
(2006) 08 JH CK 0046

Jharkhand High Court

Case No: Criminal Appeal No"s. 410 and 477 of 2004

Murli Modak and Hari Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Aug. 28, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395, 412

Citation: (2007) 1 JCR 398

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: T.R. Bajaj, in Cr. appl 410/04 and N.K. Chatterjee, in Cr. appl 477/04, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.

Both the criminal appeals arise out of the same impugned judgment dated 26/02/2004, passed by the passed by the Additional Judicial Commissioner, F.T.C.- IX, Ranchi in Sessions Trial No. 303 of 1982 and, therefore, they were taken up and heard together and are being disposed of by this common judgment.

2. Both the appellants and one another namely Devendra Hazam were charged for the offence u/s 395 I.P.C. for committing the dacoity on 23/24-05-1979 in village Kulsud on Ranchi-Purulia Road, P.S.- Silli, District- Ranchi. The appellants Hari Sao (in Cr. Appeal No. 477/04) and Murli Modak (in Cr. Appeal No. 410/04) were further charged for the offence u/s 412 IPC for dishonestly receiving or retaining stolen property knowing or has reason to believe that the same was transferred by commission of dacoity. The learned trial court by the impugned judgment dated 26/02/2004 in Sessions Trial No. 303/1982, passed by the learned Additional Judicial Commissioner, Fast Track Court-IX, Ranchi, acquitted the third accused Devendra Hazam for the charges under Sections 395 IPC. However, the appellant Hari Sao was

found guilty for the offence under Sections 395 and 412 IPC whereas the appellant Murli Modak was found guilty for the offence u/s 412 IPC only. Both the appellants were convicted for the said offences. The appellant Hari Sao was sentenced to undergo R.I. for a period of ten years for the offence u/s 395 IPC and he was further sentenced to undergo R.I. for a period of ten years for the offence u/s 412 IPC. However, both the sentences were ordered to run concurrently. The appellant Murli Modak was sentenced to undergo R.I. for a period of ten years for the offence u/s 412 IPC.

3. The prosecution case in short is that in the night of 23/24 05-1979, the informant Nagina Singh (PW-2) started from Ranchi driving truck No. BRV-2711. The said truck was loaded with Potato. When the truck reached at village Kulsud, P.S. Silli, at about. 11.00 P.M., he saw that the diversion road was blocked by a big piece of wood. Khalasi Bhudeo Rajwar and the owner of the Potato namely, Footan Koeri (PW-9) were also in the truck. Five persons came near the truck armed with Sword, Dabla and Pistol. The accused persons broke open the glass of the truck and demanded money from the driver. The informant gave Rs. 60/- to them. Thereafter, they entered into the truck and snatched wrist watch from Footan Koeri and also snatched Rs. 5/- from Khalasi Bhudeo. One two shell torch and two towels were also taken away by the miscreants. From the driver of the truck bearing No. WGW-1481 they took away Rs. 80/- and a watch. They also looted one HMT Sona wrist watch from Kamlesh Bhagat.

4. The defence case is of total denial of the occurrence and of false implication.

5. In order to establish the charges, altogether 11 witnesses were examined on behalf of the prosecution. The learned trial court on the basis of the evidences, adduced before him, convicted and sentenced the appellants as already stated earlier.

6. Mr. Bajaj, learned senior counsel appearing for the appellants submitted that in the present case, the prosecution has totally failed to establish the charges against the appellants and, therefore, the conviction and sentence passed against them by the trial court is absolutely illegal. Elaborating his argument he has submitted that both the appellants were put on Test Identification Parade but they were not identified. However, in the T.I. of articles the wrist watch and Torch recovered from the possession of these two appellants, were identified but such identification of articles has got no evidentiary value because neither the said wrist watch nor the Torch was produced in Court. Even the T.I. chart was not brought on record by getting it exhibited. The T.I. Magistrate was also not examined in Court nor the Investigating Officer, who allegedly recovered the said wrist watch and Torch was examined by the prosecution and, therefore, the recovery of the said wrist watch and Torch from the possession of the appellants has not at all been established by the prosecution.

7. PW-1 Kamlesh Bhagat, was an occupant of the truck. This witness specifically stated in cross-examination that he did not identify any of the miscreants. PW-2 Ram Nagina Singh is the informant, i.e. the driver of the truck. He has supported the occurrence. He further stated in his evidence that in T.I. parade he had identified his Torch, which was looted away by the dacoits. He also identified the appellant Hari Sao in the dock but in his cross examination this witness has specifically stated that when he had gone to attend the Test Identification parade in the jail he could not identify any of the dacoit in the said T.I. parade.

It is surprising that when this witness failed to identify-any of the accused in the T.I. Parade then as to how he was able to identify the appellant Hari Sao for the first time in the dock. Such statement of the informant does not inspire confidence.

8. PW-3 Yogeshwar Mahto, PW-4 Parsuram Mahto and PW 5 Budhram Mahto were declared hostile. PW-6 is Ram Brikch Singh. This witness stated that in his presence from the Pakaouri shop of the appellant Murli Modak, one wrist watch was recovered by the police. In his cross-examination, this witness has stated that the said watch, which was recovered from the possession of the appellant, was not produced before him in Court. PW-7 Ratan Kumar Chaturvedi was tendered for cross-examination. PW-8 Pradeep Kumar Manjarve, though has supported the occurrence but in his evidence in paragraphs 3 and 5 he has stated that he did not identify any of the dacoits in the T.I. Parade. PW-9 is Footan Koeri. In his evidence he has stated that he did not identify any of the dacoits in T.I. Parade but, however, he identified his wrist watch, which was looted away by the dacoits in the T.I. parade of articles. He also admitted that the said wrist watch was not present before him in Court. PW-10 Keshav singh was also declared hostile and PW-11 Bhudeo Rajwar was tendered for cross-examination.

Therefore, from the evidence of the prosecution witnesses. it appears that the main witnesses are PW-2 Nagina Singh, i.e. the informant and PW-9 Footan Koeri.

9. As discussed earlier, PW-2, i.e. the informant Ram Nagina Singh, clearly stated in his evidence that in the T.I. Parade he could not identify any of the dacoits, however, he stated that he could identify the appellant Hari Sao in the dock. His identification in dock for the first time cannot be believed since he failed to identify any of the dacoits in T.I. Parade.

10. In the present case, the way in which the prosecution has been conducted by the court below is really shows a sorry state of affair as to how the prosecution agency is treating serious sessions cases in such a casual manner. The prosecution neither chose to produce the material exhibits in Court nor did it chose to bring on record the T.I. chart of the articles, nor the T.I. Magistrate, who conducted the T.I. Parade was examined in the Court. Over and above, the Investigating Officer, who was the best witness to say about the recovery of looted articles from the possession of the appellants, was also not examined by the prosecution. Therefore, the alleged

recovery of those two articles, i.e. wrist watch and the Torch also could not be legally established by the prosecution in absence of any legal evidence.

11. In such a situation, I am constrained to hold that the prosecution has miserably failed to establish the charges at all against both the appellants. I further hold that the learned trial court without any reliable materials, wrongly and illegally convicted the appellants for the charges framed against them.

12. In the result, both these appeals are allowed. The conviction and sentence passed by the trial court against both the appellants are hereby set aside. Both the appellants, who are on bail, are discharged from the liabilities of their bail bonds.