

Shankar Das Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Mar-04-2015

Appellant : Shankar Das

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (S.J.) No. 206 of 2003 With Criminal Appeal (S.J.) No. 319 of 2003 ----- Against the judgment of conviction and order of sentence dated 20.01.2003 and 21.01.2003 respectively, passed by Sri Kamlesh Mishra, learned Additional Sessions Judge, Fast Track Court-IV, Deoghar in connection with Sessions Trial No. 297 of 2000 / 152 of 2002. ----- Chirauddin Mian @ Ansari Son of Safik Mian, resident of Palajori, P.S.- Palajori, District- Deoghar ... Appellant [in Cr.Appeal (S.J.) no. 206 of 2003] Shankar Das Son of Ganesh Das, resident of village Jamua, P.S. Chitra, District- Deoghar ... Appellant [in Cr.Appeal (S.J.) no. 319 of 2003] --Versus-- The State of Jharkhand Respondent (In both cases) For the Appellants : Mr. Ranjan Kumar Singh, Advocate (In Cr.Appeal no. 206 of 2003) M/s. K.P.Deo & Aashish Kumar, Advocates (In Cr.Appeal no. 319 of 2003) For the State : Mr. Tapas Roy, A.P.P. (In Cr.Appeal no. 206 of 2003) : Mr. S.S.Choudhary, A.P.P. (In Cr.Appeal no. 319 of 2003) PRESENT HONBLE MR. JUSTICE RAVI NATH VERMA -----

JUDGMENT

C.A.V. ON:

29. 01/2015 PRONOUNCED ON:

04. 03/2015 Both the above appeals arisen out of the same judgment were heard together and are being disposed of by this common judgment.

2. The two appeals are directed against the judgment of conviction and order of sentence dated 20.01.2003 and 21.01.2003 respectively whereby the learned trial court convicted the two appellants for the offence under Section 395 of the Indian Penal Code 2 and sentenced them to undergo rigorous imprisonment for two and half years each.

3. The case of prosecution as propounded in the F.I.R. lodged by the informant Raju Choudhary of village Jondiah Nawadih on 21.11.1999 at 0.30 A.M., is that on the last evening at about 6.00 P.M., he along with his Khalashi Jogender Das and a business man Kameshwar Sah proceeded on his Truck bearing no.BR-12A-3955 to purchase potato from Asansol and at about 8.00 P.M. when reached near Sagarubad Bridge, he saw a log of tree lying on the road, whereafter he stopped his vehicle and in the light of the vehicle, he saw six unknown criminals coming towards truck. Out of six criminals, one after opening gate of the driver side entered into the cabin of the truck and after brandishing his pistol directed him to switch off the light of the truck. Another miscreant also entered in the cabin of the truck and sat near him and two of the miscreants having Bhujali and dagger in their hands hang themselves on the gates of both sides and asked him to proceed. When he proceeded on the direction of the miscreants, he found one black Rajdoot motorcycle lying in the road side ditch and almost after going one kilometer, miscreants directed him, his Khalasi and the businessman to come out of the truck. Thereafter, the miscreants entered into the cabin of the truck and looted away Rs.18,700/-, which was kept in cash in the cabin and fled away. It is further alleged that the informant, his Khalasi and the businessman thereafter went to the Palajori Police station and narrated the incidence to the Officer-in-charge B.K.Singh Chouhan of the said Police Station. The informant claimed to identify all the six miscreants and on the basis of the fardbeyan (Ext.- 1), formal F.I.R. was drawn and after investigation, the Investigating Officer submitted the charge sheet against the two appellants and kept the investigation pending against the other

accused persons. During investigation, the I.O. had seized one black Rajdoot Motorcycle without number, which was alleged to be used in commission of Dacoity and also seized one Tangi with wooden hand 3 on the basis of confessional statement of one of the appellant Shankar Das. Thereafter, the court took cognizance of the offence and committed the case to the court of sessions. The trial court framed the charges against the two appellants under Sections 395 and 412 of the Indian Penal Code. The appellants had denied the charges pleading not guilty.

4. As many as five witnesses were examined by the prosecution including the informant Raju Choudhary (P.W.-2) and Kamehswar Sah, the businessman (P.W.1). The two seizure list witnesses were examined as P.W. 4 and P.W.

5. The officer-in-charge Kumar Kirti, who has submitted the charge sheet, has been examined as P.W.3.

5. The trial court by placing reliance upon the evidences adduced by the prosecution witnesses, convicted the appellants for the offence under Section 395 of the Indian Penal Code and sentenced them accordingly. The court below further held that the prosecution has failed to prove the charge framed against the two appellants under Section 412 of the Indian Penal Code and acquitted them from the said charge.

6. The appellants have challenged the impugned judgment of conviction and sentence mainly the ground that the trial court has convicted the appellants without their being any cogent and reliable evidence and as a matter of fact, the appellants were not identified by the prosecution witnesses and no reliance can be placed on the identification made by P.Ws. 1 and 2 and the appellants cannot be held guilty of the charge. It was also submitted that the identification of the accused-appellants loses significance when the prosecution witness admits that he had seen the photographs of the two appellants in police station. It was also submitted that on two consecutive dates when representations were filed on behalf of the appellants and they were not physically present in Court, the prosecution had examined P.Ws.1 and 2 in Court. It was also seriously contended that neither the appellants were arrested from 4 the spot nor any incriminating article was

recovered from the possession of the two appellants. It was also submitted that the prosecution did not make any effort to put them on Test Identification Parade.

