

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1152 of 2018

Arising Out of PS. Case No.-171 Year-1983 Thana- ROSERA District- Samastipur

1. Nandan Das
2. Shiv Nandan Das,
Both are sons of Guneshwar Das, Residents of Village- Jharahi, P.S.- Rosera,
District- Samastipur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vivekanand Singh, Advocate Mr. Rajendra Narayan Singh, Advocate
For the Respondent/s	:	Mr. Kumar Ranjit Ranjan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 22-02-2024 Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against a judgment and order of affirmation of conviction and sentence dated 17.10.1996 passed by the learned Assistant Sessions Judge, Rosera in S.T. No.222 of 1986/15 of 1993 arising out of Rosera P.S. Case No.171 of 1983 whereby and whereunder the petitioners were convicted under Section 395 of the Indian Penal Code, confirming the judgment and order of conviction and sentence in Cr. Appeal No.170 of 1996.

3. Before this Court deals with the legality, validity and propriety of the orders impugned, it is necessary for the



purpose of appraisal of the issue to describe the following facts :-

In the night of 10.10.1983 when all the family members of the informant were sleeping, a group of people numbering 15-20 being armed with deadly weapons illegally entered into the house of the informant at about 11:00 P.M. They first identified the informant by torch light brought by them and tied him, his brother Ram Badan Sharma, his son-in-law and Bikhani Kamti with their Gamcha and Dhoti, they also assaulted them by Lathis. After wrongfully confining the informant, his brother and son-in-law, the said miscreants entered into the room where the female members of the family of the informant were sleeping. They committed Dacoity in respect of ornaments, utensils, cloths, watch and a sum of Rs.13796/-. In the process of committing dacoity they also assaulted the family members of the informant in order to create a terror in their mind. In the meantime, the informant and his brother somehow managed to untie themselves and started fleeing away towards western side of their house. One of the dacoits in the group to whom others were calling as 'Baba' hurled Bombs to them, they received injuries on their persons due to the explosion of bombs. In the meantime, hearing their hue and cry local villagers assembled at



the spot and the dacoits fled away.

4. F.I.R. of the incident was lodged on 11.10.1983 at about 01:00 A.M. On the basis of the said F.I.R. police registered Rosera P.S. Case No.171 of 1983 under Section 395/397 of the I.P.C. against five accused persons. On completion of investigation charge sheet was filed against the said five accused persons. During trial one of the accused expired, four accused persons faced trial, on conclusion of trial the learned Trial Judge acquitted two accused persons while the petitioners were convicted under Section 395 of the I.P.C. All the accused persons were acquitted of the charge under Section 397 of the I.P.C.

5. It is contended on behalf of the petitioners that the petitioners are co-villagers of the informant, they know each other very well. The relation between the petitioners and the informant was inimical since long. The petitioners filed a complaint against the informant on the basis of which a police case under section 307 of the I.P.C. was registered against him. However, the informant was acquitted from the said charge. Therefore, they are in bad blood. The petitioners were convicted by the Trial Court for committing offence under Section 395 of the I.P.C. on the basis of identification made by the family



members of the informant under torch light which the dacoits were carrying.

6. It is submitted by the learned advocate for the petitioner that according to Section 391 of the I.P.C., when five or more than persons conjointly commit or attempt to commit a robbery or where whole number of persons conjointly committing or attempting to commit a robbery and the persons present and adding such commission or attempt amount to five or more every persons so committing or attempting or aiding is said to commit dacoity. Section 395 of the I.P.C. prescribes the punishment for dacoity.

7. In the instant case, five persons were charged for committing dacoity, one person died during trial of the case. Two persons were acquitted, meaning thereby the prosecution failed to bring home the charge against the said two acquitted persons to the effect that they were the members of the team of dacoits committing or attempting to commit dacoity. When in order to prove dacoity necessary ingredient to commit offence under Section 391 of the I.P.C. is conjoint act of five or more persons, the petitioners being only two persons cannot be convicted, in support of his contention he refers to a decision of the Hon'ble Supreme Court in the case of Raj Kumar @ Raju



Vs. State of Uttaranchal (now Uttarakhand) reported in (2008) 11 SCC 709. In the said report six persons faced trial under the charge of Section 395 of the I.P.C. Out of the said six persons two persons were acquitted. Under such factual backdrop the Hon'ble Supreme Court held as hereunder :-

“35. For the foregoing reasons, the appeal is allowed. The conviction of the appellant for an offence punishable under Section 396, IPC is set aside and he is ordered to be acquitted. Since the appellant is in jail, he is ordered to be released forthwith if his presence is not required in any other case.”

8. In the instant case, as observed earlier, there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. In my opinion, therefore, as per settled law, four persons could not be convicted for an offence of dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under Section 120B, IPC as also for receiving stolen property in the commission of dacoity punishable under Section 412, IPC. The conviction of the



appellant herein for an offence punishable under Section 396 IPC, therefore, cannot stand and must be set aside.

9. In the instant case, it is found from the judgment of the Trial Court that the petitioners are co-villagers, the Trial Court held that they had inimical relation. Enmity between the informant and the accused persons is a double edged weapon. It cuts both the parties. It may be the reason for committing the offence or it may be the reason for false implication of the accused persons.

10. Neither the Trial Court nor the first appellate court in their judgment came to the finding that there were five or more persons who committed dacoity in the house of the informant and the accused persons are the members of the gang. In the absence of such finding the accused persons are entitled to be acquitted relying on the observation made by the Hon'ble Supreme Court in Raju Kumar (supra). It is needless to say that in case of dacoity there must be robbery by five or more persons, robbery is defined in Section 390 of the I.P.C. In all robbery there is either theft or extortion. In case of robbery the prosecution is required to prove that in order to committing the theft or in carrying away or attempting to carry away property obtained by theft, the offender, for that end voluntarily causes or



attempts to cause to any person death or hurt or wrongful restrain or fear of instant death or instant hurt or instant wrongful restrain then theft is robbery.

11. In the instant case, it is submitted on behalf of the prosecution that the informant and his brother received injury due to the explosion of bombs hurled towards them by one of the members of dacoits, named, *Baba*. The informant in his evidence stated that he was medically treated, no medical report has been filed during the Trial of the case, the medical officer was not examined. In view of absence of such evidence, it is not possible to hold that the petitioners committed dacoity and in course of committing dacoity they caused hurt to the informant and his brother.

12. Thus, the prosecution failed to prove, the essential ingredients of offence under Section 391 of the I.P.C. punishable under Section 395 of the I.P.C. Both the courts below erred in law in convicting the petitioners under the charge of section 395 of the I.P.C. and accordingly, sentencing them.

13. In view of the above discussion, the instant revision is allowed on contest.

14. The petitioner are acquitted the order of conviction and sentence passed against the petitioners are



quashed and set aside.

15. Let a copy of this order be sent to the trial Court along with the Lower Court Record. The trial Court is directed to issue release order against the petitioners at once, if they are in custody.

16. If the petitioners are not in custody, they shall be discharge from their bail bonds.

(Bibek Chaudhuri, J)

mdrashid/-

U		T	
---	--	---	--

