
(2003) 08 PAT CK 0021

In the Patna High Court

Case No : Criminal Appeal No. 349 of 2002

Bajnath Singh and Adalat Mian

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2004) 1 PLJR 89

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

Bench : Single Bench

Advocate : Shakti Suman Kumar, for the Appellant; Kameshwar Prasad Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The salient facts of the prosecution case are that while celebration of marriage of Shakuntala Devi (P.W. 9) was over and female members were making preparation for Shakuntala's going to her in-laws' house, unidentified miscreants ransacked house of Suraj Das in the intervening nights of 18/19th June, 1990, and coercing inmates of the house, removed house belongings. They also relieved female members of their ornaments and also their wearing apparels. During operation of dacoit, two cousins of Suraj Das claimed to have identified Appellants and Rajesh Kumar Das. son of the informant, too claimed to have identified one Bishwanath Sahani. Fardbeyan of Suraj Das was recorded by Police Officer at 130 hours on 19th June, 1990, pursuant to which investigation commenced. The Police Officer recorded statement of witnesses, visited place of occurrence, noticed sign of violence there, took steps for apprehension of miscreants, effected recovery of booty, allegedly from houses of Rajdeo Singh and Adalat Mian,; got Sachindra Das clinically examined by doctor, and on conclusion of instigation laid charge sheet before the court in the eventual trial that followed, while State examined 14 witnesses, the defence too examined two witnesses and brought on the record two deeds.

2. The defence of Appellants both before the court below and this Court have been that of plea of innocence. The explicit defence Adalat Mian was his false implication due to land dispute, and as for Baijnath Singh, his defence of false implication was for no good reasons. The trial court however, negating contentions raised on behalf of Appellants recorded binding of guilt against both the Appellants u/s 395 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for a term of seven years. Adalat Mian suffered conviction also u/s 412 of the Indian Penal Code and on that count too, he was sentenced to suffer rigorous imprisonment for seven years, with direction that sentences awarded to Adalat Mian shall run concurrently.

3. Learned Counsel appearing for the Appellants has taken me to the evidences of witnesses and submission is that since both the Appellants were residents of the neighboring villages and were quite known to the inmates of the house, it was quite unlikely for them to participate in commission of dacoit without taking any precaution for concealment of their identities. Other submission is that in backdrop of animosity between the parties though trial court was required to critically analyse evidences, finding of guilt was recorded without cautiously marshalling evidences. Attention of some of the witnesses drawn by defence towards their earliest version rendered before the police to impeach their credibility, and to persuade the Court to believe that they had not made parallel statements before the police was also highlighted at bar. I have given my anxious and deepest consideration to the submissions made and for proper appreciation of them, I propose to discuss with brevity, the narrations made by witnesses to judge culpability, of Appellants about their participation in dacoit," or recovery of booty from possession of one of them. Those who claimed to have identified Baijnath Singh, happen to be Rajesh Kumar Das, P.W. 1, Bhola Das, P.W. 2, Surendra Das, P.W. 3, Sachindra Das, P.W. 5, Ram Kumari Devi, P.W. 8 and Shakuntala Devi, P.W. 9 but for the reasons to which I shall advert to hereinafter, the claim of identification of Baijnath Singh made by P.Ws. 1, 3, 8 and 9 did not appear to be free from blemishes. If fardbeyan of Suraj Das which was the earliest version of the prosecution and also sheet-anchor of the case was to be given due consideration, Rajesh Kumar Das was suggested to have identified only Bishwanath Sahani who was neither put on trial nor is Appellant before me. He happens to be none-else but inmate of" the house and it was most unlikely that had he identified Baijnath Singh, he would not have disclosed his complicity to Suraj Das, the maker of the fardbeyan who happens to be none-else but his father. Similar reasonings would follow in case of identification of Baijanth Singh by Surendra Das also. He too was a house inmate and in fardbeyan of Suraj Das he was not suggested to have identified Appellants. Though Ram Kumari Devi, P.W. 8 and Shakuntala Devi, P.W. 9, claimed identification of Baijnath Singh, their attentions were drawn by the defence towards their earliest version rendered be fore the police during investigation and it would appear from evidence of Investigating Officer that these two witnesses have not made parallel statement before police about identification of Baijnath

Singh, and hence claim of identification made by P.Ws. 1, 3, 8 and 9 has lost all its significance. However, so far identification of Baijnath Singh made by P.Ws. 2 and 5 was concerned, that appear to be free from blemishes.

