

(2003) 08 PAT CK 0127

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 340 of 1991

Ishwar Narain Singh and Kapileshwar Paswan @ Kapil Paswan

APPELLANT

 V_S

State of Bihar

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Penal Code, 1860 (IPC) – Section 395

Citation : (2004) 2 PLJR 280

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

Bench : Single Bench

Advocate : Yogendra Pd. Sinha No. 1, Nirmal Kumar Singh No. 3 and Rakesh Ambastha, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—Appellants suffered conviction u/s 395 of the Indian Penal Code (IPC) for which they were sentenced to suffer rigorous imprisonment for a term of ten years each. It seems from the proceeding of the Court below that Kapileshwar Prasad alias Kapil Paswan did not appear in person in the Court below when he was convicted and sentenced. However, subsequently, after he surrendered in the court, he was remanded to jail to serve out the sentence awarded to him.

2. Though salient features of the prosecution case have been fairly spelt out in the judgment of the Court below, a brief resume of them can be noticed at the threshold. Allegedly at dead of night, in the intervening nights of 13/14th May, 1984, unidentified miscreants having gained their access in the inner apartment of house of Ram Lachhan Mahto, Mahavir Mahto and Nathuni Mahto, coercing house inmates, removed house belongings which include ornaments, wearing apparels, cash etc., and while retreating also resorted to firing. It was Ram Tapeswar Paswan (P.W.1) who rushed to the Police Station where his statement was recorded by a Police Officer which happens to be first information report of

the case. As usual, investigation followed, in course of which, Investigation Officer recorded statement of witnesses u/s 161 of the Code of Criminal Procedure, took steps for apprehension of the miscreants, arranged test identification parade in Sitamarhi Jail of the suspect Ishwar Narayan Singh, effected seizure of some incriminating objects at the place of occurrence, and on conclusion of investigation, laid chargesheet before the Court. At trial the State examined 14 witnesses who happens to be family members of the victims, Ram Tapeswar Paswan who was first informant and also some of the family members of his house, who were tendered at trial. Defence of the Appellants, both before the Court below and this Court, has been that of innocence and false implication for no good reasons. "As for Ishwar Narain Singh there has been explicit defence of the Appellant that as he impounded cattle of Panchan Mahto and Ram Vinay Mahto, for that animosity, he was falsely dragged in the case, and common defence of the Appellants was that since Village Sinhariya was adjacent to Phulwaria, which situates hardly at a distance of 1/2 Km's from each other, Appellants were quite known to the villages of village Phulwaria, and in that backdrop, identification of Ishwar Narain Singh at the test identification parade was bereft of legal value. Defence had also chosen to examine three witnesses and while Hardeo Mishra (D.W.1) brought on the record, two receipts, ostensibly to testify seizure of two heads of cattle of Pancham Mahto and Binay Mahto by Ishwar Narain Singh for which Ram Briksh Roy (D.W.2) was put in the witness box only to say that both the villages are adjacent to each other intervened by a river and also that the field of Nathuni Mahto and Panchan Mahto was adjacent to the field of Ishwar Narain Singh. Other defence witness happens to be Amiri Lal Roy (P.W. 3), Sarpanch of Puruhiya Harnahiya Gram Panchayat and the witness says that the people of each of the two villages know each other.

3. The trial Court, however, on meticulously appreciating the probative value of the testimony of witnesses, while negating contentions raised on behalf of the Appellants relied on prosecution witnesses, recorded finding of guilt against the Appellants and sentenced them in the manner stated above.

4. As has been the testimony of witnesses, dacoity was committed in the houses of Nathuni Mahto (P.W.2), Ram Vinay Mahto (P.W.6) and Ram Ekbal Mahto (P.W. 10) and it is submitted on behalf of the Appellants that Ram Vinay Mahto (P.W.6) happens to be son of Nathuni Mahto (P.W.2). Evidences are galore that during commission of dacoity, miscreants having assaulted house inmates removed house belongings and decamped with the booty and while retreating also resorted to firing. Admittedly, Tapeswar Paswan, Chowkidar of the village and also the first informant, was not a witness about identification of any of the miscreants, as first information report simply states about commission of dacoity in some houses in village Phulwaria in the night of the occurrence. Now I may switch over to the evidence of witnesses about identification of the Appellants. Admittedly, there has been no evidence about recovery of booty from possession of the Appellant and without burdening my judgment with reproduction of evidence of witnesses which have been fairly spelt out in the judgment of the

Court below, I may reiterate that there has been identification of Kapileshwar alias Kapil Paswan by Nathuni Mahto (P.W.2), Ram Vinay Mahto (P.W. 6), Panchan Mahto (P.W.7), and Ram Ekbal Mahto (P.W. 10). As for Nathuni Mahto (P.W. 8), he claimed to have identified Kapileshwar Paswan alias Kapil Paswan in the lantern and flash of torch light held by the miscreants. Ram Vinay Mahto (P.W. 6) claimed to have identified miscreants in the flash of torch light and also moon light. Panchan Mahto (P.W. 7) too claimed identification of Kapil Paswan in flash of torch light as well as moon light. Ram Ekbal Mahto (P.W. 10) too had torch with him.

5. Since much has been argued questioning propriety of identification of Ishwar Narain Singh, other Appellant, I may now advert to the evidence of witnesses as for identification of this Appellant. In case of this Appellant, P.W. 2 claimed his identification along with Kapil Paswan during commission of dacoity. P.Ws. 6, 7 and 8 claimed identification of this Appellant during test. identification parade held in Sitamarhi jail.

