

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.325 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BANKA

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1. Madhu Yadav, son of Barju Yadav
2. Ashok Pujhar, son of Bashudeo Pujhar, both are residents of village Lathani,
P.S. Chanden, District Banka

..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellant/s :Mr. Rajesh Kumar Sharma, Advocate(amicus curiae)

For the Respondent: Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 26-03-2018

Both the appellants stand convicted under Section 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years vide judgment and order dated 22.4.2003 passed by Sri Bijay Prasad Poddar, the then 11nd. Additional Sessions Judge, Banka in Sessions Trial Case No. 536 of 2000.

2. Prosecution case as per the fardbeyan of informant Chandradeo Yadav (PW 7), in short, is that a dacoity was committed in his house at about 1 O'clock in the night of 5/6.11.1999 and the dacoits had taken away three pairs of Payel silver made 15 vars, one pair of barn silver made 10 vars, silver made Pauchi two pairs 24 vars, six pieces of Kansa plate, three kansa lota, sari and other articles. It has been stated that his younger brother was sleeping in the verandah and on his alarm villagers came there and chased the dacoits and further it is stated that they heard some sound of gossiping in the



jungle and they have apprehended the appellants Mohan Yadav and Ashok Pujhar and from where they have been handed over to police. On the basis of aforesaid fardbeyan, Katoria P.S. Case No. 197 of 1999 was registered under Section 395 IPC and 25 (1-b) A of the Arms Act.

3. After investigation police submitted charge sheet against the appellants and after commitment the case has ultimately traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial the prosecution in order to substantiate its case has examined altogether eight witnesses, they are PW 1 Chulho Rai, PW 2 Jib Lal Yadav, PW 3 Gajo Yadav, PW 4 Asha Devi, PW 5 Ganga Yadav, PW 6 Fakira Yadav, PW 7 Chandradeo Yadav (informant) and PW 8 Shiva Shankar Prasad, I.O. of this case.

5. Learned trial court has convicted the appellants under Section 395 IPC and acquitted them from the charge under Section 25 (1-b) A of the Arms Act.

6. Nobody appears for the appellants on repeated calls. Mr. Rajesh Kumar Sharma, who is present in Court, has been appointed as amicus curiae to assist this Court.

7. Contention of learned amicus curiae is that appellants have not been arrested at the spot, rather arrest was made from jungle which is at a distance of 1.5 kms. from the place of occurrence and nothing has been recovered from their possession. Further submission of learned counsel is that it has come in the evidence that appellant



Madhu Yadav had some relationship in the village and some of the witnesses had known to him from before, as such his identification has no value in the eye of law. Further submission is that informant and his family members have not identified the appellants in court and there is no evidence that they were present at the time of dacoity and they have identified them in course of dacoity and, as such the conviction of the appellants is not sustainable in the eye of law and liable to be set aside.

8. On the other hand, learned counsel for the State has submitted that evidence clearly shows that appellants were apprehended on chase and one pistol was recovered from their possession and they were handed over to police and, as such inference can be drawn that they were fleeing away from the place of occurrence after committing dacoity and they were arrested and they were identified by the witnesses also in court, as such the conviction of appellants under Section 395 IPC appears to be free from any infirmity and sustainable in the eye of law.

9. Having heard both sides and on perusal of evidence it appears that PW 7 is the informant in this case and his evidence in court discloses that dacoity was committed in his house and when dacoits were fleeing away from his house, his brother started raising alarm on which witnesses, namely, Chulho Rai (PW 1), Jiv Lal Yadav (PW 2), Fakira Yadav (PW 6) and Gajo Yadav (PW 3) and other villagers came there running and they opened the doors of his room



and then he came out of the room. He has further stated in his evidence that he along with other villagers proceeded to search out the dacoits and in course of search they came into the jungle at a distance of one and half kilometers from the village, where they heard some sound of gossiping and they surrounded the dacoits and raised alarm and the dacoits began to flee away and out of them they apprehended two dacoits, one of the dacoits disclosed his name as Madhu Yadav and other as Ashok Pujhar. This witness has also stated in his evidence that from accused Madhu Yadav one rifle was recovered and from other accused nothing was recovered and he has proved the fardbeyan also. In paragraph-5 of his cross examination he disclosed that dacoity was committed in dead of night and they have not identified any of the dacoits. This witness has also been cross examined on the point that in his village people of Pujhar caste were living and Bahadur Pujhar is living in his village. In his cross examination he has not admitted that Ashok Pujhar is maternal uncle of Bahadur Pujhar and Madhu Yadav is nephew(vagina) of Udho Yadav and he has also stated that he does not know as to whether Udho Yadav is living in his village. However, he has stated that he is in talking term with him. His evidence does not disclose that any looted article has been recovered from the possession of accused persons.

