

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.330 of 2003

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1. Shiva Balak Darhi

2. Suresh Darhi

Both sons of Baleshwar Darhi, Resident of Lodipur, P.S. – Barbigha, District –
Sheikhpura

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harish Kumar, Adv.
Mr. Sudhanshu Bhushan, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-06-2018

Both the appellants stood convicted under Section 395 and 397 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo rigorous imprisonment of ten years under Section 395 of the IPC and rigorous imprisonment of three years under Section 397 of the Indian Penal Code by the judgment of conviction dated 24.04.2003 and order of sentence dated 28.04.2003 passed by Shri Gopal Krishna Jha, Additional Sessions Judge –IX. Munger in S.C. No. 61/2001.

2. Prosecution case as per fardbeyan of informant Arvind Kumar Jha P.W. 7, in short is that in the night of 16/17th September 1999, while the informant was sleeping along with his wife Kanti Devi in the southern room of the house and in the adjacent room, his



two daughters, namely, Rubi Kumar and Baby Kumar and one *bhagini* were sleeping. In both the rooms lantern was lighting. In the night at about 1.30 A.M., some dacoits entered in his house and while one of them was trying to remove the ear –ring of the wife of the informant, she woke up and asked him as to who was he then the informant also woke up and saw that there were three dacoits in his room, one of them was armed with gun, who pointed the gun towards the chest of the informant. The informant has given the description of the said dacoit in his fardbeyan. It is alleged that the dacoits took out two attachi and other articles from the room and also snatched away the ear-rings worn by the Kanti Devi. It is further alleged that four dacoits had entered inside the room, where the daughters and *bhagini* of the informant, were sleeping and committed loot of jewelley and other articles as well as cash of Rs. 2,000/-. Daughters of the informant and the *bhagini* claimed to have seen them and recognized them. As soon as the dacoits left the place of occurrence, informant and his family members raised alarm, on which villagers assembled and tried to apprehend the dacoits. The informant heard a sound of explosion but he continued to chase them and while, he was returning, he saw that one dacoit is lying dead near a *Mahua* tree and other three dacoits were apprehended by the villagers. The dead dacoit was identified as Dasrath Darhi and the daughter of the informant said that



this is the person, who assaulted Rubi Kumari with the butt of the gun, causing injury to her. Other apprehended dacoits were also identified as Shiv Balak Darhi, Ganaur Darhi and Suresh Darhi and remaining dacoits succeeded in fleeing away after looting the articles. It is also alleged that one of the dacoits disclosed the name of his other associates, who succeeded in fleeing away as Bhaso Darhi, Jairam Darhi and Gauri Darhi.

3. On the basis of aforesaid fardbeyan, Barbigha P.S. Case No. 184/99 was registered. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Gopal Krishna Jha, Additional Sessions Judge –IX. Munger in S.C. No. 61/2001, for trial and disposal.

4. During trial charges were framed under Section 395 and 397 o the IPC and in order to prove the charges, prosecution has examined altogether eleven witnesses. They are; P.W. 1 – Rajniti Jha, P.W. 2 – Ramchandra Singh, P.W. 3 – Suresh Prasad Singh, P.W. 4 – Surendra Singh, P.W. 5 – Baby Kumari (daughter of informant), P.W. 6 – Rubi Kumari (another daughter of informant), P.W. 7 – Kanti Devi, wife of the informant, P.W. 8 – Abhai Shankar Kumar, P.W. 9- Arvind Kumar Jha, the informant, P.W. -10, the doctor, who examined and treated the daughter of informant Rubi Kumari and



P.W. 11- Kameshwar Singh, Investigation Officer of the case.

5. Apart from that following documents have been brought on record and marked as; Ext. 1 – Signature of F.I.R witness Rajniti Jha on fardbeyan, Ext. 2 – Injury report of Kanti Devi, Ext. 1/1 – Signature of informant Arvind Kumar Jha on fardbeyan, Ext. 2/1 – Injury report of Rubi Devi, Ext 3- Fardbeyan and Ext. 4 – Confessional statement of accused Shiv Balak Darhi.

6. The defence of the accused person is of total denial of the occurrence and of innocence as per trend of cross examination and statement under Section 313 Cr.P.C.

