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Court : Jharkhand

Decided On : Jul-11-2001

Reported in : 2001(3)BLJR2075

Judge : Deoki Nandan Prasad, J.

Appeal No. : Criminal Appeal No. 99 of 1995

Appellant : Sajit Barla and ors.

Respondent : State

Disposition : Appeal Allowed

Judgement :

Deoki Nandan Prasad, J.

1. This Criminal appeal is directed against the judgment and conviction dated 24th and 25th November, 1995 passed by the Additional Sessions Judge, Gumla in Sessions Trial No. 77 of 1989 whereby and whereunder the learned Sessions Judge convicted the appellants under Section 395 of the Indian Penal Code and sentenced to undergo imprisonment for seven years. Further, the appellant No. 2 Cristopher Barla alias Cristopher Kharia and appellant No. 3, Andherias Kerketta have been convicted under Section 412 of the Indian Penal Code and sentenced to undergo R.I. for seven years further and also sentenced to pay a fine of Rs.

200/-each and in default to undergo R.I. for two years. However, all the sentences ordered to run concurrently.

2. The case of the prosecution in brief as stated that the informant along with others were returning on 18-5-1988 from the village Hat on bicycle and when they reached near Dhunsera river they saw six unknown boys and they intercepted them on the point of pistol and chhura and they looted away clothes and cash. The decoits also took away the wrist watches of the informant and others. The informant and others were also assaulted by electric wire and first and thereafter, the mis-creants fled away. Some villagers also came to the spot and got the information from the informant and others about the incident. Accordingly the First Information Report was lodged for the offence under Section 395 of the Indian Penal Code against Pokar Kharia only and unknown others. The police investigated the case and submitted charge-sheet against the appellants. The appellants appeared before the trial Court. Charges under Sections 395 and 412 of the Indian Penal Code were framed. Witnesses were also examined in the Court below. After hearing both the sides and considering the evidence on record, the learned trial Judge convicted and sentenced the appellants in the manner as stated above.

3. The learned Counsel appearing on behalf of the appellants at the very outset submitted that the learned Judge committed error in convicting the appellants as there is no cogent evidence collected to establish the charges against the appellants in the manner as alleged, neither the seizure list was produced nor the articles said to have been recovered from the possession of the appellants were ever put into T.I. Parade. It is further argued that the Investigating Officer has also not been examined in this case causing prejudice to the has of the defence. It is further argued that the learned Magistrate who held T.I. Parade has also not been examined by the prosecution as the defence could not get an opportunity to cross-examine the learned Magistrate who held T.I. Parade about the manner of identification and for which alone the whole prosecution case fails. It is further argued that there is much contradiction in the evidence of the witnesses which also makes the whole prosecution case suspicious and doubtful as well as the appellants have not been examined under Section 313 of the Cr. P.C. in proper

way and no specific question was asked during the recording of statement under Section 313, Cr. P.C.

4. On the other hand, the learned A.P.P. contended before me that there is no illegality in the judgment impugned. However, he conceded in course of argument that the seizure list has not been brought on the record and the learned Magistrate holding the T.I. Parade has not been examined in this case.

5. Altogether four witnesses have been examined in this case by the prosecution. P.W. 1 stated in paragraph 4 in clear terms that he had gone to the jail premises to stand T. I. Parade but he had not identified any of the miscreants. He also admitted that he had identified one Blause in the T.I. Parade and at the same time he admitted that such type of blouse is also available in the market. P.W. 2 stated in his evidence that he had indented three dacoits in the T.I. Parade of whom one dacoits is present in the dock today out he also admitted in Paragraph 6 that all the miscreants were concealing their faces at the relevant time. In such circumstances, it is quite. unbelievable that this witness will identify the accused, if the accused-persons concealed their faces at the time of dacoity. He also admitted that Cristopher, appellant No. 2 is known to him from before as he used to go in the said village where he is residing. Thus, his evidence does not appear to be convining.

6. P.W, 3 stated that he identified all the three appellants during T.I. Parade but at the same time, he admitted that they are known to him and Andherias, appellant No. 3 is the resident of Dharampur.

7. P.W. 4 has not stated anything as he has been tendered by the prosecution. The appellants were examined under Section 313 of the Cr. P.C. and they have not denied the allegation.

8. Obviously, the Investigating Officer has not been examined by the prosecution in this case. Further, the Magistrate who conducted the T.I. Parade has also not been examined. The seizure list indicating the articles seized from the custody of the appellants has not been brought on record to establish the story that actually the said articles were seized from the possession of appellants. The articles said

to have been recovered from the possession of the appellants have also not been brought before the witnesses during trial which makes the entire story of recovery suspicious. The evidence of P.Ws. 2 and 3, as regards identification of the appellants also suffers from material contradiction.

9. It is well settled that if the accused was identified for the first time by witness in the Court during trial and no other direct or circumstantial evidence to connect the accused with the crime, the conviction cannot be sustained. T.I. Parade was also held after one month of their arrest and delay in holding T.I. Parade has not been satisfactorily explained. Hence, no reliance can be placed upon such test. None examination of Magistrate who conducted. T.I. Parade prejudicially affect the case of appellants who debarred from cross-examining him on the point of manner of identification being a vital question in the case of dacoity. P.Ws. 2 and 3 are specific in their evidence that the appellants were known to them from before as well as it has come in evidence that the miscreants kept in muffled face during crime. In such situation, the story of identification cannot be believed.

10. For the aforesaid reasons, it is evident that the whole prosecution suffers from suspicious and infirmities as a result of which the judgment of conviction and sentence passed by the Court below cannot be sustained and it is liable to be set-aside. In the result, I find merit in this appeal which is accordingly allowed. The judgment of conviction and sentence passed by the Court below is hereby set aside. The appellants appears to be on bail and hence, they are discouraged for the liabilities of their bail-bonds.