

(2002) 04 PAT CK 0117

In the Patna High Court

Case No : Criminal Appeal No. 147 of 1991 (S)

Kishori Prasad Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2002) 3 PLJR 98

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Kishore Kumar Mandal, R. Roy and K. Singh, for the Appellant;
Ashwani Kumar Sing, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—All the Appellants have been convicted u/s 395 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 8 years.

2. The prosecution case, in brief that in the night of 18/19th August, 19(sic) while the informant was sleeping at allow alongwith his sons Fuloram and (sic)Ram in the mid night all of a sudden, (sic)10 to 12 miscreants armed with (sic) weapons came there and one of (sic)Kishori Yadav demanded money from (sic)and at last fired with a pistol on him (sic)accused injury on his chest and thigh (sic)he fell down. It has been further allow that his sons and grand son were (sic)assaulted by the dacoits and they (sic)looting the ornaments, cash and (sic)ts from the house of the informant. It been further alleged that he has record Rs. 500/- money order from Punjab (sic)Rs. 700/- from widow pension and Rs. (sic)0/- from other means and all the cash looted away by the dacoits. It has stated that the Appellant, Kishori Yadav, in view to take revenge of previously, has arranged this dacoity in which himself also took part. It has been also that on alarm the villagers came and they untied the hands of the members of the informant which was by the dacoits. The informant injured has taken to Sadar Hospital Madhepura for (sic)ent where his fardbeyan was recorded on the

basis of which a formal F.I.R. (sic) drawn up. The police took up investigation and after completion of investigation-submitted charge sheet against the ants. Thereafter cognizance was taken pally the trial concluded with the reis indicated above. Hence this appeal.

3. The Appellants pleaded not guilty have stated that they have been falsely cated in this case out of previous end and no dacoity in the manner as ended by the prosecution in the house of informant took place and actually none case Appellants took part in any such and they have been implicated only (sic) ing harassed out of previous enmity.

4. The prosecution in support of its has examined altogether 10 witnesses. P.W. 1 is Nago Ram. P.W. 2 is Rajesh Ram P.W. 3 is Umesh Ram. P.W. 4 is Jagdish Ram. P.W. 5 is Phulo Ram. P.W. 6 Yogendra Yadav is a formal witness. P.W. 7 is Bhuneshwar Ram. He is a tender witness. P.W. 8, Abhinandan Yadav is a formal witness. P.W. 9 Manni Ram is the informant. P.W. 10 is Dr. A.K. Mandal who has examined the injured informant.

5. The defense has also examined 13 witnesses out of which D.W. 11 has proved that no such dacoity as alleged was committed in the house of the informant and they have been falsely implicated in this case due to enmity.

6. P.W.9 the informant has fully supported the case of the prosecution as stated in his fardbeyan. According to him while he was sleeping in his house alongwith his sons, one grand son and a Choukidar was also sleeping on his Verandah, all of a sudden about 10-12 persons came there armed with deadly weapons and Appellant Kishori Yadav fired a pistol on him which caused injury on his person and the other Appellants also assaulted other inmates of the house. He has further stated that the dacoits after assaulting the family members took away the utensils, clothes, cash etc. belonging to the informant and he claimed to have identified all the Appellants. He has further stated that he has got some enmity with Ghina relating to land of Tarni Prasad which both of them had purchased from original tenant Tarni Prasad. A detailed description of the dacoity and arson cases filed by the Appellant Ghina Bhatt in which the member of informant parties were accused has also been given by him. He has further, stated that there was some election dispute with Kishori Yadav who had contested Gram Panchayat election. According to him he was admitted in Hospital and pellets were removed from his body. He has further stated that the police submitted final form and on his protest this case was firstly re-started. P.Ws. 2, 3, 4 and 5 have also fully supported the version of the informant (P.W. 9).

7. P.W. 10 is Dr. A.K. Mandal who has examined the informant injured (P.W. 9) on 19.8.1984 and found one gun shot injury on his left thigh at the middle anteriorly with wound of and faces deep with direction entrance 1/2" x 3/4" downward and posteriorly, skin around the entrance was black and ecchymosed. There was no wound of exit. The distance of the fire arm assumed is about a metre. The major damage of blood vessels, bone and muscles were seen. Nature

of injury was simple in nature caused by gun shot.