4. Now adverting to the case of Adalat Mian, there has been claim of identification made by Rajesh Kumar Das, P.W. 1, Bhola Das, P.W. 2, Surendra Das, P.W. 3 and Sachindra Das P.W. 5. In his case too, the same logic would follow, as neither Rajesh Kumar Das, P.W. 1 nor Surendra Das, P.W. 3, were suggested to have claimed identification of this Appellant in the fardbeyan of Suraj Das. However, in case of Adalat Mian, there has been identification by Bhola Das, P.W. 2 and Sachindra Das, P.W. 5 for which there has been explicit accusation attributed to this Appellant for his identification by these two witnesses in fardbeyan of Suraj Das.

5. Coming to the evidence of witnesses about recovery of booty from house of Adalat Mian, on analysing evidences it Should appear that evidence of witnesses on this score too are not free from blemishes vague description about house belongings allegedly removed from the mouse, was made in fardbeyan of Suraj Das. Though description of some ornaments finds furnished in fardbeyan, about Swearing apparels, only assertion made by the informant was that wearing apparels quite in good numbers were removed from the house. The investigating Officer in his evidence was quite emphatic that even marring investigation the list of wearing apparels and house belongings lost in course of dacoit, was not furnished to him any the informant or any house inmates. That is not the end of story. Though recoveries, are shown to have been effected from Houses of Rajdeo and Adalat Mian, admittedly Rajdeo was not put on trial. As for Adalat Mian, though recovery was shown to have been effected from his house in presence of Shamsul and Habibullah but none of them were examined at trial and hence court is left with solitary testimony of Investigating Officer, who too was not explicit about description of wearing apparels, recovery of which were effected from house of Adalat Mian. I am oblivious of the fact that a test identification parade was held, for which Jageshwar Jha, Circle Officer, Turkaulia Block was examined as a witness who stated that T.I.P. proceeding was conducted by him in which identification of wearing apparels were made by P.W. 7 and P.W. 8. The T.I.P. charge too was placed on the record but the moot question which survives for consideration was that when description of articles with distinctive marks are conspicuously wanting in the fardbeyan of Suraj Das and none of the family members examined at trial had given any description of wearing apparels with distinctive marks, whether identification by P.Ws. 7 and 8 in these circumstances would bear probative value, and in my considered opinion, the answer would be in negative and on these premises I find that the finding recorded by the trial court finding Adalat Mian guilty u/s 412 of the Indian Penal Code and sentencing him on that count was not sustainable in law which is accordingly set aside.

6. The other ancillary matter which also agitates, is about identification of the

Appellants. The evidences placed on the record unerringly suggest that both the Appellants are residents of neighboring villages which situate at 1 1/2 K.M. They were on visiting terms and one of them namely, Baijnath Singh, Appellant No. 1, had also participated in the process of preparation of Mama. They too had been invited in the marriage. The dacoit was committed at the dead of night. The instances are not uncommon that even atrocious crimes are committed by known persons in broad-day light. As for source of identification of the Appellants, there has been good evidence with sustained consistence that since process of celebration of marriage was yet inconclusive, a petrosal was burning inside the house, and hence there was good source of illumination for identification of miscreants. Having considered these aspects of the matter, identification of the Appellants by two witnesses who happen to be none else but house inmates and have been found credible appear to be improbable or suffering from infirmity. Since occurrence took place at a dead of night, the possibility of identification of the miscreants by independent witnesses would be a remote possibility and as such finding recorded by the trial court recording finding of guilt u/s 395 of the Indian Penal Code did not require interference.

7. However, one mitigating circumstance was brought to my notice by learned Counsel for the Appellants. It is submitted that as occurrence took place in the year 1990 and about a decade has elapsed since when the Appellants have suffered trauma of protected prosecution and hence this circumstance may weigh with court in awarding sentence.

8. Having bestowed my anxious and deepest consideration to evidences placed on the record and submission made at bar, while upholding conviction of the Appellants u/s 395 of the Indian Penal Code, sentence awarded to them by the trial court is reduced to a term of five years and with this modification, the appeal is dismissed.