

(2002) 03 PAT CK 0115

In the Patna High Court

Case No : Criminal Appeal No. 87 of 1991 (SJ)

Kiran Sah and Abdul Rajjak

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2002) 3 PLJR 252

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

Bench : Single Bench

Advocate : Rajeev Roy and Amrendra Kumar Sinha, for the Appellant; B.P. Gupta, for the Respondent

Judgement

B.N.P. Singh, J.—Though prosecution was launched against five accused persons including Suleman, Kiran Sah, Uday Lal Sharma, Abbas and Talim, Police after due investigation, laid charge sheet before the Court against as many as eight persons including Abbas, Suleman, Talim, Najmul, Tajmul, Kiran Sah and Sk. Rajjaque. It seems from the record of the proceeding that trial of Uday Lal Sharma was separated and it commenced only against the Appellants who, on being tried by Shri Prem Narain Shukla, Additional Sessions Judge, Katihar in Sessions Trial No. 93 of 1987, suffered conviction u/s 395 of the Indian Penal Code (IPC) and were sentenced to suffer rigorous imprisonment for a term of seven years.

2. The factual matrix—In the mid night of 22nd June, 1985, the miscreants, holding lethal weapons, having gained their access in the inner apartment of the house of Motiur Rahman (P.W. 8), after coercing the house inmates, tied their limbs with the rope, broke open the boxes and collected house belongings from the house which included ornaments, wearing apparels and also cash and decamped with the booty having taken recourse to firing while retreating from the place of occurrence. The house inmates were also subjected to assault, and with these accusations, prosecution was launched against five persons, as stated

above, on behest of Motiur Rahman, pursuant to which investigation commenced. During investigation, Police recorded statements of a number of witnesses, including the persons who set the Police in motion and other house inmates, visited the place of occurrence and, on conclusion of investigation, laid charge sheet before the Court against as many as eight persons. The trial, that commenced, was against three persons which remained conclusive against the Appellants, who suffered conviction and were sentenced in the manner stated above. In the eventual trial, the State examined altogether ten witnesses. Defence of the Appellants before the trial Court and also this Court had been plain denial of entire allegation and they scribed their false implication, and the trial Court placing reliance on testimony of these witnesses, having negated the defence of the Appellants, rendered verdict of guilt finding them guilty of the charges with which they were saddled at trial.

3. Volume of arguments were canvassed at Bar on behalf of the Appellants to assail the propriety of the findings recorded by the Court below and it is sought to be urged that on proper evaluation of the testimony of witnesses, name of them, who claimed identification of the Appellants, deserved credence for the infirmities that have crept in their testimony and my attention on this score has been drawn to the evidence of Sk. Mandeem (P.W. 1), Md. Abid (P.W. 3), Jainuddin (P.W. 4), Mujahid Alam (P.W. 6), Samsuddin (P.W. 7) and Motiur Rahman (P.W. 8). Though other witnesses too were examined at trial, but they had lent assurance to the prosecution allegation only about factum of commission of dacoity in the dwelling house of Motiur Rahman, as they would not claim identification of the Appellants and, for brevity without details of narration, their evidences can be evaluated for better appreciation of the findings recorded by the trial Court. Aziz (P.W. 2), who happens to be the full brother of Motiur Rahman, did not claim identification of the miscreants and similar was the case with Khursid Alam (P.W. 5). So far as the case of Shamsuddin (P.W. 7) was concerned, though he did not claim identification of any of the miscreants, much less the Appellants, he stated to have been informed by Abid, Mujahid and Noorjehan about identification of Razaque by them. This witness would also state about identification of Suleman, Uday Lal Sharma and Kiran Sah by Motiur Rahman. This fact cannot be lost sight of that the said Abid stated to have claimed identification of Razaque, only with the aid of voice and not by feature of the physical appearance of the Appellant. Contrary to the assertions made by Samsuddin (P.W. 7), Mujahid did not claim identification of Razaque and, instead of that, claimed identification of Tasleem and Abbas who are admittedly not the Appellants, and as for Noorjehan, who allegedly claimed identification of Razaque before Samsuddin, the said Noor Jehan was not examined at trial by the State. Even Motiur Rahman does not claim to have narrated identification of Suleman, Uday Lal Sharma and Kiran Sah to Samsuddin (P.W. 7) and on this score narration made by P.W. 7 did not receive corroboration from others, who were shown to have disclosed identification of Razaque to him. Sk. Siddique (P.W. 9) and Marmuz Alam (P.W. 10) also did not claim identification of any miscreants,

much less the Appellants.

4. Now, coming to other set of witnesses, who allegedly claimed identification of the Appellants and others, one cannot fail to notice that Sk. Mainuddin (P.W. 1), though claimed identification of Razaque and Tajmul in the light of lamp, he would state that Razaque was residing in the tola where he resides and his house was adjacent south to his house. Not only that, they claimed identification of Razaque in the dim light, but subsequently in the next breath, he states that the person identified by him resembles to that of Razaque and, that apart, he did not claim to have narrated identification of Razaque to Motiur Rahman. The other disturbing feature of the testimony of P.W. 1 cannot remain unnoticed. The witness would admit that he did not narrate identification of Razaque to any one. Md. Abid (P.W. 3) claimed identification of Razaque only with the aid of voice. Though this witness stated to have gone to the Police Station for lodging information about commission of dacoity in the house, he admitted in certain terms that he did not narrate before the Police about identification of Razaque nor he did narrate identification of Razaque to other persons. Jainuddin (P.W. 4) would not claim identification of the Appellants, as his claim of identification was confined to one Najmul who was not the Appellant. Muzahid Alam (P.W. 6) claimed identification of Tasleem and Abbas who were not the Appellants.

5. Now coming to the testimony of Motiur Rahman (P.W. 8), though the witnesses claimed identification of Suleman, Kiran Sah and Uday Lal Sharma in the light of lamp that was burning in the house and also flash light of the torch held by the miscreants, the witness would virtually withdraw from claim of identification, as he admitted to have identified Kiran Sah on suspicion without his proper identification. This is all the evidence that has been adduced on behalf of the State. So far as Kiran Sah was concerned, there was solitary identification by P.W. 8 and that too suffers from infirmity, as he did not claim his proper identification, and for Razaque, the other Appellant, though P. Ws. 1, 3 and 8 claimed his identification, their evidence too, as has been discussed, were not free from blemishes and there was no positive and clinching evidence of these witnesses to lead to the conclusion about identification of this Appellant by these witnesses. Non-examination of the Investigating Officer, who visited the place of occurrence and recorded statement of the witnesses, was also taken to be a ground to assail the finding recorded by the trial Court and it is urged that the Appellants were seriously prejudiced due to non-examination of the Police Officer. Since the Police officer was not examined at trial, admittedly, some questions remained unanswered and the objective finding recorded by him could not be placed on the record and on these premises, on evaluating the testimony of the witnesses, I feel persuaded to come to a conclusion that the finding recorded by the trial Court, was not based on sound reasoning and deserve to be set aside. The finding as such is set aside and the Appellants are acquitted of the charges leveled against them. They are also discharged from the liability of the bail bonds.