

(2011) 05 JH CK 0029

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 187 of 2011

Manoj Murmu, Patrash Soren,
Polush Soren and Heeralal
Mirdha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 5, 2011

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 395, 399, 411, 412

Citation: (2011) CriLJ 4553

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.K. Sinha, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 13.8.2010, recorded by the learned Sessions Judge, Godda in connection with Sessions Case No. 66/2010, by which the Appellants (1) Manoj Murmu, (2) Patrash Soren, (3) Polush Soren (4) Heeralal Mirdha and one Md. Salim (not the Appellant herein) were convicted under Sections 395/412 of the Indian Penal Code and accordingly, all of them were sentenced to undergo rigorous imprisonment for ten years on each count and fine of Rs. 10,000/- and Rs. 5000/- respectively with default stipulation in Sundar Pahari P.S. Case No. 42/2009, corresponding to G.R. No. 1133/2009

2. Prosecution story in short was that a dacoity was committed in the State Bank of India at Chandana Branch, Sundar Pahari, Godda on 7.11.2009 by six unknown culprits, who after entering into the Bank premises during working hours

committed dacoity of Rs. 1,44,465/- from the possession of the cash officer of the Bank and Rs. 6700/- from the possession of the informant, who was the Branch Manager of the said Bank at the relevant time. All the culprits were variously armed with firearms, including pistol and carbine and when alarm was raised by the customers of the Bank, all the six unknown culprits escaped in two motorcycles after snatching the mobile of the canteen boy of the Bank. On the basis of the statement of the informant Hindu Hansda, Sundar Pahari P.S. Case No. 42/2009 was registered u/s 395 of the Indian Penal Code as also u/s 27 of the Arms Act on 7.11.2009 against six unknown culprits. It is stated that all the Appellants including Md. Salim and Mary Josfin Soren were arrested by the police while they were making preparation for committing dacoity on highway alleged u/s 399/411 of the Indian Penal Code on 9.11.2009 just after two days of the occurrence. Each of them had confessed their guilt before the police about their active participation in the Bank dacoity, which had taken place two days earlier on 7.11.2009 at Chandana Branch of the State Bank of India, which led to discovery of the subject matter of dacoity, including cash, iron box, receipts of the Bank and both the motorcycles, which were used in commission of alleged dacoity and police had submitted charge-sheet against all the six accused under Sections 395/412 of the Indian Penal Code. Charge was framed against the Appellants herein and Md. Salim for the alleged offence under Sections. 395/412 of the Indian Penal Code and put on trial. Case record of the co-accused Mary Josfin Soren was split up as he was declared juvenile and sent to the Juvenile Justice Board, Godda for his separate enquiry. After examination of the prosecution witnesses, all the Appellants were examined and their statements were recorded u/s 313 of the Code of Criminal Procedure and after argument, the Appellants and Md. Salim were convicted by the judgment recorded by the learned Sessions Judge, Godda, which is impugned herein.

3. Learned Counsel Mr. S.P. Roy at the outset submitted that as many as ten Witnesses were examined on behalf of the prosecution. Prosecution proved the following documents:

4. Statement of the informant Ext.-1; paragraph-1 to 78 as contained in the case diary Ext.2; endorsement made on the statement of the informant Ext.1/1 formal FIR Ext.3; signature of the witnesses on the Xerox copy of the seizure list Ext.4; signature of another witness Masilal Soren on the Xerox copy of the seizure list Ext.4/1; confessional statement of the accused Manoj Murmu Ext.5/5; confessional statement of Patrash Soren Ext.5/1; statement of Heeralal Mirdha Ext.5/2; confessional statement of Polush Soren Ext.5/3 (all led to discovery of relevant facts) and photocopy of all six seizure list Ext.6 to 6/5.

5. Learned Counsel Mr. Roy submitted that Appellants were facing serious charge under Sections 395/412 of the Indian Penal Code but virtually there was no legal evidence on the record, yet, they have been convicted under Sections 395/412 of the Indian Penal Code. P.W.-1-informant Hindu Hansda though admitted the alleged