10. PW 1 Chulho Rai has stated in his evidence in chief that two accused persons were apprehended in jungle and he identified



Madhu Yadav in court. However, his cross examination shows that he knows Madhu Yadav from before and he used to come to his village and he is nephew of Udho Yadav, as such his identification to Madhu Yadav has no value.

11. PW 2 Jib Lal Yadav has also stated about the arrest of Madhu Yadav and Ashok Pujhar from jungle but in his cross examination he has stated that nanihal of Madhu Yadav is the same village where dacoity was committed and Madhu Yadav used to come to his Mama's house. His evidence also discloses that he was not present at the time of arrest of the accused persons.

12. PW 3 is Gajo Yadav (he has been mentioned as PW 2 in deposition). He has appeared for the cross examination and as such learned trial court has expunged his evidence.

13. PW 4 Asha Devi has stated that two accused persons were arrested on chase and they were Madhu Yadav and Ashok Pujhar but she has stated that male members have chased them and she has not chased them and in the morning she saw the villagers caught two persons. She has also stated that Udho Yadav is known to her and Madhu Yadav is his nephew.

14. PW 5 Ganga Yadav in his evidence has stated that on chase dacoits were arrested and he has identified accused Madhu Yadav and Ashok Pujhar. His evidence also shows in paragraph-3 of his cross examination that they have searched for one and a half hours for the dacoits and his evidence also shows that no looted article has



been recovered from the dacoits and only a sixer (pistol) was recovered. He has also admitted that house of Madhu Yadav's mama is in his village.

15. PW 6 Fakira Yadav has also supported the prosecution case and he has stated that on chase accused persons were arrested and he has also stated that no looted article was recovered from them. In his cross examination he has stated that he knows Udho Yadav but he does not know as to whether Madhu Yadav is his nephew (baghina) or not. In his cross examination he has also stated that nothing was recovered from the place and even from the apprehended accused persons nothing was recovered.

16. PW 8 is the I.O. in this case and he has proved the fardbeyan and he has stated in his evidence that after recovery he prepared production-cum-seizure list and he recorded the statement of the informant and visited the place of occurrence but from his evidence it appears that he has not visited the place of occurrence from where the accused persons were arrested and further stated that accused persons were not arrested by him, nor any pistol was recovered from them nor the looted articles were recovered by him.

17. On consideration of the entire evidence, as discussed above, it appears that the appellants were not identified by the informant or any other witnesses at the time of committing dacoity and it is said that they have chased the appellants and arrested them in jungle at a distance of one and a half kilometers from the place of



occurrence and no looted article was recovered from their possession and there is nothing to show the involvement of the accused appellants in commission of dacoity in the present case except that they were arrested after one and a half hours on chase. Even the informant has stated in his evidence that he has not identified any of the accused at the time of dacoity and other witnesses have also stated that it was dark of night and they have not identified the accused persons. It further appears in evidence that in absence of any recovery of looted articles it cannot be said that accused Madhu Yadav and Ashok Pujhar, who were apprehended after the occurrence, were also involved in the dacoity committed in the house of informant. However, learned trial court has not considered the aforesaid infirmities and convicted the appellants on the ground that they were arrested on chase after the occurrence but he failed to consider the evidence of witnesses shows that they were chased one and half kilometers and, as such, in absence of any recovery of looted articles and no family members were present there, it is not proper to convict the appellants in a case under Section 395 IPC. On the other hand, defence case is that as there was quarrel between Madhu Yadav with his maternal uncle with respect to share of property, as such, they have falsely been implicated in this case.

18. Considering the facts and circumstances, as discussed above, to my opinion, the appellants are entitled to the benefit of doubt in this case.



19. Accordingly, this appeal is allowed and the impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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