

(2001) 09 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal No's. 383, 391, 405, 406 and 411 of 2000 (SJ) and 5 and 12 of 2001 (SJ)

Alam @ Alam Gir @ Lulha and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2001) 3 BLJR 2210A

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Judgement

B.N.P. Singh, J.—All these appeals arise out of the same judgment of the trial Court passed in Sessions Trial No. 3 of 1999/98 of 1999 and hence they have been heard together and are being disposed of by this common judgment.

2. In broad day light of 23rd June, 1997 at about 13 p.m. shortly after rain was over and employees of Bank of India, Kendui Branch, Gaya, were working in the Bank, three unidentified persons came near the counter when Branch Manager of the Bank made inquiries from them about object which had brought them and it was alleged that they stated to have visited the Bank to seek some information about securing loan from the Bank. Shortly thereafter, three more unidentified persons came in the Bank and placed pistol on the chest of the Branch Manager and also Shri Chandrika Prasad Singh, Cashier of the Bank and other employees of the Bank, namely, Shri Krishna Gopal and Shri Mohan Ram, who were on duty and it was alleged that the unidentified miscreants having coerced and assaulted the Bank employees, secured key of strong room, removed a sum of Rs. 4,24,129/- from the cash chest of the Bank and putting all the inmates of the Bank in a room, locked it from the outside and decamped with the booty allegedly on a vehicle which was waiting outside the Bank. The alarms raised by the Bank employees collected persons, on arrival of whom, they were rescued from the room and under the instruction of the senior officers of the Bank, they

took recourse to Police authority and Chandrika Prasad Singh, cashier of the Bank rendered his fardbeyan before the Police, pursuant to which investigation commenced. In the process of collection of evidence during investigation, the Police recorded statements of witnesses u/s 161 of the Code of Criminal Procedure, visited place of occurrence, recorded confessional statement of some of the appellants, took coercive steps for apprehension of the miscreants, got recorded statement of Md. Gulzar (P.W. 6) u/s 164 of the Code of Criminal Procedure, by Shri G.S.R. Tripathy, Judicial Magistrate (P.W. 7) and on strength of confessional statement of the accused, and at their behest, made recovery of part of booty from the houses of Munna Mian, Md. Naushad, Md. Aftab, and Babloo Kumar. Since complicity of Md. Ashlam alias Ishlam, Tajo Mian, Alam alias Alamgir @ Lulha and Tathagat Singh too came to the notice of the Police during investigation, charge-sheets in two instalments were laid before the Court to put them on trial and on their committal to the Courts of Session, appellants along with Tathagat Singh were put on trial. In the eventual trial, prosecution examined altogether either witnesses who were Bank employees, Police Officer, Seizure list witnesses and also Md. Gulzar.

3. Appellants, at trial, denied their complicity in the commission of dacoity that took place in the Bank of India on 23rd June, 1997 and ascribed their false implication by the Police. The alleged recovery of currency notes forming part of booty attributed to them was also stoutly refuted by those from whom recoveries were said to have been made, and the trial Court on appreciation of evidences placed on record, while negatived contentions raised on behalf of the appellants, finding Tathagat Singh not guilty of the charges, acquitted him but rendered verdict of guilt against appellants Tajo Mian, Alam alias Alamgir alias Lulha, Md. Ashlam alias Ishlam, Munna Mian, and Md. Naushad finding them guilty u/s 395 of the Indian Penal Code (IPC), and sentenced them to suffer rigorous imprisonment for ten years. Munna Mian, Naushad, Md. Aftab and Babloo Kumar were found guilty u/s 412 IPC and were sentenced to suffer rigorous imprisonment for ten years and also to pay a fine of Rs. 5000/-, in default of which they were to suffer rigorous imprisonment for one year. Sentences imposed on Munna Mian and Md. Naushad were, however, directed to run concurrently.