6. Finding of guilt recorded by the Court below was sought to be assailed by the learned Counsel for the Appellants basically on premises that though witnesses claimed identification of the Appellants, their complicity was conspicuously wanting in the first information report that was lodged by none else but village chowkidar shortly after the incident, and referring to the testimony of P.Ws. 2. and 6, learned Counsel with all stress would urge that since it has been acknowledged by these two witnesses that they had narrated incident to chowkidar before he left for Police Station, it was most unlikely that names of the Appellants would not surface in the first information report lodged on behest of said village chowkidar. I have given my due consideration to the lucid submissions made, and I am of the view that though the witnesses acknowledged about meeting the chowkidar and also sending him to the Police Station it was expressly stated by them in their evidences that before first information, report was registered on his behest at the Police Station, they had disclosed complicity of the Appellants to him and the other limb of the argument pressed into service on behalf of the Appellants was that since it has been the evidence of D.Ws. 2 and 3 that village Singrahiya and Phulwaria were adjacent to each other with variance of only 2 kms. intervened by a river, people of one village must be in close proximity of the resident of other village and if that be so, then claim of P.Ws. 6, 7 and 8 about identification of Ishwar Narain Singh did not bear legal value. A good deal of argument was also canvassed about evidence of defence witnesses and submission is that not only suggestion was given to the witnesses but even there has been evidence of D.W. 1 with the aid of receipt that cattle of Panchan had been impounded by Ishwar Narain Singh was most probable. My attention has also been drawn to the other infirmity that has crept in the prosecution version and it is noticed that though P.Ws. 6, 7 and 8 had made consistent narration about identification of Ishwar Narain Singh during test identification parade at Sitamarhi Jail, neither test identification chart was brought on the record nor Magistrate who conducted test identification

parade, was examined at trial.

7. I am not oblivious that identification of an accused in Court for the first time ordinarily by a witness shall not be relied upon for recording conviction without a definite corroboration. Since identification for the first time in Court cannot possibly be termed to be unimpeachable evidence, yet it is a matter of prudence. As has been noticed, though P.Ws. 6, 7, and 8 claimed identification of this Appellant in Court, yet there are good reasons to suspect credibility of witnesses who claimed identification of Ishwar Narain Singh during test identification parade, as, if P.W. 7 is to be given any credence, though he would refute suggestion given to him about animosity with this Appellant, he acknowledged to have seen this Appellant three times earlier. Evidence of D.W. 1 shows that this Appellant must not be on good terms with Ram Vinay Mahto and Nathuni Mahto. Some feeble arguments were also made that it has come in the evidence of same witnesses that while Ram Vinay Mahto (P.W.6) possessed only 7-8 bighas of land, Ishwar Narain Singh possessed 30 bighas of land and on these premises it was urged that since he was quite affluent, it was most unlikely that he would involve himself in commission of dacoity. True it is that animosity operates in both ways, as while it becomes a tool for false implication, it also mobilises a person to commit an offence against a person hostile to him. But in view of infirmity that has been noticed in the prosecution case about identification of Ishwar Narain Singh, evidence of witnesses about his complicity was not free from blemishes, and hence finding of the Court below recording verdict of guilt and sentencing the Appellant is accordingly set aside. The Appellant is also discharged from liability of bail bonds.

8. Now evidence of witnesses about identification of other Appellant, namely, Kapileshwar Paswan alias Kapil Paswan can be noticed, for which there has been evidence of Nathuni Mahto (P.W.2) Ram Vinay Mahto (P.W.6) Panchan Mahto (P.W. 7), and Ram Ekbal Mahto (P.W. 10). The only ground on which identification of this Appellant, during commission of dacoity has been challenged was that since both the villages are at variance of 1-2 Kms. People of both the villages must be familiar with each other. Though suggestions were given to the witnesses about they being familiar with this Appellant, they were refuted strongly by the witness and none of them acknowledged to have any familiarity with this Appellant. Even if there being familiarity of one person in the -family, with another person, that did not necessarily ipso facto lead to the conclusion of his familiarity with other family member too and hence I find that except some bald suggestions given to the witnesses about familiarity of Kapileshwar Paswan with the witnesses, there has been no good evidence worth reliance to suspect bona fide of accusations attributed to this Appellant by the witnesses.

9. As for source of identification, I have noticed that there has been good evidence about identification of this Appellant in the illumination of flash of torch light or moon light. Since some of the house members, where dacoities were committed, have been tendered by the State, no useful purpose would be served

in analysing their evidences and these family members happen to be Rampati Devi (P.W.3), Ram Jyoti Devi (P.W.4) and Ram Rati Devi (P.W. 5). Since Investigation Officer was not examined at trial, I do feel that few questions remained unanswered, but for that reason alone credibility of the prosecution witnesses alone cannot be subject of suspect.

10. Other mitigating circumstance which has been highlighted at Bar is that as occurrence took place in the year 1984 i.e. about two decades have lapsed since the Appellants have suffered trauma of protracted prosecution and this mitigating circumstance as such merits consideration while awarding sentence to the Appellant.

11. Having bestowed my deepest and anxious consideration to the evidences placed on the record and also attending circumstances of the case, while Ishwar Narayan Singh is acquitted of the charges and discharged from liability of bail bonds, upholding finding of guilt recorded against Appellant Kapileshwar Paswan alias Kapil Paswan, sentence awarded by the trial Court is reduced to six years and the appeal accordingly partly succeeds. Since Kapileshwar Paswan alias Kapil Paswan is on bail, his bail bond is cancelled and it is directed that trial Court shall take coercive action for his apprehension to consign him to custody to serve out remainder of sentence.