

## Bhade Munda and Suresh Munda Vs The State of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** April 28, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313  
Penal Code, 1860 (IPC) â€” Section 395

**Hon'ble Judges:** Prashant Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Prashant Kumar, J.

This appeal is directed against the judgment of conviction and order of sentence dated 27.9.2002 and 28.9.2002

respectively passed by 7th Additional Sessions Judge, Hazaribagh in S.T. No. 363 of 1998 whereby and whereunder the appellants were

convicted u/s 395 of the IPC and sentenced to undergo R.I. for seven years.

2. The case of prosecution in short is that on 11.12.1997 at about 11 p.m. when the informant along with his family members were sleeping inside

their house, appellant Bhade Munda knocked his door. Whereupon his wife woke up opened the door. It is stated that appellant Bhade Munda

asked about the informant and when the informant's wife disclosed that he was sleeping, he asked her to call him. It is further alleged that

thereafter informant came out of his house and went with Bhade Munda near a mango tree, where he found that seven persons were sitting out of

them he identified one Suresh Munda in the light of torch. It is further stated that on being directed by aforesaid persons he called Bodhan Sao,

Seetan Sao and Badho Sao and went near mango tree. Thereafter the miscreants told that they will hold meeting in the house of informant and then

all had gone to the house of informant. It further alleged that thereafter informant and his co-villagers were locked in a room. It is further alleged

that thereafter the aforesaid persons committed dacoity in the house of informant and other co-villagers, namely, Bodhan Sao, Arun Sao and

Barho Sao.

3. On the basis of statement of informant, Barkagaon P.S. Case No. 94 dated 13.12.1997 instituted u/s 395 of the IPC and police took up

investigation. It appears that after investigation, police submitted charge sheet against Suresh Munda and Bhade Munda and six unknown u/s 395

of the IPC. After cognizance, case committed to the court of sessions. After Commitment, charge framed against the appellants u/s 395 of the IPC

and same was explained to them to which appellants pleaded not guilty and claimed to be tried. Thereafter prosecution examined altogether 12

witnesses in support of its case. The prosecution also brought on record Fard Beyan (Ext.-1), Formal FIR (Ext.-2), Signature of informant on the

Fardbeyan (Ext.-1/1), Forwarding note on the Fard Beyan (Ext.-1/2), and endorsement made on the Fard Byan (Ext.-1/3). After close of the

case of prosecution, both the appellants examined u/s 313 of the Cr.P.C. in which their defence is of total denial. It then appears that the learned

court below after considering the materials available on record, convicted and sentenced the appellant as aforesaid, against that present appeal

filed.

4. It is submitted by learned Counsel for the appellants that both the appellants are innocent and they have been falsely implicated in this case on

account of enmity. He further submits that the witnesses examined on behalf of the prosecution are interested witnesses, as they are related to each

other. It is submitted that though other independent witnesses are present, but none had supported the case of prosecution. It is further submitted

that no incriminating article recovered from the possession of appellants or from their houses, though I.O. conducted raid in their houses. It is

submitted that both the appellants are known to the prosecution witnesses, therefore, it is not possible that they will commit dacoity in their house

without concealing their face. Accordingly, it is submitted that the appellants are entitled to be given the benefit of doubt.

5. On the other hand, learned Additional P.P. submits that there is absolutely nothing on the record to show that the Informant and other

prosecution witnesses have any reason to falsely implicate the appellants. It is further submitted that almost all the prosecution witnesses except

P.W. 2 and 4 have identified these appellants among the dacoits. All the prosecution witnesses were cross examined at length, but nothing has

been elicited by the defence on which their evidence can be discarded. Accordingly, it is submitted that there is no illegality and/or irregularities in

the Impugned judgment, which requires any interference by this Court.

6. Having heard the submission, I have gone through the record of the case. From perusal of deposition of P.W. 1 Bodhan Sao, P.W. 3 Etwari

Devi (wife of informant), P.W. 5 Suraj Sao (informant), P.W. 6 Arun Sao, P.W. 7 Badho Sao, P.W. 8 Tirath Nath and P.W. 9 Anil Sao, I find

that they have fully supported the prosecution case. They have also stated that among the dacoits, they have identified appellants. From the perusal

of their cross-examination, I find that the defence has not elicited anything on which their testimony can be discarded. I also find that the defence

has not brought anything on record to show that the prosecution witnesses have any reason and/or personal grudge to falsely implicate the

appellants. Even the appellants in their statement u/s 313 Cr.P.C. had not stated that they have been falsely implicated due to any reason. Under

the said circumstance, I find that the statement of aforesaid prosecution witnesses is wholly reliable and acceptable.

7. It is submitted by learned Counsel for the appellants that no independent witness examined in support of prosecution case. In this connection, it

is worth mentioning that the defence had not brought on record anything to show that apart from the aforesaid prosecution witness, any other

independent witness were present at the place of occurrence. The record reveals that near the place of occurrence there is cluster of 5 to 6 houses

occupied by the informant and other prosecution witnesses. It also appears from the record that other houses of the village situates at some

distance, therefore, it is quite possible that the persons who reside in other houses of the villages could not notice the alarm raised by the informant

and other victim. Thus, I find no merit in the aforesaid submission of learned Counsel for the appellants, accordingly, the same is rejected.

8. The next contention of learned Counsel for the appellants that it is not possible for the appellants to commit dacoity without concealing their

face, because they are known to them is also worth rejectable. In this connection, it is worth mentioning that different persons react differently in a

given situation. The appellants, may be because of illiteracy or otherwise might had committed dacoity without covering their face. It may be

possible that they are dare devil and they might not care for the consequences of committing any crime and because of aforesaid reasons they

might not have covered the face. Thus, only because the appellants had not covered their face at the time of dacoity, it will not be a ground to

acquit them from the charge levelled against them, that too when there is nothing on record to show that they have been falsely implicated in this

case.

9. As discussed above, I find that the statement of the prosecution witnesses are consistent, cogent and clear that the appellants committed present

crime along with other un-known persons. Thus, I am of the view that the learned court below rightly convicted the appellants for committing the

offence u/s 395 of the IPC.

10. In the result, I find no merit in this appeal. Accordingly, the same is dismissed. It appears that both the appellants are on bail, their bail bonds

are cancelled. They are directed to surrender in the court below to serve out the sentence. The court below is also directed to take all coercive

steps for their appearance.