
(2002) 08 PAT CK 0036

In the Patna High Court

Case No : Criminal Appeal No. 78 of 1991

Manohar Gope and Jogi Gope

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

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

Citation : (2002) 4 PLJR 604

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

Bench : Single Bench

Advocate : Shyameshwar Dayal, in Criminal Appeal No. 78 of 1991 and Nirmala Kumari, Amicus Curiae in Criminal Appeal No. 90 of 1991, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.N.P Singh, J.—While Krishna Murari Prasad, P.W. 3, was to close down shutter of the cloth shop at about 8 P.M., 10/11 persons gained access in the shop and coercing house inmates, removed ornaments, watches, clothes, boxes containing valuable documents, cash etc.. of value Rs. 9, 600/- and decamped with the booty. Prosecution was launched on behest of said Krishna Murari Prasad, P.W. 3, pursuant to which investigation commenced, during which Police Officer apart from recording statement of witnesses, and visiting place of occurrence, allegedly made recovery of part of the booty also from the houses of Bholi Mahto alias Baliram Mahto and also Jagat Singh, one of the Appellants. The Police also made seizure of broken boxes from a place near Mahua tree and also a pair of sandals from the place of occurrence probably that of the miscreants. During investigation, Bholi @ Baliram Mahto who was apprehended with fire arm was put on test identification parade when he was identified by Krishna Murari Prasad, Pramod Kumar, Bholi Prasad and Srikant Prasad, and Police on conclusion of investigation laid chargesheet before the court, against the Appellants and Bholi Mahto alias Baliram Mahto. The said Bholi Mahto alias

Baliram Mahto during pendency of appeal however, jumped bail and eventually was reported to be dead, and Cr. Appeal No. 2 of 1992, as such abated as against him and other two appeals being Cr. Appeal Nos. 78 of 1991 and 90 of 1991 survived for consideration.

2. In the eventual trial, that commenced, the State examined altogether 10 witnesses who were shopkeepers, customers, the Police Officer, Judicial Magistrate who held test identification proceeding of the suspects and also Anchal Adhikari who conducted test identification of the articles shown to have been seized from possession of one of the Appellants.

3. The defence of Jogi Gope and Manohar Gope who are Appellants in Cr. Appeal No. 78 of 1991 was that since they had carried some materials on horse cart to the shop, there had been dispute for carriage charges with the shopkeepers. The defence of Appellant Jagat Singh was that of plain innocence and other defence was that cashmelon shawl shown to have been seized from his house was a common article which was available in open market. The trial court, however, though acquitted four persons including Sheela Devi, Ashok Sonar, Genauri Mahto, Shaheb Mian of the charges, recorded finding of guilt u/s 395 of the Indian Penal Code against Appellants and Bholi Mahto alias Baliram Mahto and sentenced them to suffer rigorous imprisonment for a term of seven years. Jagat Singh and Bholi Mahto alias Baliram Mahto suffered conviction also u/s 412 of the Indian Penal Code for which they were sentenced to suffer rigorous imprisonment for a term of seven years with a direction that both the sentences shall run concurrently.

4. Though narrations made by the witnesses had been fairly spelt out in the judgment of the court below, I shall discuss them with brevity so as to appreciate contentions raised at Bar on behalf of the Appellants. Though a good number of witnesses were examined at trial by the State, admittedly majority of them turned volte face to the State about identification of Appellants Jogi Gope and Manohar Gope during commission of offence. As for testimony of Nageshwar Prasad, RW.1, though he would support the factum of dacoity in the cloth shop where he had been for purchase of some clothes, he resiled from previous version about identification of Jogi Gope for which his attention had been drawn by the State counsel for not making parallel statement before the police. Now coming to the testimony of Pramod Kumar Munsi, P.W. 2, though stated about dacoity committed in the shop when boxes and clothes were removed from business premises, and there had been seizure of wooden boxes by the Police during investigation and he had identified cashmelon shawl during test identification of articles would however frustrate the Prosecution, as he did not identify any of the Appellants. Similar was the case with Durgesh Prasad, P.W. 4 also as he too while stating factum of dacoity in the cloth shop, turned volte face to the State about identification of the Appellants notwithstanding the fact that he would state about seizure of boxes and pair of sandal by the police Officer during investigation. The evidence of Gaurishankar Prasad too was not on better

footing, as though he too supported the factum of dacoity in the cloth shop and claimed identification of Jogi Gope and Manohar Gope, failed to identify them in court at trial. Similar was the case with Srikant Prasad, P.W. 6 who too supported the factum of dacoity but did not disclose complicity of any one. Though attention of this witness had been drawn by the State towards his earlier version suggesting identification of some of the Appellants during test identification parade and also commission of dacoity, he emphatically denied identification of any of the miscreants.

