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Saheb Mian and Ajay Dhanuk Vs The State of Bihar

Court: Patna High Court

Date of Decision: Sept. 12, 2011

Final Decision: Dismissed

Judgement

Gopal Prasad, J.
Heard learned counsel for the appellant and the State.

2. The appellants have been convicted under Sections 395 and 397 of the Penal Code and have been sentenced to undergo rigorous imprisonment

for ten years and seven years respectively.

3. The case of the prosecution is that P.W. 4 was the owner and proprietor of the Nalanda Service Station Petrol Pump situated in Mohalla Gagan

Diwan. The petrol pump is having the generator and even if the electric supply is not there, there is arrangement for generation of electricity. On

30.05.1994 P.W. 4, the proprietor/owner of the petrol pump along with his raxin bag proceeded for his house and at that time there was light and

staff as well, a tanker came for unloading petrol and tin of mobile was being unloaded from the tanker. In the meantime, 4-5 persons, armed with

fire arms, came and 2-3 persons surrounded P.W.

4, who got him freed from the clutches of the accused persons and running away, in the meantime, one of the accused persons fired upon P.W. 4

causing injury on his head and when he fell down then one of them snatched his raxin bag, containing money and passed over to the other person.

4. The person who snatched the bag was caught hold by the witnesses, who are the staff of the petrol pump and the person who was caught hold

disclosed his name as Ajay Dhanuk. However, he confessed before the witnesses about the committing of dacoity and disclosed the names of the

persons who were his associates as Raka @ Rakwa, Kana Saheb @ Saheb Mian and Arjun Mahton. Kana Saheb, co-accused, arrested during

the investigation and was identified during the trial by the witnesses as the person who has received the raxin bag, containing the money, which was

snatched from Aam Ashraya Prasad Singh.

5. The police after investigation submitted the charge sheet on which the cognizance taken and subsequently dafter commitment of the case to the

Court of session, the charge was framed for offence under Sections 395 and 397 of the Penal Code and during the trial eight witnesses were

examinec.

6. The trial Court taking into consideration the evidence that witnesses have supported the prosecution case regarding the implication of the

appellants and P.Ws. 1, 2, 3, 4 and 5 have supported the prosecution case regarding the implication of the accused persons. P.Ws. 1, 2, 4 and 6

supported the prosecution case regarding commission of dacoity. The dacoit, who was caught hold, was armed with fire arm and has confessed

about the guilt and the witnesses supported that he was the person who snatched raxin bag, containing the money, and he disclosed the names of

other accused persons who were his associates and, hence, the appellants have been convicted and sentenced, as stated above.

7. The learned counsel for the appellants, however, contends that there is no evidence regarding the use of the fire arm by the appellants and has

contended that the allegation of firing has been made against only one person, which has caused injury to the owner of the petrol pump and the

offence u/s 397 of the Penal Code can be fastened against the person who used the activity during the commission of a robbery and it can not be

used as vicarious liability for all the persons who were members in the commission of dacoity and submits that unless there is evidence that the

appellants were armed with deadly weapon specifically he can not be convicted and sentenced for offence u/s 397 of the Penal Code and has

relied upon a decision reported in Dilawar Singh Vs. State of Delhi, and has, further, contended that offence is of the year 1994 and several years

has elapsed and appellant no. 1 has remained in jail for more than four years and appellant no. 2 has remained in jail for more than five years and,

hence, a lenient view may be taken.

8. The learned counsel for the informant and State, however, countered the argument and submitted that there is evidence that appellant no. 2 has

used the fire arm and the use does not mean that by the said firing some persons have been injured and even if weapons is visible causing

reasonable apprehension of firing or creating a terror in the mind of the victim is a sufficient for holding that the appellants have used the fire arm

and, hence, contended that taking into consideration the nature of crime committed dacoity in the market area resorting to firing does not attract

any sympathy.

9. However, taking into consideration the evidence in the light of the submissions, it is apparent that P.Ws. 1, 2 and 3 have supported the

prosecution case about the dacoity and the dacoits resorted firing causing injury to P.W. 4 on his head has been proved by P.W. 5 the doctor.

However, as per evidence of P.W. 4, itself, that three persons surrounded him, one fired and when he was calling then other snatched his bag and

passed it to another person, however, it is not specific that who fired, but, the witnesses deposed that one person who snatched the raxin bag was

apprehended and he disclosed his name as Ajay Dhakuk and he was armed with pistol and at the time when he was brought by the people he

fired, but, it was misfired and, hence, there is apparent that appellant no. 2, Ajay Dhanuk was armed with pistol, which is a dangerous weapon and

even it misfired, he can well be inferred that he used the fire arm and, hence, he has been convicted u/s 397 of the Penal Code.

10. However, so far appellant no. 1 is concerned, though the witnesses have supported the prosecution case and there are evidence that Ajay

Dhanuk snatched the raxin bag, containing the money from P.W. 4 and passed it over to appellant no. 1, but, there is no evidence that there is no

specific evidence that he was armed with pistol or fire arm. He was not a person arrested at the spot though his name has been placed in the

confessional statement by Ajay Dhanuk and he confessed before the witnesses who caught hold of him and, hence, it is extra judicial confession of

Ajay Dhanuk in which he named appellant no. 1 and, hence, it is an inculpatory statement of Ajay Dhanuk with implication of appellant no. 2 and

Kana Saheb and, hence, is admissible in evidence.

11. However, the criticism on behalf of the appellants that Kana Saheb was arrested during the investigation and no Test Identification Parade has

been conducted and, hence, his confession is not reliable and trustworthy. However, it is true that no Test Identification Parade has been

conducted, but, the witnesses have identified Kana Saheb in Court. However, in Court the evidence placed where the occurrence took place there

was sufficient arrangement of light and the probability that the witnesses had seen the appellants well can not be ruled out. There were several staff

of the P.W. 4 and in such a situation the raxin bag was snatched and passed over to other person must have been imprinted in the mind of the

witnesses. Their evidence that they identified Ajay Dhanuk snatching razin bag from the informant has been found to be reliable and trustworthy

and, hence, this evidence of the witnesses read with confessional statement of the self inculpatory by a complete statement before the witnesses are

sufficient for conviction of appellant no. 1 and Kana Saheb and the criticism has got no significance.

12. However, having regard to the fact that there is no specific evidence regarding the use of fire arm by Kana Saheb having been established and

the learned counsel for the appellants and the State also concede that there is no specific evidence about that Kana Saheb was armed with any fire

arm or used any fire injury, hence, the conviction and sentence against Kana Saheb for offence u/s 397 of the Penal Code is not sustainable.

13. Having regard to the fact that the appellants have been convicted u/s 397 of the Penal Code for seven years and u/s 395 of the Penal Code for

ten years appears to be reasonable and, hence, the sentence u/s 395 of the Penal Code is reduced to for a period of seven years.

14. However, having regard to the fact, the submission that appellant no. 1 has remained in jail for more than four years and appellant no. 2 has

remained in jail for more than five years, hence, a lenient view may be taken against the appellants.

15. However, having regard to the fact that the occurrence took place in the year 1994 at 07.30 p.m. in a market area using the fire arm, causing

injury to the owner of the petrol pump, hence, in the facts and circumstances, I do not think it proper that the appellants are liable for any

sympathy. Hence, this appeal is dismissed with modification in sentence from ten years to seven years for offence u/s 395 of the Penal Code.