

(2005) 06 JH CK 0078

Jharkhand High Court

Case No: Criminal Appeal No. 138 of 1992 (P)

Maini @ Manager Das

APPELLANT

Vs

The State of Bihar
(Now Jharkhand)

RESPONDENT

Date of Decision: June 24, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395

Citation: (2005) 2 BLJR 1571

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: Sujata Bhattacharjee, for the Appellant; APP, for the Respondent

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.

This appeal is directed against the judgment dated 5.6.1992, in Sessions Case No. 342 of 1990, whereby the learned trial Court convicted the appellant for committing the offences u/s 395 of the Indian Penal Code and sentenced him to undergo R1 for a period of 7 years. The other co-accused, Bhakti Darbey, who was also tried along with the appellant, was however acquitted by the Court below.

2. The prosecution story, in short, is that in the night of 19.8.1987 at about 8 p.m. seven to eight persons, suddenly entered into the courtyard of the informant, Sugia Devi (PW 2) while the informant and her daughter were lying on their cot after night meal. It is stated that four persons came near the informant and asked for money. The informant stated that one of the miscreants was known to her prior to the occurrence and his name was Maini Das (appellant), and it was he who had asked for money. The informant replied that she had no money. At this, the appellant started assaulting the informant and her daughter-in-law with "lathi", fists and slaps. Thereafter he entered into the house of the informant and took away a tin

box. After breaking open the same, one Tape Recorder and Rs. 206/- in cash was taken away. It was further said that the miscreants had entered in her house with a wine bottle and they started drinking there. The accused persons were identified in the light of "dibia", which was burping there and also in the light of torch flashed by the accused persons. These dacoits were in the house for half an hour and in that course of of dacoity they scattered the house hold articles. The dacoits were repeatedly asking for Rs. 14.000/- from the informant. It is said that the dacoits took away two kasa thali, two kasa lota, one small lota one kasa Glass, cycle pump, as well as one black woolen Sal and cash of Rs. 30/-. It is further said that when the informant came out from the house, she found her husband tied with a cot. Her husband stated that he was tied by the dacoits and they took away Rs. 20/- from his possession. It was further said that the dacoits also committed dacoity in the house of Anant Turi (PW 4) and Satan Rai (PW 5) of the same village.

3. In order to prove the charge, the prosecution examined altogether 7 witnesses, Out of whom, PW 4 Anant Turi was declared hostile and PW 5 Satan Rai was tendered, whereas PW 6 and PW 7 were formal witnesses. PW 2 is the informant and PW 1 is her daughter-in-law and PW 3 is the husband of the informant, who is a blind person.

4. Though the case of the prosecution was that after the commission of dacoity in the house of the informant, the dacoits also committed dacoity in the house of Anant Rai (PW 4) and in the house of Satan Rai (PW 5), but as it appears that Anant Rai (PW 4) has been declared hostile since he did not support the prosecution and the other man namely, Satan Rai (PW 5) was tendered by the prosecution and therefore the fact that the dacoity was committed in their houses, could not be established by the prosecution.

5. The only material witnesses in this case are PW 1 and PW 2 PW 1 Sukhowati Devi, who is the daughter-in-law of the informant. In her examination-in-chief, she has stated that on the date of occurrence, while she was sitting in her "angan" with her mother-in-law at that time four boys entered into her "angan" and at that time a "dibia" was burning. After entering those miscreants asked for the keys and other articles, but she went inside the house, out of fear. She identified both the appellants in the dock. She further stated that altogether 15-20 miscreants were there. In her cross- examination she has stated that she and her mother-in-law were sleeping in a room but the door was opened and "dibia" was burning. She further stated in her cross-examination that the appellant Maini Das was known to her from before. She admitted in cross-examination that she had not named Maini Das in her statement made before the police during investigation. She further stated in cross-examination that the "dibia" which was burning was shown to the police but the police did not seize it.

6. PW 2 Sugia Devi, the informant, has stated that at the time of occurrence she and her daughter-in-law (PW 1) were sitting on a cot and were talking on the date and

time of occurrence and at that time four persons entered into their house, two of them sat on her cot, whereas the two dacoits sat on the cot of her daughter-in-law. The accused Bhakti Darbe was at the door, she stated in her examination-in-chief that she could identify both the accused, i.e. the appellant Maini Das and the co-accused Bhakti Darbe in the light of "Dibia" and "Torch." She has further stated that she and her daughter-in-law were assaulted by the dacoits and they also took away a tape recorder and cash of Rs. 606/- and some utensils valued at Rs. 2000/-. In her examination-in-chief she further stated that she and her daughter-in-law were severely assaulted by the dacoits. In her cross-examination she has stated that she was sleeping in a room and her husband was sleeping on the "Verandah." She further stated that both of them were assaulted by the dacoits by means of "lathi" and "Legs" causing injuries, which were shown to the Doctor. She has denied the suggestions of the defence that she has stated before the police that the other co-accused Bhakti Darbe was standing in the courtyard. In her cross-examination she has admitted that she has not stated before the police as to how she identified the dacoits.

7. In view of the statements of PW1 and PW 2 discussed above it is apparent that the identification of the appellants is wholly doubtful. Both the witnesses have contradicted each other on all the material points. At one point of time, i.e. in the FIR it was stated that they were sleeping in courtyard, whereas in their evidences they have changed their version and have stated that they were sleeping inside a room. Regarding the source of identification they have stated that they identified the appellant in the light of "dibia", which was burning there but they admitted in their cross-examination that it was not disclosed to the Investigating Officer during investigation. The alleged "dibia" was also not seized by the police nor the Investigating Officer has been examined on behalf of the prosecution. Therefore, those points could not be clarified and remained un-answered. Nothing has been brought on record to prove the fact that PW 1 and PW 2 were assaulted by the dacoits and they received any sort of injury. All the above facts go to show that the prosecution has not come with the true picture of the occurrence and therefore it creates doubt on the prosecution case. Therefore, the benefit of doubt has to go in favour of the appellant.

8. In view of the discussions and findings above, I hold that the prosecution has not been able to establish its case against the appellant beyond all reasonable doubts. .

9. Accordingly, this appeal is allowed. The conviction and sentence passed by the trial Court against the appellant is hereby set aside. The appellant, who is on bail, is discharged from the liabilities of his bail bonds.