumar. No. doubt these appellants were acquitted of the charges under Section 412 IPC on technical ground, but still it can be said that their conduct was suspicious and some articles were recovered suspected to be stolen property immediately after the occurrence and all these circumstances also lend support to the identification by P.W. 11.

10. So considering the entire evidence of the record and surrounding circumstances of the case, I am of the opinion that the prosecution has been able to prove that these two appellants also took part in this dcoity which is a road hold up case, alongwith others. So far sentence is concerned, the trial

Court awarded sentence of six years' rigorous imprisonment as against both the appellants and 1 think that the manner in which the dacoity was committed appears to be very serious and heinous and the trial Court definitely has taken a very lenient view of the matter and as such it does not require any interference.

11. In the result, this appeal is dismissed and the judgment of conviction and sentence as recorded by 4th Addl. Sessions Judge, Dhanbad, in S. Tr. No. 202/91 is hereby confirmed and maintained and bail bonds of both the appellants are hereby cancelled and they are directed to surrender before the trial Court without any further delay failing which the trial court will take necessary steps for their apprehension so that they can undergo remaining part of their sentence.

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