

# PATNA HIGH COURT

Bishwanath Prasad Keshrialias

Vs

State of Bihar

(Anjana Prakash, J)

26.04.2011

## JUDGEMENT

**Anjana Prakash, J.**

( 1. ) THE Appellants have been convicted Under Section 395 I.P.C. and sentenced to R.I. for six months by the 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 54 of 1994/ 3 of 1994 by a judgment dated 18.7.1995.

( 2. ) THE prosecution case is that in the night between 19/20.7.1993 a dacoity had taken place in the house of the informant (P.W.7) in which the mother of the informant allegedly identified the Appellant Nos. 1 and 3. Subsequently the Appellant No. 2 was put on Test Identification Parade and identified by the P.W.7. During trial the prosecution has examined ten witnesses on its behalf. Out of whom, P.W.1 is the mother of the informant and on the fact that she had identified the Appellant Nos. 1 and 3 during the course of dacoity. P.W.2 is only on the factor of the occurrence and his evidence was expunged since he did not appear for cross examination. P.W.3, who is a neighbour, had gone to the place of occurrence after the dacoity and hearsay on the point of identification of Appellant Nos. 1 and 3. P.W.4 has been tendered by the prosecution. P.W.5 is a co -villager and hearsay on the point of identification of the Appellant Nos. 1 and 3. P.W.6 is also on the same count. P.W.7 is the informant on the factor of occurrence as well as the identification of the three Appellants. P.W.8 is the Judicial Magistrate, who conducted the Test Identification Parade on 3.9.1993 of the Appellant No. 2 in which he was identified by P.W.7, the informant. P.W.9 is the doctor, who examined the injured and P.W.10 is the Investigating Officer of the case. The Appellants did not dispute the factor of the occurrence but disputed their complicity in the same.

( 3. ) THE admitted position is that the Appellant Nos. 1 and 3 were well known to the prosecution and in fact there were some civil disputes pending between them, for which Exhibit A and B were brought on record by them. In this background the possibility of false implication cannot be ruled out. As per the evidence of P.W.8, it appears that the Test Identification Parade of Appellant No. 2 was held on 3.9.1993 i.e. almost two months later and in view of the sole identification of Appellant No. 2, I am not inclined to accept the same. Under the circumstances, the prosecution has failed to prove its case beyond all reasonable doubt. ;

