

Chaturi Yadav and Others

Vs

State of Bihar

Criminal Appeal No. 147 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

09.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Patna High Court confirming the conviction and the sentences passed by the trial Court against the appellants. The appellants were convicted under Sections 399 and 402 and sentenced under Section 399 to 10 years' RI and under Section 402 to 7 years' RI. The sentences were directed to run concurrently.
2. The prosecution case has been detailed in the judgment of the High Court and it is not necessary for us to repeat the same all over again. It appears that on the date of occurrence, the appellants along with the others, had assembled at a lonely spot in the school premises and were detected by a police Patrol Party on seeing whom some of the accused tried to run away but some of the appellants were caught.
3. One of the appellants was found to be in possession of a gun and live cartridge and others had merely one live cartridge each in their pockets.
4. The courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1 a.m. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value, there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned Counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 a.m. does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself, has in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter, there is no legal evidence to support the charge under Sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In these

circumstances, therefore, we are unable to sustain the judgment of the High Court.

5. For the reasons given above, the appeal is allowed. The judgment of the High Court is set aside and the appellants are acquitted of the charges framed against them. The appellants will now be released forthwith.

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