
(2011) 09 PAT CK 0142

Patna High Court

Case No: Criminal Appeal (SJ) No. 358 of 1998

Shyam Narayan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Sept. 13, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395

Hon'ble Judges: Gopal Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Gopal Prasad, J.

Heard Learned Counsel for the Appellant and Learned Counsel for the State.

2. The Appellant has been convicted u/s 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years.

3. The prosecution case as alleged in the fardbeyan by the informant is that in between the night of 4th-5th August, 1995 the informant was sleeping with his wife in the south-west room of his house. He woke up on hearing the sound of falling boxes. He saw two persons who were breaking the boxes and then the informant went over the roof of the house and made Halla. The villagers came and it is alleged that the dacoits looted the articles after tying the legs and hands of the brother of the informant and fled away after looting the articles.

4. On the fardbeyan of the informant, FIR was lodged and during investigation some of the dacoits were apprehended and the T.I.P. conducted. In the T.I.P. the Appellant was identified by P.W. 1 and after investigation charge-sheet was submitted.

5. During the trial nine witnesses were examined in this case. P.W. 6 is the informant, P.W. 1 is the brother of the informant, P.W. 2 is the wife of the informant, P.W. 3 is the

wife of P.W. 1, P.W. 4 is the sister of the informant, P.W. 5 is the daughter of the informant, P.W. 7 is the Judicial Magistrate who has conducted the T.I. P. with regard to the identification of co-accused Lalan Kumar Singh, P.W. 9 is the another Judicial Magistrate who conducted the T.I.P. on the persons of the identification of the Appellant. P.W. 8 is the I.O. The witnesses P. Ws. 1, 2, 3, 4, 5 and 6 have supported the prosecution case about the commission of the dacoity and the loot of the articles. P. Ws. 2, 3, 4 and 5 have also claimed to identify the Appellant in court during the trial though they did not participate in T.I. P. However, in their evidence they claimed that at the time of occurrence the identification was in the light of the lantern burning in the room as well as in the torch light.

6. P.W. 1 Ramsuchit Singh who has supported the prosecution case about the dacoity and he has identified one of the dacoits during the dacoity and has attributed him the role that one of the dacoits opened the main Darwaza and the same dacoit tied his legs and hands by Dhoti and towel. Thereafter two dacoits came armed with pistol and stick. They also tied the legs and hands of the two other brothers of this witness.

7. The trial court taking into consideration the evidences held that the identification of the Appellant by P. Ws. 2, 3, 4 and 5 who are the family members of the informant and since they did not participate in the T.I. P., their evidence is not reliable and further taking into consideration the evidence of P.W. 9 who conducted the T.I. P. and proved the T.I. P. chart of the Appellant and further took into consideration the evidence of P.W. 1 that the dacoit who has tied his hands and legs and the dacoits who went inside the room brought five boxes and the dacoits who was standing at the door used to keep silent and lit the torch and on seeing the dacoit it appears to him that he has seen him somewhere though it was not his memory.

8. The trial court, however, taking into consideration the evidence of P.W. 1 that Laxmi Singh the father of the accused Shyam Narayan Singh was known to him has held that it does not mean that the accused Shyam Narayan Singh was previously known to this witness Ramsuchit Singh and hence convicted the Appellant in view of the fact that he was Ramsuchit Singh and Shyam Narayan Singh as well as in the court and hence have implication in the crime.

9. Learned Counsel for the Appellant, however, contended that the occurrence took place in the mid-night at 12:30 A.M. and the witnesses have stated regarding the identification in the light of the lantern as well as in the torch light. However, the I.O. in para 10 of his evidence states that no lantern was shown to him and he has not mentioned in the diary about any lantern and further there is sufficient material in the evidence to suggest that the Appellant was known to the witnesses and hence the identification in the court on T.I. P. is not significant and has lost its significance.

10. Learned Counsel for the State, however, submits that the witnesses have identified in court and identification of his evidence is the substantive evidence.

11. However, taking into consideration the fact and evidence in the light of the submission, it is apparent that nine witnesses were examined in this case. P. Ws. 1 to 6 is all family members and no other persons have come to support the prosecution case about the dacoity.

12. However, out of the nine witnesses only P.W. 1 has identified the Appellant in T.I. P. P. Ws. 2, 3, 4 and 5 though identified in court but did not participate in T.I. P. and hence there is no corroboration regarding their identification of the Appellant and the lower court also discarded their evidence in view of the fact that they did not participate in T.I. P. However, in the T.I. P. chart when he identified the Appellant in T.I. P. he has only mentioned that the Appellant has tied his legs only. Moreover, this witness has admitted in his evidence that he knows the father of the Appellant since much before and he used to visit the village of the Appellant. Further in his evidence in para 8 it appears that he identified one of the dacoits. The other family members also have claimed that they identified the Appellant. However, their evidence are not found to be reliable but having regard to the fact that the Appellant in his evidence has stated that it appears to him that he has seen the dacoits since before and hence it gives a doubt that the Appellant was known to him in view of his evidence that he knows well the father of the Appellant. Moreover, it is a case of a single identification and hence under the facts and circumstances of the case, the Appellant is entitled for benefit of doubt. I give the Appellant benefit of doubt and hence hold that the prosecution has not been able to prove the case beyond reasonable doubts and hence the order of conviction and sentence recorded by the lower court is set aside. Hence, this appeal is allowed.