

Basudeo Yadav And Anr Vs State Of Bihar**Criminal Appeal (DB) No. 442 Of 2015**

Court: Patna High Court**Date of Decision:** Jan. 31, 2024**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 209, 372#Indian Penal Code, 1860 " Section 120B, 395, 396

Hon'ble Judges: Ashutosh Kumar, J; Nani Tagia, J**Bench:** Division Bench**Advocate:** Rama Kant Singh, Abhimanyu Sharma**Final Decision:** Allowed

Judgement

1. Heard Mr. Rama Kant Singh, learned Advocate for the appellant and Mr. Abhimanyu Sharma, learned APP for the State.

2. The appellant no. 1/Basudeo Yadav has been convicted vide judgment dated 07.04.2015 under Sections 395 and 396 of the IPC by the learned 1st

Additional Sessions Judge, Gaya in Sessions Trial No. 70/93/394/07 and by order dated 08.04.2015, he has been sentenced to undergo S.I. for life and

fine of Rs. 5000/- for the offences under Sections 395 and 396 of the IPC respectively. In the event of non-payment of fine, he has been directed to

suffer further S.I. of three months. The sentences have been ordered to run concurrently.

3. The appellant no. 2/Rajdeo Yadav has only been convicted for the offence under Section 395 of the IPC and has been sentenced to undergo S.I.

for life and a fine of Rs. 5000/-. This conviction is with the aid of Section 120B of the IPC; for which also separate sentence of life and a fine of Rs.

5000/- has been awarded to him. In the event of non-payment of fine, he too has been directed to suffer S.I. for three months. With respect to him

also, it has been directed that the sentences shall run concurrently.

4. The Trial Court has examined only four witnesses on behalf of the prosecution and has convicted and sentenced the appellants as aforesaid.

5. From the judgment impugned, we find that the Trial Court has employed a very skewed logic and perhaps a weird reasoning for holding the

appellants guilty for the aforementioned offences.

6. The FIR has been lodged by one Ramji Yadav, who has not been examined at the trial. He has alleged that in the night of 23.05.1990, a dacoity had

taken place in his house and the appellants and their brother viz. Jagdeo Yadav (since deceased) had entered the house through the roof-top and had

taken away valuables in the shape of silver ornaments, clothes etc. There were about 7-8 dacoits waiting outside and hurling bombs. As a result of

one of the bombs lodged by the dacoits, one Saryu Yadav was injured; who later died. One Mahgu Yadav, who has also not been examined, is also

said to have been injured by the bomb splinters. The appellants were armed with sickles. Jagdeo Yadav (since dead) was armed with a pistol. It has

also been alleged in the FIR that appellant/Rajdeo Yadav is his brother-in-law who had deserted his wife. The informant and his brother Ishwar

Yadav/(P.W. 1) had gone to the house of appellant/Rajdeo Yadav about 15 days ago to request him to take back his wife in the matrimonial fold,

which he had denied. It was therefore suspected that at the instance of one Nanhak Yadav, who was never put on trial, a dacoity had been committed

in the house of the informant.

7. On the basis of the aforementioned fardbeyan-statement, a case vide Sherghati P.S. Case No. 76 of 1990 was registered for investigation for offences

under Sections 395 and 396 of the IPC.

8. The police, after investigation, submitted charge sheet against the two appellants. The case of the appellants was committed to the Trial Court.

9. Be it noted that neither the informant nor the I.O., nor the Doctor, who would have declared Saryu Yadav dead or would have conducted the post-

mortem examination have been examined.

10. There is nothing on record to indicate that the post-mortem report was ever brought on record.

11. We do not even know whether the deceased was subjected to post-mortem examination. The FIR also could not be exhibited.

12. Under such circumstances, we really fail to understand as to how the Trial Court could convict and sentence the appellants under Sections 395,

396 and 396 of the IPC.

13. The evidence of all the witnesses viz. Ishwar Yadav, Kaloya Devi, Fulwa Devi and Farku Yadav (P.Ws. 1 to 4) would offer no assistance to any

any Court for coming to any definitive conclusion. Ishwar Yadav (P.W. 1), Kaloya Devi (P.W. 2) and Fulwa Devi (P.W. 3) claimed to have identified

the appellants inside their house while dacoity was taking place.

14. However, there is no independent witness to support the prosecution case.

15. One of the brothers of deceased/Saryu Yadav viz. Farku Yadav (P.W. 4) has been examined, who but has stated before the Trial Court that

perhaps the accusation was because of appellant/Rajdeo Yadav having deserted his wife, who is the sister of the informant and Ishwar Yadav (P.W.

1).

16. It appears clearly that the implication of the two appellants was only for this reason i.e. to feed fat the old grudge of appellant/Rajdeo Yadav

having abandoned the sister of the informant. He is said to have married again.

17. Both the appellants are own brothers.

18. With this deficit of evidence, there was no way in which any Court could have convicted any person under Section 396 of the IPC. Who actually

died and whether the death was because of bomb injuries, remains completely the realm of imagination of the informant, who has also not been

examined.

19. We do not find any logic for the Trial Court to have held that the absence of independent witnesses in the case is explainable as a natural human

conduct of co-villagers in not taking the trouble of reporting the matter to the police or becoming a witness to such a case and the Investigating Officer

not having been examined, never caused any prejudice to the appellants.

20. The reasoning given by the Trial Court belies all tenets of appreciation of evidence and legal concepts.

21. There is a clear admission of the fact that appellant/Rajdeo Yadav is the son-in-law of the family; who did not behave like a good husband. The

pressure of the informant and P.W. 1 on appellant/Rajdeo to take back his wife was flatly refused by him. This appears to be the only motive for both

the brothers to have been prosecuted. In fact, the prosecution had chosen to implicate the other brother of the appellants viz. Jagdeo Yadav, but he

died before he could be put on trial.

22. We find no material in the case records to justify the conviction of both the appellants especially with respect to appellant no. 1, who has been

convicted under Section 396 of the IPC.

23. The looted articles were never put on Test Identification Parade. We say so for the reason that neither the TIP chart has been exhibited nor the

Investigator has been examined.

24. None of the facts alleged in the FIR thus could be established; much less, beyond all reasonable doubts.

25. We could only see the thread of enmity and revenge in the deposition of P.Ws. 1, 2 and 3, about which reference has been made earlier.

Whatever was left behind of the prosecution case, was completely destroyed by the deposition of P.W. 4, who also attributed the implication of the

appellants to the failed marriage of appellant no. 2 with the sister of the informant. He had only learnt that during the course of dacoity, his brother had

died. How did he die was not known to him.

26. In the absence of any evidence therefore which would support the case of the prosecution regarding the factum of dacoity or of death of anyone

and that also during the course of dacoity, the judgment under appeal becomes highly doubtful with respect to its contents and therefore unsustainable

in the eyes of law.

27. The judgment and order of conviction and sentence is thus set aside. The appellants are acquitted of the charges.

28. Both the appellants are in jail for a very long time. They are directed to be released forthwith from jail, if not wanted in any other case.

29. The appeal stands allowed.

30. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

31. The records of this case be returned to the Trial Court forthwith.

32. Interlocutory application/s, if any, also stand disposed off accordingly.