4. Now, advertent to the evidences placed on record, one would find Chandrika Prasad Singh (P.W. 2), Cashier of the Bank of India, Kendua a Branch, reiterating his early version which he had rendered before the Police to set it in motion, about three unidentified persons having visited the Bank and secured key of the strong room, coercing them. The witness would state that they had collected money in a piece of cloth, also confined one of the customers who visited the Bank at that time, did assault them and keeping them inside a room, removed Rs. 4,24,129/-. After alarms were raised, they were rescued from the room where they were confined. He stated to have rendered his fardbeyan before the Police, pursuant to which investigation commenced. Evidence of Sanjay Kumar (P.W. 1) was in similar terms about three persons visiting the Bank, during

business hour on false pretext of seeking some information to secure loan from the Bank. The witness would state that all these three unidentified persons came in the cabin and placed pistol on them and, cercing them, secured key of the strong-room and removed money from the Bank. Shri Krishna Gopal (P.W. 3) would also state in similar terms about Bank dacoity having been committed in the Bank of India, Kendui Branch, Gaya, when some unidentified persons gained their access in the Bank premises and, coercing the inmates of the Bank, secured key of the strong-room and removed money from the Bank. The witness would state that they were locked in a room. Since the miscreants had covered their faces, he did not claim to identify them. Similar narrations were made by Mohan Roy (P.W. 4) also who was on duty in the Bank on 23r June, 1997, when at about 1 p.m. some unidentified persons having gained access in the Bank premises, coerced them to secure key of strong-room and removed Rs. 4,24,129/-from the cash chest. He, however, did not claim to identify them. Md. Murshid Ali (P.W. 5), who was suggested to be a seizure list witness, turned volte face to the State, refuting any recovery attributed to some of the appellants. Gulzar Mian (P.W. 6) who was a Jeep driver, expressed his complete ignorance about the incident. Through he stated to have rendered his statement before a Magistrate, the contents thereof were never read over to him. He did not remember as to whether he put his LTI on Us statement. Attention, of this witness had been drawn by the State towards statement rendered by him u/s 164 of the Code of Criminal Procedure before the Magistrate. Shri Ganga Prasad Ram Tripathy (P.W. 7) stated to have recorded statement of Md. Gulzar u/s 164 Cr. P.C. on 25th July, 1997 while he was posted at Gaya.

5. Jagdeo Kumar, Sub-Inspector of Police (P.W. 8), happens to be the Investigating Officer of the case and he would narrate before the Court that shortly on receipt of telephonic message about Commission of dacoity in the Bank of India, Kendui Branch, Gaya, on 23rd June, 1997, he made Sanha Entry No. 421 of 1997 and proceeded to Bank in the company of Shri A.N. Thakur, Sub-Inspector of Police, where he recorded fardbeyan of Shri Chandrika Prasad Singh, Cashier of the Bank, and took up investigation. The Bank situates in the house of Binod Singh. The I.O. also noticed Rs. 3,006.62 Ps. scattered over the floor of the Bank. He stated to have taken details of currency notes removed from the Bank by the miscreants, pursuant to which coercive steps for apprehension of unidentified miscreants were taken. The witness would state about having made searches of the house of Md. Aftab, Md. Naushad, Munna Mian and Babloo Kumar who also rendered their confessional statements before him. The witness would state about seizure of arms and ammunition from the houses of these four appellants and also recovered Rs. 24,000/- from the house of Munna Mian which situates in Gogri Tand mohalla of Gaya and that too at the behest of Munna Mian himself. The witness would state recovery of Rs. 20,000/-from the house of Najmuddin which situates in Gogri Tar, where mother of Naushad resides. The said Najmuddin is the uncle of Md. Naushad and recoveries were made at his instance. The witness would state about recovery of Rs. 30,000/- from the house

