

Criminal Appeal

Present : The Hon'ble Mr. Justice Ashim Kumar Roy

Judgment On : 17-03-2010

C.R.A. No. 636 of 2005

Abul Hossain Laskar @ Abul Laskar

versus

State of West Bengal

POINTS:

Lack of Evidence----Criminal appeal-----Evidence-----Appellant convicted by the Trial Court--
---Lack of evidence about the involvement of the appellant -----Judgment of the Trial Court, if
can be sustained---Indian Penal Code, S.397

FACTS:

On June 17th, 2003 at about 8 p.m. while a bus full of passengers was proceeding towards Sahararhat and reached near cremation ground situated at Mansarhat, a group of miscreants who were sitting inside the bus in the guise of passengers brought out fire arms and other weapons and then started looting away valuable articles from the passengers on the point of fire arms and weapons they were carrying. Being attracted by the hue and cry of the passengers, the local villagers rushed to the spot and surrounded the bus and apprehended three miscreants while others fled away. Out of the said three miscreants apprehended by the mob, two were done to death and one was handed over to the police.

During the trial the prosecution in order to prove its case examined as many as 13 witnesses while two others were examined as Court Witnesses. The Trial Court convicted the Petitioner under Section 397 of The Indian Penal Code and sentenced him to suffer rigorous imprisonment for seven years.

HELD:

However, these witnesses were not able to identify the present appellant as one of the miscreants who either participated in the dacoity or was apprehended by the mob from the spot. There is no evidence that the present appellant is one of the miscreants who took part in the commission of the alleged dacoity or he was apprehended by the mob in course of such dacoity.

PARA --4

In such view of the matter, there is no material to sustain the conviction of the appellant under Section 397 of the Indian Penal Code.

Accordingly, the order of conviction and sentence is set aside. The appeal stands allowed.

The appellant who is now on jail, be released forthwith if not wanted in connection with any other case.

PARA --5

For Appellant : Mr. Sushil Kumar Mahato
For State : Mr. Swapan Kumar Mullick

THE COURT:

1. In this statutory appeal the appellant challenged his order of conviction under Section 397 of the Indian Penal Code and sentence of Rigorous Imprisonment for seven years. It may be noted in the trial, beside the present appellant, four others were also charged for the self-same offence together with the present appellant but all of them were acquitted.

2. The prosecution case in brief are as follows;

“That on June 17th, 2003 at about 8 p.m. while a bus full of passengers was proceeding towards Sahararhat just after crossing of Dostipur More and reached near cremation ground situated at Mansarhat, a group of miscreants who were sitting inside the bus in the guise of passengers brought out fire arms and other weapons and at the point of such weapons forced the driver to stop the bus and to put off the light. The said miscreants then started looting away valuable articles from the passengers on the point of fire arms and weapons they were carrying, and being attracted by the hue and cry of the passengers, the local villagers rushed to the spot and surrounded the bus and apprehended three miscreants while others fled away. Out of the said three miscreants apprehended by the mob, two were done to death and one was handed over to the police.”

3. During the trial the prosecution in order to prove its case examined as many as 13 witnesses while two others were examined as Court witnesses.

4. Out of the witnesses so examined by the prosecution, P.W. 1, Arun Kr. Halder, is the owner of the bus who claimed to be present at the cabin of the driver at the time of the alleged incident. However, these witnesses did not able to identify the present appellant as one of the miscreants who either participated in the dacoity or apprehended by the mob from the spot. The P.W. 2, Prabir Kr. Mondal, is the scribe of the First Information Report and has no knowledge about the alleged occurrence. The P.W. 3, Swapan Kumar Mondal, admitted in his evidence that he has no knowledge about the occurrence. P.W. 4, Anil Kr. Chakraborty, is the driver of the bus although he supported the case of the prosecution about the commission of dacoity in the bus,

but the present appellant was not identified by him as one of the miscreants. P.W. 5, Sujit Halder, was tendered by the prosecution while P.W. 6, Ashit Mukherjee, P.W. 7, Goutam Naskar and P.W. 8 Uttam Halder were declared hostile. P.W. 9, Bachchu Koyal admitted that he knew nothing about the occurrence. P.W. 10, K.D. Hore, is an Investigating Officer of the case. The P.W. 11, Partha Sarathi Bhat, is one of the passengers, who was victim of the dacoity. However, this witness could not identify the present appellant as one of the miscreants. Both the Court witnesses who were the doctors, allegedly treated the present appellant at Sub-divisional Hospital stated in their deposition that they treated one Abul Hossain Laskar who was brought to the hospital with several injuries with the history of assault by the mob but these two witnesses also could not identify the appellant as the person they treated at the Hospital. Thus, there is no evidence that the present appellant is one of the miscreants who took part in the commission of the alleged dacoity or he was apprehended by the mob in course of such dacoity.

5. In such view of the matter, I find there is no material to sustain the conviction of the appellant under Section 397 of the Indian Penal Code.

Accordingly, the order of conviction and sentence is set aside. The appeal stands allowed.

The appellant who is now on jail, be released forthwith if not wanted in connection with any other case.

The Office is directed to send down the Lower Court Records immediately.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)