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Mohib Vs State Of Bihar

Criminal Appeal (Sj) No. 499, 555, 653 Of 2017, Criminal Appeal (Db) No. 1155, 1161 Of 2016, 7 Of 2017

Court: Patna High Court

Date of Decision: Nov. 6, 2020

Acts Referred:
Indian Penal Code, 1860 â€" Section 395

Hon'ble Judges: Ashutosh Kumar, J

Bench: Single Bench

Advocate: Upendra Prasad, Veena Kumari Jaiswal, Mukesh Kumar Rana

Final Decision: Partly Allowed/Disposed Of

Judgement

1. All the three criminal appeals have been taken up together for hearing.

2. In fact, separate applications were filed on behalf of the appellants for suspension of sentence during the pendency of the respective appeals. Their

prayer for bail, at the time of admission of their respective appeals, were rejected. However, it appears from the office notes that the appeals were

listed on the request of the learned counsel for the parties for their disposal on the question of sentence.

3. The appellants, in all the criminal appeals, have been convicted under Section 395 of the Indian Penal Code and have been sentenced to undergo

rigorous imprisonment for ten years and a fine of Rs. 10,000/- each. In default of payment of fine, the appellants have been sentenced to undergo

simple imprisonment for a period of three months. It has also been stipulated that the period already undergone by the appellants in custody shall be

set-off from the aforesaid period.

4. The impugned judgment and order, dated 28.10.2016 and 29.10.2016 respectively, was passed by the learned 1st Additional Sessions Judge, Araria

in Sessions Trial No. 486 of 1999/Trial No. 67 of 2016, arising out of Araria P.S. Case No. 540 of 1998.

5. It appears from the case records that while the informant/Abul Amin was coming back to his home, he was ambushed by miscreants who had hid

themselves in the road side bush. Other persons also were taken custody of by the miscreants, who were many in number. The informant was

divested of Rs. 50,000/-, whereas others were divested of their personal belongings. Those who were been robbed are Mathura Paswan and Seikh

Safid Mian. The informant claims to have identified the appellant/Sobrati (Cr. Appeal (SJ) No. 653 of 2017).

6. From the judgment and order of conviction, it appears that seventeen prosecution witnesses were examined during the trial. Out of the aforesaid

witnesses, P.Ws. 1, 2, 3, 15 and 16 have been declared hostile, whereas P.Ws. 6, 8 and 14 have not supported the prosecution version. The aforesaid

witnesses have also not identified anyone of the appellants during the course of trial.

7. P.W. 17 is a formal witness, who has only identified the formal F.I.R. and the fardeybeyan (Exhibits Ã¢â‚¬" 1 and 2).

8. The informant (P.W. 15), as noticed earlier, has completely given a go-by to the prosecution case and the Investigating Officer of the case has not

been examined by the prosecution. No explanation also has been offered by the prosecution for non-examination of the Investigating Officer.

9. Apart from this, it appears that there are several contradictions in the deposition of other prosecution witnesses with respect to the manner, time

and place of occurrence as well as the participation of the accused persons including the appellants.

10. The miscreants, according to the prosecution version, were about twenty to twenty-five in number. The appellant/Dukha @ Dukhawa (Cr. Appeal

(SJ) No. 499 of 2017) has been identified by P.W. 4, who has not identified any other person. Similar is the case with P.W. 6, who too has identified

appellant/Md. Taiyab only (Cr. Appeal (SJ) No. 499 of 2017). P.W. 7 has identified appellant/Sobrati (Cr. Appeal (SJ) No. 653 of 2017) and

appellant/Mohib (Cr. Appeal (SJ) No. 555 of 2017).

11. The prosecution case appears to be faltering at the seams so far as the other relevant considerations in a trial are concerned.

12. However, regard being had to the fact that appellant/Mohib (Cr. Appeal (SJ) No. 555 of 2017) and appellant/Sobrati (Cr. Appeal (SJ) No. 653 of

2017) have been identified by three and two witnesses respectively and appellants/Md. Taiyab and Dukha @ Dukhawa (Cr. Appeal (SJ) No. 499 of

2017) have been identified by three other witnesses, I am not inclined to interfere with the judgment of conviction.

13. It has been submitted on behalf of the appellants that prior to their conviction, the appellants have remained in jail for about a year and they are in

custody since the date of the judgment, i.e., 28.10.2016.

14. Thus, the appellants have spent more than five years in custody.

15. Since the occurrence is of the year 1998 and there are several mitigating factors in the case, this Court is of the considered view that the interest

of justice would be subserved if the sentences of the appellants are reduced to the period of custody which they have already undergone.

16. It is ordered accordingly.

17. The conviction of the appellants is maintained, but the sentence is reduced to the period already undergone.

18. The appellants shall be released from the custody on receipt of a copy of this judgment.

19. Let a copy of this judgment be transmitted to the Jailer, Araria Jail forthwith.

20. A copy of the judgment shall be preserved for future reference.

21. All the three appeals are partially allowed and disposed off accordingly.