of Md. Aftab, at his instance which situates in mohalla Gogri Tar, Gaya. The witness would state about recovery of Rs. 15,550/- from a room of the house of one Kaneeza Khatoon, which was in occupation of Babloo Kumar. The witness would state about recovery of currency notes in presence of two witnesses, namely, Rash Bihari and Murshid Alam, for which a seizure memo was prepared to which they were signatories. The witness would state about complicity of Md. Ashlam, Tajo Mian, Alam, Tathagat and Rajesh, transpiring in confessional statements of Md. Naushad, Munna Mian and Aftab. Statement of Gulzar was got recorded u/s 164 Cr. P.C. by a Magistrate on prayer made by him during investigation. The witness stated to have submitted charge-sheet before the Court against Md. Aftab, Munna Mian, Naushad and Babloo Kumar while kept investigation pending against others and a supplementary charge-sheet was submitted against Alam alias Alamgir alias Lulha, Tajo Mian, Md. Ashlam alias Ishlam, keeping investigation pending against Tathagat Singh and Rajesh. The third supplementary charge-sheet was also submitted pursuant to conclusion of investigation. All the currency notes allegedly recovered from the house of the four appellants were kept in Malkhana. Seized currency notes were also produced in Court at trial which are material Exhibit is 1 series. This is all the evidence that has been adduced on behalf of the State.

6. Findings recorded by the trial Court are sought to be assailed by the learned Counsel for the appellants on various premises and it is sought to be urged on behalf of appellants Alam alias Alamgir, Tajo Mian and Md. Ashlam alias Ishlam that though admitted facts are that none of the miscreants, who gained their access in the Bank premises on the day of incident, were identified by any inmates of the Bank, it was obligatory on the part of the State to get test identification parade held, in case suspects were apprehended on suspicion of their complicity in the Bank dacoity. But no test identification parade was ever held of these appellants. Contentions were raised that the trial Court erroneously drew conclusion about complicity of these three appellants primarily on the confessional statement allegedly rendered by Md. Naushad, Md. Aftab, Munna Mian and Babloo Kumar and also statement of Gulzar (P.W. 6) rendered u/s 164 Cr. P.C. Learned Counsel would urge that in view of the settled and broad proposition of law that statement u/s 164 Cr. P.C. was not substantive piece of evidence, and it can be used either for corroboration or contradiction of the maker, conclusion about guilt of these three appellants having been drawn by the trial Court on the strength of statement of Gulzar, rendered under Section 164 Cr. P.C., was manifestly erroneous, particularly in view of the fact that said Gulzar at trial had turned volte face to the State about having rendered such statement before the Magistrate and contents of the statement having not been read over to him.

7. Learned Counsel appearing for the rest of the appellants would urge strenuously that though recoveries of currency notes were attributed to Md. Naushad, Aftab, Munna Mian and Babloo Kumar, there was no evidence of tangible nature or unimpeachable character to lead to a conclusion that the

currency notes allegedly recovered from possession of the four appellants were part of booty. Contentions were raised that neither in the early statement of Shri Chandrika Prasad Singh, which he rendered before the Police, nor at any stage of investigation, particulars about number of currency notes were ever furnished to the Police and since these details are yet wanting, possibly no conclusion can be drawn that the recoveries of currency notes allegedly attributed to these four appellants were part of booty. Learned Counsel would urge that even the I.O. of the case stated before the Court in most uncertain terms that there was no detail of packet of bundles of notes when these currency notes were produced in Court. Though it is urged that the prosecution brought on record Exhibit-8, the I.O. would admit in most positive terms that the list of notes furnished in Exhibit-8 did not contain series and number of notes. The contentions are raised that when these currency notes were produced in Court at trial, the witness would state that he was not in a position to say that each of these currency notes forms part of the booty and the last argument canvassed at Bar on behalf of the appellants was that assuming for the sake of arguments about recovery of currency notes from the possession of these four appellants, no conclusion of guilt can be drawn against them also for the reason that these currency notes, allegedly recovered from possession of the appellants, were never put on test identification parade. Learned Counsel for the State would counter the arguments canvassed on behalf of the appellants and it is urged that complicity of the appellants has well transpired in the evidences collected during investigation.

