

Ramesh Mondal Vs. State of Bihar

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Court : Jharkhand

Decided On : May-10-2001

Reported in : 2001(49)BLJR1816

Judge : Deoki Nandan Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395 and 412

Appeal No. : Cri. Appeal No. 87 of 1995 (R)

Appellant : Ramesh Mondal

Respondent : State of Bihar

Advocate for Def. : Ashok Kumar Sinha, APP

Advocate for Pet/Ap. : S.P. Roy, Adv.

Disposition : Appeal allowed

Judgement :

Deoki Nandan Prasad, J.

1. In this appeal, the sole appellant assailed the judgment of conviction and sentence dated 29.9.1995 passed by 3rd Additional Sessions Judge, Dhanbad, in Sessions Trial No. 39 of 1994, whereby and whereunder, the learned Additional Sessions Judge convicted the appellant for the offences under Sections 395 and

412 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment, five years on each count. However, both the sentences were ordered to run concurrently.

2. The short facts, as alleged in the prosecution case, are that one Prawal Mistry, the Driver of Truck No. BIR 5721, was returning from Dehri-on-Sone after unloading coal and going towards Baghmara and when at about 4 a.m., he reached near Musa Pahadi, he saw some boulders kept on the road and on seeing this, he became afraid. It is further alleged that the informant stopped his truck and started driving his truck back but the vehicle went in wrong side and, as such, he stopped the truck. In the meantime, about five dacoits came there and got the door of the truck opened and thereafter they looted away the bag containing Rs. 14,700/- including the papers of the vehicle and another bag containing Rs. 110/-. In the meantime, a Jeep which was coming from Gosala side and on seeing the said Jeep, the dacoits fled away and from the Jeep the police personnel came to the informant to whom the informant disclosed the incident. Thereafter the police started chasing the dacoits along with the informant and his Khalashi and one of the dacoits was apprehended who disclosed his name as Ramesh Mondal. He was also caught with a bag containing Rs. 110/-. Accordingly, a First Information Report was lodged as well as the seizure list was prepared. The police investigated into the case and submitted charge-sheet against three accused-persons including this accused/appellant.

3. The witnesses were examined during trial. Having heard both the parties and considering the evidence on record, the learned trial Court convicted and sentenced the appellant in the manner as stated above. However, the other two accused-persons were acquitted by the trial Court.

4. Learned counsel appearing on behalf of the appellant at the very outset submitted that the learned Court below committed error in convicting the appellant as none of the witnesses supported the prosecution case and even the informant did not identify the appellant in the dock. It is further argued that the Khalasi who is said to be present at the time of occurrence, has also not been examined by the prosecution to substantiate the story in the manner as alleged. It is further argued

that the alleged bag or the money amounting to Rs. 110/- has never been put in the test identification parade and, as such, it is difficult to say that the said bag and the money were actually the looted property.

5. On the other hand, learned Additional Public Prosecutor contended before me that the police officials, who are said to be present at the time of occurrence, have supported the prosecution case.

6. Apparently two accused who faced the trial along with this accused/appellant were acquitted by the trial Court on the ground that they were not put in the test identification parade PW 6 is the informant, who has not identified this appellant during trial. Neither the said bag nor the money amounting to Rs. 110/- was shown to the informant (PW 6) at the time of trial. According to him, the police officials brought him (the accused/appellant) near a petrol pump where his statement was recorded and one person was brought there but he failed to identify this appellant. He further deposed that all the dacoits muffled their face at the relevant time and there was no source of identification at the time of occurrence as the night was also dark. Thus there is no cogent evidence that this appellant participated in the occurrence, as according to the informant, one man was brought before him at the Petrol Pump though he (informant) does not identify this appellant during trial.

7. PWs 1 and 2, the Police Officials, claimed to have identified this appellant on the ground that this appellant was caught at the spot. According to the informant, seizure list was prepared at the Thana (police station) and Khalasi, Shashi Bhushan Singh, who could have also been a competent witness on this score, has not been examined in the case by the prosecution. In absence of independent witness, the whole prosecution case becomes suspicious. Moreover, according to the informant, one person was brought before him at the Petrol Pump. Nothing can be said that this appellant was caught on chase at the relevant time. The bag as well as the money amounting to Rs. 110/- has not been put in the test identification parade and, therefore, it is difficult to say that those articles are the looted articles.

8. As regards the arrest of the appellant at the relevant time, there appears much contradictions in the testimony of the police officers also and the whole prosecution case suffers from suspicion, due to which, the appellant deserves for

the benefit of doubts.

9. Having regard to the above facts and circumstances coupled with the evidence collected, it is evident that the prosecution has failed to establish the charges against the appellant beyond all reasonable doubts.

10. In the result, I find merit in this appeal which is accordingly allowed and the impugned judgment of conviction and sentence passed against the appellant is hereby set aside. The appellant appears to be on bail. He is discharged from the liability of his bail bond.

11. Appeal allowed.

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