

Ramesh Chandra Lenka Vs. State of Orissa

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Court : Orissa

Decided On : Apr-06-1995

Reported in : 1995CriLJ3178

Judge : A. Pasayat, J.

Acts : Indian Explosive Substances Act - Sections 9; [Indian Penal Code \(IPC\), 1860](#) - Sections 395, 397 and 457

Appeal No. : Criminal Revision No. 590 of 1993

Appellant : Ramesh Chandra Lenka

Respondent : State of Orissa

Advocate for Def. : A.N. Misra, Addl. Govt. Adv.

Advocate for Pet/Ap. : S. Das, ;A. Mohanty, ;Y. Nayak and ;M. Sinha, Advs.

Disposition : Petition dismissed

Judgement :

A. Pasayat, J.

1. Petitioner hereafter called as 'accused' faced trial along with one Ganeswar Sahu for alleged commission of offence punishable under Sections 395/397/457 of the Indian Penal Code, 1860 (in short, 'IPC') and under Section 9(b) of the Indian

Explosive Substances Act, (in short, the 'Explosive Act'). In total eight persons were involved. Three of them were convicted in a separate trial. Since petitioner and Ganeswar had absconded, the case was split up.

2. The prosecution case so far as relevant is as follows:

In the night of 25-7-1990 the inmates of the house of Mukunda Nath (P. W. 11) went to bed rooms around 12.30 p.m. The accused persons more than five in number entered into the court-yard by breaking open the back door, and entered into PW 11's bed-room by breaking open with a 'Shiaki'. One of the accused was keeping watch at the verandah. They dragged the informant and his wife Sita Rath (P.W. 13), and assaulted them. They threatened to kill them if they made any noise, at the point of knives. They broke open the wall almirah and the wooden almirah and scattered the articles. They collected cash and gold ornaments and bundled them in a napkin. Thereafter they broke open the next room and scattered the articles also. They went to the room of daughter-in-law of P.W. 11 and broke open the doors by means a 'Sila' (stone grinder). Four of the culprits entered into the room, demanded keys from the daughter-in-law, and threatened to kill her children. They brought an attache and threw it on the ground. By breaking open the boxes, they removed ornaments and cash worth Rs. 25,000/-. On demand the daughter-in-law (P.W. 15) showed the golden chain in the almirah, and bangles which she was wearing were handed over by her. The dacoits did not take the bangles, and threw it on the bed. They were wearing black banians and half-pants. Some of them had tied napkins on their heads. One of them was armed with katari. He was a short man with ordinary complexion. The age group of the accused persons was between 25 to 35. They were talking in Oriya and they had vivid knowledge about the location of different rooms of P.W. 11. They were focussing a torchlight. In light of torch and an electric bulb lighted in the verandah, the culprits were identified by the inmates of the house. The dacoits also assaulted one Rasa Manthan, who was sleeping in the verandah. Due to assault the informant had bleeding injuries. P.Ws. 11, 13 and their field servant were also injured. When the villagers came the decoits threatened them by exploding bombs. Information was lodged at Jagatsinghour Police Station. List of articles stolen was given to the police officials. On the basis of information lodged investigation was

undertaken.

3. The accused persons denied the allegations.

4. In order to establish its case, 33 witnesses were examined by the prosecution. P.Ws. 1, 2, 7, 11, 13 and 14 were inmates of the informant's house. P.Ws. 3 to 6 and 18 are post-occurrence witnesses who came to the house of informant after the dacoits had decamped. P.W. 23 is the Judicial Magistrate, First Class, who conducted Test Identification Parade of culprits and properties. P.Ws. 24, 32 and 33 are the Investigating Officers. On analysis of evidence, the learned trial Judge found the accused Ramesh guilty of offence punishable under Sections 457 and 395, IPC. Accused Ganeswar was acquitted because there was no acceptable evidence against him. In respect of offence punishable under Section 395, IPC the accused-petitioner was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/-, in default to undergo rigorous imprisonment for one year. For the offence punishable under Section 457, IPC he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default to undergo R. I. for six months. Both the sentenced were directed to run concurrently. In appeal the learned Sessions Judge, Cuttack affirmed the conclusions of the learned trial Judge, and conviction and sentence.