8. Facts of the case are tellatell. Commission of dacoity in the Bank, cannot possibly be disputed in view of the evidences placed on record. Now, advertng to the evidences on record about complicity of Tajo Mian, Alam alias Alamgir alias Lulha, Md. Ashlam alias Ishlam, Munna Mian and Md. Naushad and finding of guilt recorded by the trial Court against them u/s 395 IPC, as has been stated in the preceding pages, conclusion about complicity of these appellants was drawn primarily from the statement of Gulzar Mian recorded u/s 164 Cr. P.C. and also their complicity transpiring in the confessional statements rendered by Md. Naushad, Md. Aftab, Babloo Kumar and Munna Mian. Since Gulzar has turned volte face to the State at trial, resiling from his previous version, which he rendered before the Magistrate statement rendered u/s 164 Cr. P.C. would not have been pressed into service to draw a conclusion of guilt against these appellants, there being no corroboration on this score. In the same fashion, conclusion of guilt drawn against them on strength of confessional statements rendered by Babloo Kumar, Naushad, Munna and Aftab was also not sustainable in law, as it is well recognized principle of law in view of plethora of decisions of the Court that only that part of confessional statement rendered by the accomplice was admissible in evidence which led to recovery of the stolen property. However, so far case of Munna Mian and Md. Naushad was concerned, it was distinct from that of Tajo Mian, Alam alias Alamgir and Md. Ashlam, as only after few days of the incident recoveries of currency notes were attributed to them from their possession and in that view of the matter, findings recorded by

the trial Court u/s 395 IPC against appellants Tajo Mian, Alam alias Alamgir and Md. Ashlam alias Ishlam are set aside and they are acquitted of the charges levelled against them.

9. Another aspect of the case was, alleged recovery of currency notes from possession of Md. Naushad, Md. Aftab, Munna Mian and Babloo Kumar. True it is that details which were expected to have been furnished about the number of currency notes and their denominations were not furnished in the earliest version of the prosecution, some of them were sought to be furnished in Exhibit-8 during investigation and true it is that details of number of currency notes are yet wanting therein. The bundle of currency notes, allegedly recovered from the house of the four appellants, were also produced at trial which are material Exhibit-1. These currency notes admittedly remained in custody of the Bank on its release under the orders of the Chief Judicial Magistrate, Gaya, during pendency of investigation. Yet this fact is undisputed that those currency notes which were recovered from the houses of the appellants bore slips of Bank of India, Kendua Branch with sticker and also the signature of cashier and even though the Bank was claiming these currency notes, it was indeed intriguing that even none of the four appellants ever claimed possession of these currency notes. Since recovery of these currency notes were made from the possession of the four appellants, onus also shifted on them to explain how they came in their possession. Since the property looted in Bank dacoity was found in possession of these appellants, it can well be presumed that the properties were the stolen property of dacoity and in this view of the matter, their conviction u/s 412 IPC was quite in order. Since recoveries were attributed also to appellants Munna and Md. Naushad, after few days of the Bank dacoity, they were also answerable u/s 395 IPC. Though a faint argument was also canvassed at Bar that the Investigation Officer did not hold inquiry about houses from where the recoveries were allegedly made, such arguments appear to be quite innocuous.

10. Having given my anxious and deepest consideration to the facts and circumstances of the case and also the evidences placed on record, while findings of conviction and sentences recorded by the trial Court as against appellants Alam alias Alamgir alias Lulha, Tajo Mian and Md. Ashlam alias Ishlam u/s 395 IPC are set aside and they are acquitted of the charges, findings of the trial Court as against other appellants, are upheld which did not require interference. Accordingly, Criminal Appeal Nos. 383 of 2000, 12 of 2001 and 391 of 2000 are allowed and Criminal Appeal Nos. 405, 406 and 411 of 2000 and Cr. Appeal No. 5 of 2001 are dismissed. Appellant Md. Aslam alias Islam alias Aslam of Cr. Appeal No. 391 of 2000 is said to be in custody. He is directed to be set at liberty forthwith, if not required in any other case. Appellants Tajo Mian and Alam alias Alam Gir alias Lulha of Cr. Appeal Nos. 12 of 2001 and 383 of 2000 are discharged from the liability of the bail bonds. Bail bonds of the remaining appellants are cancelled and they are directed to surrender forthwith. Trial Court is also directed to take them into custody forthwith to serve out the remaining sentences.