7. On the other hand, learned A.P.P. appearing for the State submitted that on the basis of the confessional statement of one of the appellant Shankar Das, a Tangi was recovered from his house and the alleged motorcycle, which was lying in a ditch, was also recovered though none of the appellants or any person had ever claimed the seized motorcycle and both the appellants were identified by P.Ws. 1 and 2 in police station when the photographs of the criminals of the area were shown to them by the I.O.

8. Before proceeding to appreciate the submissions of learned counsel for the appellants with reference to the facts of this case, it is necessary to examine the evidence of prosecution witnesses on the factum of dacoity and the nature and scope of identification.

9. P.W.2 the informant while reiterating the facts, which was stated in the fardbeyan, further disclosed that how the miscreants stopped his vehicle and two of them entered in the cabin of the truck and after brandishing pistol they forced the informant to proceed and how the accused persons looted away approximately 19,000/- rupees further confirmed that Daroga Ji had shown him photographs of criminals in police station. The two appellants on the day of examination in court were on representation. It means, the appellants were not physically present in court at the time of deposition of P.W.2 but the witness claimed to identify the appellants if they are produced in Court.

10. P.W.1 has also fully corroborated the version of P.W.2 and further confirmed that while he along with the informant (P.W.2) went to the police station, they were shown the photo album of criminals and both of them had identified the two criminals and Daroga Ji had disclosed the name of the accused Shankar Das and another man of village Kaseraidih. The witness claimed to identify 5 the accused persons but it appears that both the appellants were on representation on the day of his examination in Court.

11. P.W. 4, a seizure list witness, has stated that in his presence, police had never searched the house of Radhe Shyam Yadad of Malhadih and when his signature on the seizure list was obtained by the police, the paper was blank and nothing was written on it.

12. P.W. 5, another seizure list witness, has also stated that when his signature was obtained by the police, the paper was blank and nothing was written on that paper.

13. P.W. 3 is one of the Investigating Officer of the case and he had submitted the charge sheet and this witness has stated in his evidence that he had given notices to the witnesses but nobody turned up for T.I.Parade. The witness has further stated that he had taken charge of investigation from one Birendra Kumar Chouhan, who had recorded the fardbeyan of the informant and had investigated the case.

14. It appears from the record that the said Birendra Kumar Chouhan, the first I.O., has not been examined in this case and no explanation has been given by the prosecution for his non- examination. It further appears that another witness Jogender Das, who was the Khalasi of the truck and was accompanying the informant on the alleged date of occurrence, has also not been examined and no explanation has been given by the prosecution for his non-examination also. The trial court relying on the evidence of two witnesses i.e. P.Ws. 1 and 2 came to the finding that the prosecution has proved the case beyond reasonable doubt. Of course, after going through the evidence of P.W.1 and P.W. 2, factum of dacoity may be proved but the moot question was whether the appellants had participated in the alleged dacoity? 15. In the case in hand, admittedly, no T.I. Parade was conducted and the two witnesses P.Ws. 1 and 2 have confirmed that the I.O. of the case had shown them the album of photographs and 6 out of those photographs, the witnesses had identified the criminals whose names were disclosed by the I.O. as Shankar Das and another person of village Kaseraidih.

16. In Harnath Singh Vs. State of Madhya Pradesh (AIR 1970 SC1619, the Honble Supreme Court observed: during the investigation of a crime, the police has to hold identification parades for the purposes of enabling witnesses to identify

properties which are subject matter of the offence or to identify the persons, who are concerned therein. They had thus a two fold object, first to satisfy the investigating authorities that a certain person not previously known to the witnesses was involved in the commission of the crime or a particular property was the subject matter of the crime. It is also designed to furnish evidence to corroborate the testimony which the witnesses concerned tenders before the court. So, it is a settled law that the persons required to identify the accused should have had no opportunity of seeing him after the commission of the crime and before identification. It means the evidence as to identification must be subject to close and careful scrutiny by the court or I mean to say that the law is quite clear on the point that the identifying witnesses should have no opportunity to see the suspect before the actual T.I. Parade and after the commission of the crime and abandon precaution should be taken for the same.

17. As stated above, P.Ws. 1 and 2 admitted in their evidence in court that immediately after the occurrence, they had gone to the police station and the I.O. of the case had shown them the photographs of the criminals including the two photographs of the appellants. Hence, I am constrained to observe that the court below while examining the evidence of the prosecution witnesses without considering this aspect of the matter believed their testimony. In the circumstances stated above, there can be no room for doubt that the photographs of the appellants were shown to the two aforesaid witnesses. So far as the seizure of motorcycle is concerned, the Court below had come to the finding that the seized motorcycle was not of either of the appellant and it was an abandoned (Lavarish) 7 motorcycle. Though other contentions were also raised at bar about ordeal of protracted prosecution of the appellants for about 14 years but in view of the legal infirmity that has crept in the evidence of prosecution witnesses, I do not consider it necessary to dwell upon them.

18. On careful consideration of the evidences placed on record, I am constrained to hold that the findings recorded by the trial court convicting the appellants and sentencing them to a term stated above was not based on sound reasonings and as such, not sustainable in law.

19. Resultantly, the judgment of conviction and order of sentence recorded by the court below are, hereby, set aside and both the appellants are acquitted of the charge levelled against them. Since they are on bail, they are also discharged from the liabilities of their bails bonds. The appeals are allowed. (R.N. Verma, J.)
Jharkhand High Court, Ranchi Dated, 4th March, 2015 Ritesh/N.A.F.R.

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