5. Identification of the suspect Baliram Mahto alias Bholi Mahto (now dead) was held in T.I.R by Sri Mahboob Hassan, Judicial Magistrate on 30th January, 1987. Since Bholi Mahto alias Baliram Mahto is dead and appeal has abated, the evidence of Mahboob Hassan did not merit consideration.

6. Sri R.N. Tiwary, P.W. 9 was Circle Officer who conducted test identification proceeding of articles on 30th January, 1987 when two cashmelon shawls said to be part of the booty was identified by Krishna Murari Prasad, Gaurishankar Prasad, Bhola Prasad, Mithilesh Prasad, Pramod Kumar Munsi, Durgesh Prasad and Srikant Prasad. Now the State is left with evidence of two Police Officers who are Sri R.S. Pathak, P.W. 8 and Arun Kumar Sinha P.W. 10. The former stated at trial that on receipt of telephonic information about commission of dacoity, he rushed to the place of occurrence which situate in Mohalla Karunabagh when statement of Krishna Murari Prasad was recorded. The Police Officer noticed clothes of the shop scattered here and there and during investigation there had been seizure of boxes thrown near Mahua tree, and also seizure of two cashmelon shawls from the houses of Baliram Mahto alias Bholi Mahto and Jagat Singh. More or less similar is the evidence of Arun Kumar Sinha, P.W. 10 about seizure of part of booty from the house of Bholi Mahto and also seizure of part of booty from the house of Jagat Singh on the strength of disclosure made by said Bholi Mahto @ Baliram Mahto.

7. The narrations made by witnesses at trial would make it quite eloquent that though a large number of witnesses were examined at trial who had disclosed complicity of Jagat Singh and Manohar Gope before the police, had turned volte face to the State and the only evidence left, who claims identification of Jogi Gope and Manohar Gope during commission of dacoity was that of Krishna Murari Prasad, P.W. 3. This is not in dispute that these two Appellants were not strangers rather they were close door neighbours of Krishna Murari Prasad, P.W. 3. Incidentally, when this witness was examined at trial, neither of these two Appellants had been in attendance and on this premises it is urged on behalf of the Appellants that since claim of this witness about identification of these two Appellants during commission of dacoity had not been corroborated from their identification at trial, identification of the Appellants by this witness carries no significance and witness as such did not deserve credence. Having given anxious consideration to the evidences placed on the record and contention raised at bar I find that in the backdrop of large number of witnesses denying identification of

two Appellants, literary identification made by Krishna Murari Prasad, P.W. 3 in the circumstances (sic) lacks corroboration, did not conclusively suggest complicity of these two Appellants.

8. The guilt against other Appellant namely Jagat Singh was sought to be established with the aid of evidence of two Police Officers who allegedly made recovery of two cashmilon shawls; one from possession of Jagat Singh and other from possession of Bholi Mahto alias Baliram Mahto. Evidence of Pramod Kumar Munshi, P.W. 2, Krishna Murari Prasad, P.W. 3, Durgesh Prasad P.W. 4, Gaurishankar Prasad P.W. 5, Srikant Prasad P.W. 6 and also the evidence of R.N. Tiwary PW. 9 Circle Officer was relied by State to fasten guilt against Jagat Singh. However, though rikant Prasad P.W. 6 is shown to have participated in test identification proceeding, emphatically denied identification of fany cloth, by him, Pramod Kumar Munsi, P.W. 2 made tacit admission at trial that stolen casemelon shawls bearing label of Puja company are very much available in the market and such shawls had been even sold by him. Krishna Murari Prasad PW. 3 too says that shawls of such descriptions are available in the open market and the shawls identified by him did not bear any distinct mark of identification. Though it is also sought to be urged on behalf of the Appellant that Jagat Singh cerflained in custody for more than two years while other two remained in custody for some considerable period and also that they had suffered ordeal of protracted prosecution for about 15 years, I do not consider it expedient to dwell upon these aspects as in view of narrations made by Pramod Kumar Munsi, P.W. 2 and Krishna Murari Prasad, P.W. 3 which eloquently suggest that cloth seized from houses of Jagat Singh and Bholi Mahto alias Baliram Mahto did not bear any distinct mark and such clothes are very much available in open market, the guilt cannot be said to. be conclusively proved against Jagat Singh and other two Appellants.

9. In that view of the matter, I extend them benefit of doubt and while setting aside finding recorded by the court below acquit them of the chgarges levelled against them. They are also discharged from liability of their bail bonds and both the appeals accordingly succeed.