

Mahendra Mistry. Vs. State of Bihar.

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Court : Patna

Decided On : Apr-21-2011

Judge : Anjana Prakash, J.

Acts : Indian Penal Code (IPC) - Section 395

Appeal No. : Criminal Appeal (SJ) No. 110 OF 1995

Appellant : Mahendra Mistry.

Respondent : State of Bihar.

Advocate for Def. : Mr. Parmeshwar Mehta, Adv.

Advocate for Pet/Ap. : Mr. B.K. Singh, Adv.

Judgement :

1. The appellant has been convicted for the offences under Section 395 IPC and sentenced to RI for ten years by the 2nd Additional Sessions Judge, Saharsa in S.Tr. No. 111/81/77/88 by a judgment dated 14.06.1995.
2. The case of the prosecution is that a bus was looted between Saharsa and Budhama by six accused persons in which the appellant was identified by one witness subsequently in the Test Identification Parade.
3. The prosecution in all examined eight witnesses out of whom P.W. 1 is the informant but did not support the prosecution case in its entirety. P.W. 2 is the

cleaner of the bus and he was declared hostile whereas P.W. 4 and P. W. 5 have also been declared hostile. P.W. 6 is the passenger of the bus who had identified the appellant in the Test Identification Parade whereas P.W. 3 is the Judicial Magistrate who has conducted the Test Identification Parade. P.W. 8 is formal witness.

4. From the evidence of P.W. 3, it is evident that even though the occurrence has taken place on 07.03.1978 the Test Identification Parade was held on 15.04.1978 i.e. more than a month later. Admittedly the appellant was identified by only one witness and it is difficult to sustain the conviction of the appellant on the sole evidence of P.W. 6 when the Test Identification Parade was admittedly held more than a month later.

5. Under the circumstances, the appellant is given benefit of doubt and acquitted of the charges. In the result, the appeal is allowed and the judgment dated 14.06.1995 passed by the 2nd Additional Sessions Judge, Saharsa in S.Tr. No. 111/81/77/88 is set aside. The appellant is discharged of the liability of his bail bond.

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