

11 SCOB [2019] HCD 1**HIGH COURT DIVISION**

JAIL APPEAL NO.25 OF 2012.

Hemayet Mollah

.....Appellant.

Vs.**The State**

.....Respondent.

Ms. Sayeda Sabina Ahmed

.....For the appellant.

Ms. Rona Naharin, D.A.G. with

Ms. Monzu Naznin, A,A,G, and

Mr. Md. Sarwardhi,A.A.G

.....For the respondent.

Heard on 26th November, 2015 andjudgment on 30th November, 2015.**PRESENT:****MS. JUSTICE SALMA MASUD CHOWDHURY****AND****MR. JUSTICE F.R.M. NAZMUL AHASAN**

The prosecution case cannot be shaken only because the eye witnesses belong to the same family because in a case of dacoity the eye witnesses of the occurrence are always the inmates of the house in which the dacoity is committed. ... (Para 25)

JUDGMENT**SALMA MASUD CHOWDHURY, J:**

1. This Jail Appeal is directed against the judgment and order of conviction and sentence dated 2.11.2011 passed by the Joint Sessions Judge, 1st Court, Jhalakathi in Sessions Case No.94 of 2010 convicting the appellant under section 395 of the Penal Code and sentencing him to suffer rigorous imprisonment for five years and also to pay a fine of Tk.2,000/- in default to suffer rigorous imprisonment for two months more.

2. The prosecution case in short is that the informant lodged the first information report alleging that while he along with his family members were sleeping after having food at 12.30 a.m. at night, some people called him to open the door and the dacoits being 7/8 numbers entered into the house of the informant breaking the main door and tied him with a gamsa and took the keys from his wife and committed dacoity for 30/35 minutes and as they had no electricity in the house on hurricane light they could recognize the dacoits and on their hue and cry, the local people came and the dacoits fled away and hence the present case.

3. The police investigated the case and submitted charge sheet against the accused persons under sections 395/397 of the Penal Code.

4. The case record was transmitted to the Court of the Sessions Judge, Jhalakathi, who transferred it to the Court of the Joint Sessions Judge, 1st Court, Jhalakathi, for holding trial, who framed charge against the accused persons under sections 395/397 of the Penal Code which was read over to the accused persons, who pleaded not guilty of the charge and prayed to be tried.

5. Prosecution examined as many as 11 witnesses and the defence examined none.
6. The defence case is that the accused persons are innocent and they have been falsely implicated in the case.
7. On conclusion of the trial, the trial Court convicted the appellant under section 395 of the Penal Code and sentenced him to suffer rigorous imprisonment for five years and also to pay a fine of Tk.2,000/- in default to suffer rigorous imprisonment for two months more.
8. Being aggrieved thereby, the appellant preferred the present Jail Appeal which was admitted and is before us for disposal.
9. Ms. Sayeda Sabina Ahmed, the learned Advocate appearing on behalf of the appellant submits that the appellant is innocent and he has been falsely implicated in the case. She also submits that nothing was recovered from the possession of the appellant. She admits that the appellant was recognized by the hurricane light by the informant.
10. Mr. Md. Sarwardhi, the learned Assistant Attorney General appearing on behalf of the State supports the impugned judgment and order of conviction and sentence. He submits that after a full fledged trial, the trial Court convicted and sentenced the appellant and there is no cogent ground for setting aside the judgment and order passed by the trial Court.
11. We have heard the learned Advocate for the appellant and the learned Assistant Attorney General representing the State and perused the materials on record.
12. It appears that the informant lodged the first information report bringing in allegation that the present appellant along with others committed dacoity in his house.
13. Prosecution examined as many as 11 witnesses.
14. P.W.1, Morshed Ali Kakka is the informant who deposed that the accused persons forcibly opened the main door and entered into the house by causing injury on the wife of the informant and committed dacoity and he could recognize the accused persons in hurricane light.
15. P.W.2, Md. Shafiqul Alam Jewel is the son of the informant who deposed that he was sleeping with his father and the dacoits tied his father, the informant, and committed dacoity.
16. P.W.3, Sunia Akter is the daughter of the informant and she also corroborated the depositions of the informant and P.W.2.
17. P.W.4 is the wife of the informant and she deposed that on the day of occurrence she was sleeping and on torch light she could recognize the dacoits who took the keys from her and committed dacoity and she identified the accused persons in the dock. She further deposed that goods worth Tk.84,000/- were the taken away by the dacoits.
18. P.W.5, Mosharaf Hossain deposed that on hearing hue and cry he went to the house of his brother, the informant, and heard about the occurrence.

19. P.W.6, Kabirul Islam deposed that on hearing hue and cry, he went to the place of occurrence and saw the door broken and everybody was crying and the informant and his family members narrated the incident to him.

20. P.W.7, Mahabub deposed that on hearing hue and cry he went to the place of occurrence and heard about the incident.

21. P.W.8, Mofazzal Hossain was tendered.

22. P.W.9, Md. Kawter Hossain deposed that he heard about the dacoity being committed in the house of the informant and he went to the house of the informant and he put his signature in the seizure list.

23. P.W.10, Md. Zakir Hossain is another seizure list witness.

24. P.W.11 is the investigating officer who investigated into the case and submitted charge against the accused persons.

25. It appears that the informant and his other family members, i.e. his wife, daughter and son were in the house while the dacoity was committed and they recognized the appellant along with others. P.W.5, P.W.6, P.W.7, P.W.9 and P.W.10, soon after the occurrence, on hearing hue and cry, went to the house of the informant and saw the door broken and the wife of the informant being injured and heard about the occurrence and the names of the accused persons. The prosecution case cannot be shaken only because the eye witnesses belong to the same family because in a case of dacoity the eye witnesses of the occurrence are always the inmates of the house in which the dacoity is committed. The prosecution succeeded in improving the case against the appellant beyond reasonable doubt. We find no illegality in the impugned judgment and order of conviction and sentence passed by the trial Court.

26. In the result, the appeal is dismissed. The judgment and order dated 2.11.2011 passed by the Joint Sessions Judge, 1st Court, Jhalakathi in Sessions Case No.94 of 2010 are hereby upheld.

27. Send down the lower Court records and a copy of the judgment and order to the Court concerned.