5. In support of the revision application, the learned counsel has submitted that the courts below had erred in placing reliance on the T. I. Parade in respect of suspects as well as properties. It is further submitted that there was inordinate delay in conducting the T. I. Parade. The evidence of the witnesses who had identified the properties is urged to be incredible and unreliable. The learned counsel for State on the other hand supported the judgment of conviction and sentence.

6. Coming to the evidence relating to T.I. Parade it is relevant to note that two earlings were recovered from one Raghunath Misra (P.W. 30), who calimed to be the priest of the petitioner. From the evidence of P.W. 33, who conducted major part of investigation, it appears that on 29-11-1990 he raided the house of accused-petitioner and recovered stolen silver coins, fragments of Silver ornaments and a red colour torch light used during dacoity in the house of

Mukunda Rath (P.W.11). On 16-1-1991 he seized the aforesaid two gold earrings from the house of P.W. 30, which were claimed to be part of properties which were taken away. On 29-11-1990, he conducted search in the house of petitioner in village Gajipur under Patkura P.S. and recovered six silver coins in currency during the regime of George Vth, the Emperor, and also certain silver ornaments and seven pieces of melted silver. On 9-1-1992 having come to know that petitioner Ramesh had been arrested in some other dacoity case at Soro by the C.I.C. of Soro Police Station, he made an application before the learned SDJM, Jagatsinghpur for issuance of production warrant to the court of SDJM, Bhadrak, Accordingly on 9-1 -1992 the accused was produced in the court of SDJM, Jagatsinghpur and thereafter T. I. Parade was conducted.

7. Emphasis has been laid on the evidence of P.W. 1 that during investigation the culprits were taken to her house. Highlighting on this it is pleaded that during investigation, the Police Officer had taken the suspects to the house of the victims and thereafter identification was done in the T. I. Parade, and therefore, there was sanctity in such identification. The learned appellate Judge has dealt with this aspect and has referred to the evidence in detail to conclude that the petitioner was apprehended after closure of investigation, and during trial of the case. He further found that after the petitioner was apprehended in another case and was remanded to custody by the learned SDJM, Bhadrak, P.W. 33 came to know about his apprehension. Under the custody warrant the petitioner was brought to Jagatsinghpur Jail where the T. I. Parade was held. Therefore, the possibility of prosecuting agency showing him to the identifying witnesses is unbelievable. The plea that the identifying witnesses had occasion to see the petitioner earlier has been rightly rejected by the courts below. F.I.R. was lodged immediately after the occurrence giving details of the stolen properties, and graphic physical description of the accused persons.

So far as the evidence of P.W. 11 is concerned, the articles which were put to T. 1. Parade has been correctly identified. His evidence has, therefore, been rightly relied upon by the courts below. Coming to the evidence of P.W. 14, it is seen that he has identified the accused-petitioner in Court and also in the T. I. Parade. He is a field servant. He has stated about attempt by the culprits to terrorise the villagers

by throwing bombs. Though the accused had raised an objection before the learned JMFC. Jagatainghpur, who conducted T. I. Parade that the witnesses had occasion to see him, he has observed that the witnesses identified the petitioner to be one of the culprits. P.W. 30 is a star witness. He claims to be the priest of the petitioner and has produced M.Os. VI and VII. According to him, those were given to him in lieu of money for rendering service as a priest. The courts below have referred to his evidence in detail and have come to the conclusion about the guilt of the petitioner.

8. While exercising revisional jurisdiction it is neither desirable nor proper to re-assess the evidence, unless the conclusions of the courts below are patently absurd, unreasonable and perverse. This does not appear to be a case of that nature. Learned counsel for the accused made an attempt to highlight certain factual aspects. He, however, fairly conceded that these were not placed for consideration of courts below. In that view of the matter, I do not find any scope for considering those aspects for the first time in this Court. I find no merit in this revision application, which is accordingly dismissed.