Babu Pal, Vs. State

Babu Pal, Vs. State

SooperKanoon Citation : sooperkanoon.com/533573

Court : Orissa

Decided On : Oct-14-1985

Reported in : 1985(II)OLR579

Judge : B.K. Behera, J.

Acts : Evidence Act, 1872 - Sections 144

Appeal No. : Criminal Appeal No. 266 of 1981 and Jail Criminal Appeal No. 9 of 1982

Appellant : Babu Pal, ;ashok Sahu Alias Druba and Ashok Kumar Das

Respondent : State

Advocate for Def. : M.R. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : Sachindranath Kar & B.N. Prasad (In Crl. Appeal No. 266 of 1981) and P.K. Choudhury, Adv. (In Jail Crl. Appeal No. 9/82)

Disposition : Appeal dismissed

Judgement :

B.K. Behera, J.

1. The three appellants stood charged under Section 395 of the Indian Penal Code (The Code for short) for having committed dacoity with Purna Chandra Pradhan,

who also stood trial as a co-accused but was acquitted of the charge and four others, in the house of Sushil Kumar Sahu (P. W. 5) in village Salbania in the district of Dhenkanal during the night on January 9/10, 1981, being armed with dangerous instruments and having caused injuries to some of the inmates of the house and for having removed cash and a number of other articles. The appellants bad pleaded not guilty to the charge. While the prosecution had examined twelve witnesses to establish its case, the appellant Babul Pal had examined one witness in his defence to establish that the cash recovered from his possession belonged to him. Reliance had been placed by the prosecution on the evidence of two identifying witnesses, namely, P. Ws. 5 and 7. Besides, in the morning following the night of occurrence, while the three appellants had been moving together and were about to board the Baripada-Cuttack bus at Khunta, they were caught red-handed with the articles removed during the commission of dacoity, taken to the police station and arrested.

2. On a consideration of the evidence, the learned Assistant Sessions Judge held that the charge had been brought home to the three appellants while it had not been established against the co-accused Purna Chandra Pradhan. Accordingly, each of the appellants was convicted under Section 395 of the Code and sentenced to undergo rigorous imprisonment for a period of eight years.

3. It is not disputed at the bar that dacoity had been committed by more than five persons in the house of P, W. 5. The learned counsel for the appellants have challenged the evidence of P. Ws. 5 and 7 with regard to identification of the appellants and have submitted that their evidence was not worthy of credence and the test identification parade had not been conducted properly. It has been urged that the trial Court has wrongly concluded that stolen articles had been recovered from the possession of the appellants and that the articles belonged to the victims (P. Ws. 5 and 7). Mr. M. R Mohanty, the learned Additional Standing Counsel has submitted that the order of conviction is well-founded.

4. On perusal of the impugned judgment, I notice that on a careful consideration of the evidence of P. Ws. 5 and 7 who had identified properly the three appellants in the Court and at an earlier stage at the test identification parade which had been

conducted by P. W. 5 not long after the occurrence but on February 3, 1981, the learned trial Judge has held that the evidence of these two witnesses was worthy of credence. I see no justifiable reason to take a different view and therefore, in affirming the judgment, it would not be necessary to catalogue the entire evidence in this regard and reiterate the reasons recorded by the learned trial Judge in support of his conclusion. In this connection, reference may be made to the decision reported in 1981 Cri. L. J . 1019 (Supreme court); AIR 1981 S. C. 1417 (State of Kamataka v. Hamareddy and Anr.,) As the evidence would clearly indicate, the commission of offence had taken a considerable time. The place had been lighted and P. Ws. 5 and 7 were in a position to carefully see the culprits and mark their features. The test identification parade had properly been conducted and there was no material to indicate that the identifying witnesses had seen or had been shown the suspects prior to the test identification proceedings. Merely because one of the appellants had a scar mark and there was no evidence that some of the persons who had been mixed up with the suspects had scat marks, the identification of the suspacts at the test identification parade could not reasonably be thrown out, I am at one with the trial Court that the three appellants had properly been identified by Ws. 5 and 7.

5. As rightly noticed by the trial Court on the basis of the evidence of P. Ws. 8 and 9, the witnesses to the search and recoveries of the articles from the possession of the three appellants in the morning at the bus-stand at Khunta following the very night of occurrence which had been effected by the Investigating Officer (P. W. 19) and the recovery of some cash from one of the appellants in the jail premises which had been kept concealed and could not earlier be detected, each of the three appellants had been found to be in possession of articles removed during the commission of dacoity in the previous night. M. O. XVII had been recovered from the appellant Ashok Sahu and M. O. II, a Tape-recorder kept in M. O. XXXVII had been recovered from the possession of the appellant Babul Pal and M, Os. III to V and a number of other articles including a plastic bag containing gold and silver ornaments had been recovered from the possession of the appellant Ashok Das. These articles had properly been identified by P. Ws. 5 and 7 as belonging to them except the Tape-recorder (M. O. II) which had been brought from P. W. 10. Some of the articles had been identified at the test identification parade. The

owners of articles would be in a position to identify them without special marks of identification and without being in a position to formulate the reasons for identification by constantly seeing the articles and by user either by them or by the members of their families. Such identification is possible by the owners by untranslatable impressions of their minds. I see no reason to differ from the findings recorded by the trial Court that stolen articles recovered from the possession of the three appellants had properly been identified by P. Ws. 5 and 7.

6. As provided in Section 114, Illustration (a) of the Indian Evidence Act, a person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. The presumption under Section 114 is not confined to cases of theft. A like inference may be raised in a case of dacoity. If some persons are found to be in possession of articles removed during the commission of dacoity soon thereafter and they fail to explain their possession and take a false plea of denial of recoveries which cannot be accepted in view of the prosecution evidence as in this case, a presumption can legally and legitimately be raised that they were the authors of the crime of dacoity. The evidence of P. Ws. 8, 9 and 10 would leave no manner of doubt with regard to the recoveries of articles from the possession of the three appellants which had been identified by P. Ws. 5 and 7 as belonging to them. The evidence of D. W. 1 examined by the appellant Babul Pal would not be of much avail to the defence in support of his case that the cash recovered from the appellant belonged to him, as rightly submitted by the learned Additional Standing Counsel.

7. It is thus found that in the morning following the night of occurrence, the three appellants had been found to be in possession of articles removed during the commission of dacoity of which they had given no satisfactory account. In addition, there was the evidence of P. Ws. 5 and 7 that they had been able to properly identify the three appellants who were among the culprits.

8. For the foregoing reasons, I am of the view that the trial Court has correctly found that the three appellants were among the culprits who had committed dacoity in the house of P W. 5.

9. It has been submitted on behalf of the appellants that if this Court helds in agreement with the trial Court that the appellants had committed dacoity, the sentences already undergone by them would meet the ends of justice in the absence of evidence that they had previously been convicted for similar offences. The learned Additional Standing Counsel has left this matter to the discretion of this Court, The occurrence had taken place in January, 1981 and the appellants had been arrested immediately thereafter. They had been in custody in the course of investigation and trial and have been undergoing imprisonment after their conviction. They have thus undergone imprisonment for a period of nearly five years. In addition, they may have earned some remissions during the period of their imprisonment, as provided in the Orissa Jail Manual. In these circumstances, the periods of imprisonment already undergone by the appellants would meet the ends of justice.

10. In the result, the order of conviction passed against the appellants under Section 395 of the Indian Penal Code is maintained, but the sentence of imprisonment pissed against each of them is reduced to the period already undergone. The appeals stand dismissed with the aforesaid reduction in the sentences passed against the appellants. The appellants be set at liberty forthwith unless otherwise required to be detained.