
(1969) 04 SC CK 0063

In the Supreme Court Of India

Case No : Criminal Appeal No. 200 Of 1966

Chottan Mahton and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-04-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (1969) 3 SCC 727

Hon'ble Judges : V. Ramaswami, J;S. M. Sikri, J;R. S. Bachawat, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.M. SIKRI, J.-This appeal by special leave is directed against the judgment of the Patna High court dismissing the appeal filed by the appellants before us and confirming their conviction by the learned Additional Sessions Judge, Patna, under Section 396, Indian Penal Code

2. There is no doubt that at about midnight between 16/03/1958 and March 17, 1958, a number of persons committed a dacoity in the house Of Budban Gope (P. W. 5) in village Mehtarwan about four miles from police station Chandi in the sub-division of Biharsharif, District Patna. In their dacoity Mangal Gope, brother of Budhan Gope, was killed by gun shot injury and Budhan Gope and his daughter Dakho Kuer (P. W. 6) were severely injured. Various kinds of properties were looted by the dacoits, including ornaments, clothes, utensils, etc. First Information Report was lodged at the police station by Sukhu Chowkidar, P.W. 10 at 3 a.m. the same night, i.e., on 17/03/1958. He stated in the first information report that on hearing loud sound of gun firing coming from the west side of the village and on hearing from one Tilakdhari Dusadh that dacoits had come, he went near the house of Budban Gope. He found Mangal Gope, brother of Budhan Gope, fallen near the eastern corner of the house of Ramlal Mahto. Then he also found Budhan Gope and his daughter Dakho Kuer injured besmeared with blood and crying. He stated that he learnt from Budban Gope that "about 15 dacoits,

armed with lathi, gadasa and gun raided his house and committed assault with lathi and gun, as a result of which (raid) his daughter Dakho Kuer had been injured by gun shot of the dacoits, and that they (dacoits) assaulted him (Budhan) with lathi, on the Chhat of his house. The (Budhan) also faced the dacoits with a Kori (piece of bamboo)". Sukhu Chowkidar further stated in the first information report that Budhan Gope told him that "amongst the dacoits he recognised Chhotan Mahto, son of Nekhu Mahto resident of Amraura, armed with a gun, Kroo Mahto, Sohrai Mahto and the two sons of Shamlal Chamar, residents of Berwan P. S. Ghandi, District Patna armed with lathis and gadasas and they took away clothes ornaments, cash etc. from his house".

3. It will be noticed that three appellants are named in the first information report and the fourth appellant is mentioned as the son of Shamlal Chamar. Sudhan Gope in his evidence before the Additional Sessions Judge gave a few more details and he added the name of Ram Prasad, who was also known as doctor, in this manner :

"ONE dacoit said, "see, rascal is coming, assault him". At this Ram Prasad fired the gun from upstairs (Kotha). Thereafter I heard sound of weeping. After Ram Prasad, Chottan fired the gun, second time."

4. We may mention that Ram Prasad was one of the 16 persons who were committed to stand trial before the Additional Sessions Judge, but he was acquitted being given the benefit of doubt. We have mentioned this fact because the learned counsel for the appellant has strongly urged that the investigating officer, Inspector Madan Mohan Prasad, P. W. 14, had deliberately made the witnesses include some of the persons with whom he did not have cordial relations. It is said that on 20/02/1958, a public meeting was held at Kachaharis, two miles from Mehtarwan, and Dr. Ram Prasad had addressed the meeting and various accusations were made against Madan Mohan Prasad even though he was present at the meeting, and it is on that very day that Madan Mohan Prasad sent a report against Chottan and Ram Prasad, stating that "Chottan took part in dacoity and he was a leader of dacoits, and that Ram Prasad was also an important figure of this gang". The learned counsel says that we should view the evidence very strictly and in such cases indeed it is difficult to separate the chaff from the grain.

5. In our opinion both the learned Additional Sessions Judge and the High court have viewed the evidence with care and we are unable to say that they have misread the evidence or have not given due weight to any weaknesses appearing in the prosecution story.

6. The question really is one of identification and as far as those four appellants are concerned their names were mentioned in the first information report which was lodged within a very short time after the occurrence. It is true that the night was dark but Budhan Gope had as many as 30 injuries on his person out of which four had been caused by sharp-edged weapon and the rest by hard blunt

substance, and he had fought with the dacoits with a piece of bamboo. We are, therefore, unable to say that he would not be in a position to recognize some of the dacoits. It appears that the dacoits thought that he had died because they had thrown him down from the Kotha.

7. The learned counsel says that the High court erred in relying on the statement of Budhan Gope because he has included names other than those mentioned in the F. I. R., and because no independent witness of the village has come forward to say that any name was given out by the inmates, including P. W. 5, to them. The High court was of the view that "it may well be that the names were not given out to the villagers immediately as many known persons of the village had taken part in dacoity". The High court observed:

"BUT that does not mean that evidence of P. W. 1 or 5 is not trustworthy even against the appellant. As the learned Additional Sessions Judge has remarked that if some of the names of these appellants were falsely given in the first information report at the instance of the police officer (P. W. 14), as is the defecpce case, he could not have forgotten to mention the name of accused Ram Prasad in that event. To me it appears that these four appellants were rightly identified by P. W. 5 as also P. W. 1, whose evidence I shall presently deal, and these names were surely mentioned by P. W. 6 before P. W. 10 who in his turn got their names mentioned in the first information report. The name of appellant Karo Chamar was mentioned by description of his being a son of Shamlal Chamar. When I shall deal with the cases of the four appellants on the point of alleged enmity, it would be noticed that none of the other three appellants other than appellant Chottan claimed to have any enmity with the Police Inspector. They made futile attempts to allege some sort of enmity with Budhan or his relations. Appellant Karo Ghamar also alleged some sort of enmity with the chaukidar. It would thus appear that five persons who were named or mentioned in first information report by description were not so mentioned through the instrumentality of the Police Inspector as was argued on behalf of the appellants but the names were surely given out by the inmates of the house, namely, P. Ws. 1 and 5, to the chaukidar who then got their names mentioned in the first information report."

8. We are not convinced that the High court erred in coming to the above conclusion.

9. Another witness relied on by the High Court is Ram Charittar Gope, P. W. 1. He was with his brother Mangal who was shot dead. He saw the appellant Ghottan on the roof firing. He also recognised the other appellants among other dacoits. We were taken through relevant parts of his evidence. We are unable to say that the High court should not have placed reliance on his evidence.

10. The learned counsel contends that on the facts as found by the High Court conviction under Section 396, Indian Penal Code, is not sustainable as 12 persons out of 16 committed to Sessions have been acquitted. This point does

not seem to have been argued before the High court. The learned Additional Sessions Judge had however found that accused Chottan, Karoo Mahto and Shorai Mahto of Borwn along with others numbering more than sixteen committed dacoity in the house of Budhan. If this finding is accepted, conviction under Section 396 was not wrong. But as there is no such finding by the High Court, we convert the conviction to one under Section 304, I.P.C. but maintain the sentences awarded by the learned Additional Sessions Judge and maintained by the High court.

IN the result the appeal fails except for the modification indicated above.