occurrence but clearly stated that the persons on the dock were not the culprits, who had committed dacoity in the Bank and had decamped with the booty. He admitted in his fardbeyan that the culprits had removed his personal amount to the tune of Rs. 6700/- from Ms person but he did not implicate the Appellants or the co-accused in any manner in the alleged dacoity. P.W.-2 Manjay Soren, P.W.-3 Mukesh Kumar Jha, P.W.-4 Alok Uttam Khalko, P.W.-5 Budhrai Hembrem, P.W.-6 Mitra Das were projected as eyewitnesses of the occurrence, yet, they were consistent during trial that the persons on the dock were not amongst the culprits, who had committed dacoity in the Bank. P.W.-7 Baleshwar Oraon, the Investigating Officer of Sundar Pahari P.S. Case No. 42/2009, testified that he recorded the statement of the informant and other witnesses and he also visited the place of occurrence and had given description in details but no material could be highlighted to establish the nexus of the Appellants with the alleged commission of dacoity. He admitted the contents of the case diary from paragraph- 1 to 78 in his pen and signature, which was marked Ext.2. He proved the statement of the informant and the endorsement made thereon as also the formal FIR. In the Cross-examination the Investigating Officer admitted that he had not put any of the accused, during course of investigation on Test Identification. Parade and no seizure of any incriminating article could be made by him. He denied the suggestion that his investigation was erroneous. P.W.-8 Ravindra Besra and P.W.-9 Masilal Soren were the witnesses of the seizure lists, alleged to be prepared after recovery of the subject matter of dacoity, pursuant to the confessional statement of the Appellants and other co-accused. Both the witnesses admitted their signatures on the seizure lists, which were marked Ext.4 and 4/1 but they admitted in clear words that none of the articles was seized in their presence and in their cross-examination, they admitted that their signatures were obtained by the police on the blank paper in their-respective house. P.W.-10 Mahendra Bandra was the officer-in-charge of Godda police station. He testified that on 9.11.2009 he had visited Jabditand with other police officers for apprehending the culprits in connection with the Bank dacoity, which took place in the State Bank of India at Chandana Branch where Manoj Murmu, Patrash Soren, Polush Soren, Heeralal Mirdha, Md. Salim and Mary Josfin Soren were arrested and he had recorded the confessional statements of Manoj, Patrash, Polush and Heeralal. He further deposed that pursuant to the confessional statement of Manoj Murmu, a sum of Rs. 10,400/- was recovered from the house of Mary Josfin Soren, which was kept in a plastic under the earth, to which a seizure list was prepared Pursuant to the statement of Patrash Soren, a sum of Rs. 12,640/- was recovered, which was the subject matter of Bank dacoity and separate seizure list was prepared. Thereafter, a sum of Rs. 8000/- was recovered from the courtyard of the matrimonial home of Patrash Soren. Witness further testified that he was taken away by Heeralal Mirdha and pursuant to his confessional statement, a sum of Rs. 10,500/- was also recovered from his courtyard, which was kept hidden by him under the earth, which was marked M.O.IV. A sum of Rs. 3,400/- was recovered from the house of one Bhagat Tudu, who was the associate of the accused. The

motorcycles, which were used in commission of dacoity, were also recovered with registration number and were seized including aluminum box of the Bank pasted with paper seal, which was also marked as M.O.-VI. This witness admitted that the exhibit lists were the photocopies and were not in original bearing his signature, to which he identified. The witness claimed to identify all the Appellants in the dock when he was examined before the Sessions Judge. In the cross-examination, the witness admitted that on none of the seizure lists, he had mentioned the time of preparation of seizure list nor the time of recording of the confessional statement of the culprits was given in the case diary. He further suggested with respect to recovery of cash that it may not be the amounts, which were the subject matter of dacoity.

6. Assailing the judgment impugned, the learned Counsel submitted that the learned Sessions Judge on erroneous consideration observed that testimony of P.W.-10,- Ext.5 to 5/3, M.O.-I to VI and Ext.6 to 6/5 were marked without objection and considering the testimony of P.W.-10, he had given findings that evidence on the record were sufficient to establish charge for the offence punishable u/s 395 of the Indian Penal Code against the Appellants and Md. Salim and therefore, held them guilty for the said charge, ignoring the fact of course, that none of the Appellants was identified by the witnesses, who claimed their presence at the time of Bank dacoity. The witnesses had supported the factum of Bank dacoity at the relevant time but did not identify the Appellants being the dacoits.. They testified in clear words that the persons present in the accused box were not those culprits who had participated in commission of dacoity in the Bank and therefore, there was no material except the confessional statements of the Appellants who were apprehended in connection with another case alleged u/s 399/411 of the Indian Penal Code and it was stated that without corroborative evidence their confessional statements were recorded which led to discovery of certain amount from different places. P.W.-6 admitted that six seizure lists were prepared (Xerox copies) but without bringing the original seizure lists on the record and for that, no explanation was given. Seizure witnesses admitted their signatures on the seizure lists but with the explanation that no article much less any cash amount was recovered in their presence and that the signatures were obtained on blank paper by the police at their respective homes So, it cannot be held as valid seizure lists in the eye of law.

7. Heard Mr. Amresh Kumar, the learned A.P.P. on behalf of the State.

8. Having regard to the facts and circumstances of the case, I find substance that there was no legal evidence On the record and the learned Sessions Judge, Godda without appreciating the evidence that none of the witnesses supported the complicity of the Appellants in the alleged Bank dacoity, they were held guilty in Bank dacoity and recovery of money. I find that the conviction of the Appellants u/s 395 of the Indian Penal Code cannot be sustained under law. As regards conviction of the Appellants u/s 412 of the Indian Penal Code, I find that prosecution has

miserably failed to prove that any stolen property, which was the subject matter of dacoity, was recovered, pursuant to the confessional statements of the Appellants. I further find that the original seizure lists were not brought on record in course of trial and I fail to understand as to under what manner material exhibits were prepared in the trial court without producing the materials in the court itself. It do not restrain myself from commenting upon the manner by which the statements u/s 313 of the accused-Appellants were recorded by the Trial Judge wherein questions were put to the Appellants in typical manner and not by confronting each of them as to what materials were brought on the record during course of trial and what were their individual reply and for that the Appellants have been prejudiced. Questions have been typed in English and answers have been recorded in Hindi. For the reasons stated above, I find that the conviction of the Appellants was based on erroneous consideration/which cannot be sustained under law and is liable to be set aside.

9." Accordingly, Appellants, (1) Manoj Murmu, (2) Patrash Soren, (3) Polush Soren (4) Heeralal Mirdha are acquitted from their conviction and sentence under Sections 395/412 of the Indian Penal Code in Sessions Case No. 66/2010, recorded by the learned Sessions Judge, Godda, arising out of Sundar Pahari P.S. Case No. 42/2009, corresponding to G.R. No. 1133/2009. Appellants are directed to be released forthwith, if not wanted in any other case.

10. This criminal appeal is allowed.