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Jaswant Paswan Vs. the State of Bihar

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Court : Patna

Decided On : Aug-10-2011

Judge : Gopal Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 395, 414, 379, 394, 392

Appeal No. : Criminal Appeal (SJ) No.138 of 1998

Appellant : Jaswant Paswan

Respondent : The State of Bihar

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

Advocate for Pet/Ap. : Mr. Yogendra Kumar Singh, Adv.

Judgement :

1. Heard the counsel for the appellant and the State.

2. The appellant has been convicted under Section 395 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case, as alleged by the informant that in between the night of 14/15.11.1995 he opened the door on the sound of knocking of the door by Jaswant Paswan and as soon as he opened the door the dacoits entered into the house, looted away cash, silver chain, payal from the room and Umesh Ram and also looted the cash, silver ring from the house of Sattan Ram as well as from the

house of other persons.

4. On the fardbeyan first information report lodged, investigation proceeded and during the investigation the appellant apprehended and even articles recovered and Test Identification Parade of person and things were conducted which were identified by the witnesses and after completion of the investigation charge sheet submitted, cognizance taken, case committed to the Court of sessions and after framing of the charge the trial proceeded.

5. During the trial thirteen witnesses were examined and on considering the oral and documentary evidence the order of conviction and sentence recorded, as stated above.

6. P.Ws. 1, 2, 3, 4 and 12 have supported the prosecution case regarding the factum of dacoity and P.W. 13 is the investigating officer, who has also found the objective evidence and description of the place of occurrence and recovery of articles and seizure list prepared with regard to the article and has proved the test identification chart regarding the identification of the accused and the article recovered and has also deposed that the appellant is accused in so may criminal cases of Baroon P.S. Cases No. 106 of 1990, 20 of 1991, 157 of 1992, 60 of 1994, 186 of 1994 for offence under Sections 414, 379, 394 and 392 of the Penal Code as well as other cases of Aurangabad Muffasil Police Station and Railway Police Station. In his deposition against the appellant P.Ws. 1, 2, 3 and 12 have identified the appellant in Court as well as in Test Identification Parade and test identification charge is marked as Exhibit 4. However, the test identification chart of the Test Identification Parade with regard to the article also mention that Sattan Ram identified the silver ornament recovered from house of the appellant, which is mentioned in the seizure list, Exhibit 1 and this fact also find mention in the fardbeyan about the silver ring looted from the house of Sattan Ram, P.W. 2, and, hence, on considering the evidence the trial Court convicted and sentenced the appellant, as stated above.

7. The learned counsel for the appellant, however, contended that the appellant is resident of a neighbouring village and use to pass through the house of the informant for going to bazaar and, has, further, asserted that he purchased the

land in the village and do the agriculture, hence, the identification in the Test Identification Parade and in Court not reliable and subject to inspire consequence. It has, further, been contended that some of the witnesses stated that the face of the dacoits were covered, hence, identification of the appellant is doubtful and, further defence has been adduced evidence to prove and even file certificate of the Mukhiya and receipt regarding the purchase of silver ring and even sale deed about the purchase of land.

8. However, taking into consideration the evidence on behalf of the defence and the suggestion or cross examination of the prosecution witnesses there is nothing in the cross examination to suggest that the witnesses accepted that the appellant was known to the witnesses or the prosecution party. The witnesses in their evidence in cross examination have categorically stated that they do not know Jaswant Paswan nor Jaswant Paswan has got any agricultural land in the village nor the residents of Nawadih pass through Bagnaha for catching the bus and they have denied the knowledge that the mother of Jaswant Paswan had purchased land in the village or does the agriculture and, hence, there is no iota of evidence that the prosecution has accepted that Jaswant was known to them. There was no evidence at all to suggest that the appellant has falsely been implicated or was known to the witnesses, even the defence produced four witnesses, but, it neither established that they are know though D.W. 1 and 2 have been introduced to show that he has got land and use to come of agriculture, hence, it is not established or even probabilities that the appellant was known to the witnesses.

9. However, taking into consideration the entire evidence and the four witnesses have identified the appellant both in Test Identification Parade as well as in Court and, hence, prosecution has proved the charge beyond reasonable doubt and, further, there are several cases pending against the appellant and, hence, the prosecution has proved the charges beyond reasonable doubt and, hence, I do not find any merit to interfere with the order of conviction and sentence recorded by the Court below against the appellant.

10. The appeal is dismissed.

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