8. Learned Counsel appearing on behalf of the Appellants has submitted that the source of identification has not been disclosed in the F.I.R. and in a protest petition the source of identification is a subsequent introduction. As such on such evidence the Appellant should not have been convicted. He has further submitted that so far as injury on the person of the informant is concerned, it was pointed out that the informant had some criminal back ground as would be apparent from the records and he must have been injured somewhere else and has falsely implicated the Appellants, framing a false story of dacoity.

9. P.W. 9 the informant injured has admitted that there was land dispute with the Appellant Ghina Bhatt and the informant. It is true that the informant had not mentioned any source of light in which he could have identified the miscreants but the learned Counsel appearing on behalf of the State has stated that source of identification had little significance since the Appellants were neighbors and co-villagers, therefore, it was not impossible for them to identify these Appellants as they were known from before and as such for their identification there was no need of light. He has relied on a decision reported in 1999 (1) P.L.J.R. (S.C.) 63 (Rajendra Mahton v. State of Bihar the Legal Remedy brancer Govt. of Bihar, Patna) in which the Apex Court has held about omission of reference to burning of lamp in the shop in the F.I.R. and disbelieving the identification by the witnesses only on the ground that there was no source of light was mentioned in the F.I.R. However the facts of that case cited by the learned Counsel for the State is different from the present case. In that case the occurrence took place at about 7 P.M. and there was a burning of a lamp in the shop which was not found by the I.O. The Apex Court held that the Appellants were close door neighbors and there was sufficient light even without any source of light at 7 P.M. in April. As such the case mentioned above is of no help to the prosecution. In the present case the occurrence took place at about mid night and there was no mentioning of any light. In the present case source of identification has not been mentioned in the F.I.R.

10. Learned Counsel for the Appellant has rightly submitted that the informant had admitted enmity with the Appellants Ghina Bhatt and Kishori Prasad Yadav It has also been admitted that the Appellant, Ghina Bhatt has filed two criminal cases against the informant prior to the alleged occurrence. The court below in its judgment in paragraph 11 has observed that it was not inclined to place much reliance to the defense version of this case about false implication of the accused persons sons as the informant would not himself create gun shot injury in normal course However, on this point the learned Counsel appearing on behalf of the Appellants has drawn my attention to the fact that the informant having criminal back ground mid have got injured some where-else and order to implicate the Appellants might have eted the story of dacoity in the house of informant in which looted articles were (sic)ered.

11. From the perusal of the evidence record it is clear that all the articles eged to

have been stolen including boxes are recovered from the straw of Mahua in (sic)back side of the house of the informant.

12. From the above facts it creates (sic)bt in the commission of dacoity and casually whether the dacoity was committed in the house of the informant or not. (sic)pre are as many as 134 D. Ws. who have (sic)gorically stated that there was no allowed dacoity committed in the house of informant. The above facts coupled (sic) the findings of the medical expert (P.W. 10) in which he has stated that the tries which was alleged to have been by shot. The medical expert also found ok mark on the entrance injury which (sic)es to show that the shot was from very distance but in that case even the or could not ascertain the age of in- (sic) Certainly the injury was caused by fire (sic) but it is pertinent to mention here that (sic)bed head ticket was not produced and may plate did not bear the name of the informant-injured. There is no doubt that Appellant, Kishori Prasad Yadav was a (sic)ectable and reach mand (sic-rich (sic)) of the village and was not expected commit such crime on the instigation of (sic)ant Ghina Bhatt who was alleged to the master mind of the alleged crime whom the informant had enmity from he and the Appellant, Ghina Bhatt has criminal cases against the informant. apart the age of Appellant Ghina Bhatt 77 years and age of Appellants Kishori Prasad Yadav and Anisul Mian was 57 (sic). As such it is not expected that they Bake part in the commission of the Qty. Moreso they did not even take the tooted articles and it was concealed at back side of the house of the informant.

13. From the above discussions it is clear that the prosecution could not prove its case beyond all reasonable doubt and story of prosecution becomes doubtful. As such the Appellants deserve benefit of doubt. Accordingly, the Appellants are acquitted of the charges levelled against them. The conviction and sentence passed by the court below is set aside. The Appellants are discharged from the liabilities of their bail bonds.

14. In the result, this appeal is allowed.