7. Learned Trial Court after conclusion of trial convicted the appellant under Section 395 and 397 of the IPC and sentenced him in the manner aforesaid.

8. Learned counsel for the appellant has assailed the impugned judgment on the ground that identification of the appellants is doubtful in this case as it is alleged that PW 5 and PW 6 had identified the appellants but evidence of PW 5 and PW 6 shows that they have tied the clothes around their faces and in such a situation, identification of the appellants become doubtful. It has further been submitted that in this case, none of the looted articles were recovered from them and the lantern, in the light of which, they alleged to have been identified, has not been produced. Further submission is that the



appellants have been convicted under Section 397 of the IPC, however, there is no evidence available on record to show that these appellants were armed with any kind of weapon or they have used any deadly weapon in the occurrence as PW 5 has stated in her evidence that the person, who assaulted her by means of butt of pistol is not the appellants and in such a situation, the conviction of appellants under Section 395 as well as 397 of the IPC is not sustainable in the eye of law.

9. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the finding of guilt recorded by the Trial Court and submitted that there are sufficient reliable and cogent materials available on the record to prove the guilt of these appellants. So far their identification is concerned, they have been identified by PW 5 and PW 6 and besides that they were caught in the house of the informant just after the occurrence and they were not the residents of that village and their presence in the dead night on the date of occurrence, clearly shows their hands in the occurrence, as such, their conviction under section 395 of the IPC is just and proper. So far conviction under Section 397 of the IPC is concerned, it has come in the evidence of witnesses that fire arm was used in the occurrence as one of the witnesses was assaulted by the butt of pistol and there was explosion also and in such a situation, the conviction of



appellants under Section 397 of the IPC is also just and proper and does not require any interference.

10. From perusal of evidence of witnesses, it appears that P.W. 9 is the informant in this case and he has fully supported the factum of dacoity in his house and almost all the witnesses have supported the factum of dacoity and stated that in the night of 16/17th September 1999, dacoits entered inside the house of informant and committed dacoity and on chase by the informant and villagers, they were apprehended and there was also explosion and one dacoit was found in dead condition. Their evidence further disclose that they have informed the police and the villagers and they have assembled there. Further evidence of PW 5 and PW 6 shows that they have identified the appellants at the time of occurrence in the light of the lantern. However, learned counsel for the appellants is right in his submission that the said lantern has not been produced and they had wrapped clothes around their faces, as such, their identification appears to be doubtful. However, from perusal of the evidence it appears that PW 5 identified appellant Shiv Balak Darhi and PW 6 identified both the appellants but they have been caught near the house of the informant soon after the occurrence and further one of the dacoits was also in injured condition. It further appears that they were resident of village, which is one kilometer away as such, their



presence at the time of occurrence in the dead night, shows their involvement in the occurrence. No doubt informant has not identified any of the dacoits and PW 5 and PW 6 identified them stating that the appellants used to graze their pigs near the house of informant. However, the said identification has no much relevance as the appellants have been arrested on chase just after the occurrence and they have not given any explanation for their presence at the place of occurrence in their statement under Section 313 Cr.P.C.

11. Considering the facts and circumstances of the case, so far conviction of the appellants under Section 395 of the IPC, appears to be just and proper and does not require any interference by this Court. However, so far conviction of the appellants under Section 397 of the IPC is concerned, conviction can be made, if at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, but in this case, there is nothing available on record to show that these two appellants used any kind of weapon so as to cause grievous hurt to any of the family members of the informant and injury report does not show that any of the injuries, were grievous in nature and as such the conviction of appellants under Section 397 of the IPC does not appear to be sustainable.

12. Accordingly the conviction of the appellants under



Section 395 of the IPC is upheld, whereas, the conviction of appellants under Section 397 of the IPC is set aside.

13. A submission has been made by learned counsel for the appellants that appellants were aged about 55 and 50 years at the time of judgment i.e. in the year 2003, as such, they must be now aged about 70 and 65 years respectively and they have remained in judicial custody for six years and two months and there is nothing on record to show that they have previously been convicted in any other case or have been an accused in any other case or has ever misused the privilege of bail.

14. This court finds force in submission of learned counsel for the appellants and accordingly, the period of sentence of the appellants under Section 395 is reduced to the period already undergone by them in judicial custody.

15. With the above modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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