

(2001) 08 PAT CK 0045
In the Patna High Court
Case No : Criminal Appeal No. 164 of 1990

Mishri Lal Mahto and Others	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 202, 203
Penal Code, 1860 (IPC) — Section 395

Citation : (2002) 1 PLJR 119

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

Bench : Single Bench

Advocate : Y.C. Verma and Madhuri Lata, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—Complaint Case No. 569C of 1966, out of which this criminal appeal has arisen on conclusion of trial by the trial Court, has a chequered history. The factual matrix are that on 26th, October, 1977, when Phul Kumari Devi (P.W. 5) at the night, came out of her house to take her son to ease, Appellants holding arms entered into the inner apartment of the house and intercepted her. It was alleged that the Appellants broke open the boxes and took out belongings kept therein. Allegations were attributed to Maukhi Lal that he dealt blow on the neck but the aim was lost and the allegation attributed to Appellant Nathuni Mahto was about dealing lathi blows on her. It was alleged that when her daughter Krishna Devi (P.W. 4) came for her rescue, Appellant Ram Dayal Mahto took out golden ring from her nose causing bleeding injuries, and allegation attributed to Appellant Dasarath Mahto was that he assaulted Krishna Devi with lathi. Omnibus allegations were attributed to all the Appellants that while retreating from the place of occurrence, they also damaged crops in the field. Those who flocked to the place of occurrence were suggested to be Ram Lal and Bhikhari who too were subjected to assault by the Appellants.

Pursuant to filing of the petition of complaint, the Subdivisional Judicial Magistrate, Sikarahnna, who was in seisin of the proceeding, directed an inquiry to be made by the Sarpanch of the Gram Kutcherri as enjoined u/s 202 of the Code of Criminal Procedure and for submission of report. As the complainant alleged misconduct on part of the inquiring officer, a protest petition was filed which was dismissed by the Court. The inquiry report received from the Sarpanch, inter alia, suggested dismissal of the complaint petition. However, the Subdivisional Judicial Magistrate finding report to be perfunctory, while rejecting the same, made over complaint case to Shri R.S. Singh, Judicial Magistrate, 1st Class u/s 192 of the Code of Criminal Procedure for inquiry and disposal. The complaint case again received the same set back, as the learned Magistrate on conclusion of inquiry recommended for dismissal of the complaint u/s 203 of the Code of Criminal Procedure, finding no prima facie case, to put the Appellants on trial. That was not the end of the story, as the complainant took recourse to revision before the Sessions Judge who, on conclusion of hearing, directed further inquiry into the matter, and it is how that cognizance was taken and the Appellants were put on trial.

2. The case was eventually committed to the Court of Sessions, the offence being exclusively triable by the said Court and the Appellants were put on trial. In the eventual trial, the prosecution examined seven witnesses, and the trial Court while rejecting contentions raised on behalf of the Appellants about their false implication due to land dispute persisting between the parties, rendered verdict of guilt against the Appellants u/s 395 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for seven years each and also to pay a fine of Rs. one thousand, in default of which, to suffer imprisonment for six months with a direction that the sentences shall run consecutively. It was further directed in the impugned judgment that out of amount of fine so realised from the Appellants, 50% of the money shall be paid to the victim complainant and her family as a compensation of loss suffered by them.

3. Now advertng to the evidences placed on record, one would find that Bhikhari Mahto (P.W. 1) and Ram Prasad (P.W. 2) did not lend assurance to the prosecution case of the commission of dacoity in the house of the complainant, and they turned volte face to the prosecution. Ram Ekbal Ram (P.W. 7) was a formal witness and there was nothing material in his evidence to merit consideration. Basudeo Mahto (P.W. 3), who happens to be the husband of Phul Kumari, stated before trial Court that he was informed about commission of dacoity by his wife on 27th October, 1977 when she visited him at Adapur Anchal where he was employed as Grade IV employee. He was also informed about the assault met on her and Krishna Devi, by the Appellants. He stated to have visited his house and found the boxes broken and blood oozing out from the nose of Krishna Devi. Though he wanted to take recourse to Police authority but the Police refused to entertain his complaint. He stated to have got injuries of his wife and daughter examined by the doctor, pursuant to which the. prosecution was launched against the Appellants by his wife. Krishna Devi (P.W. 4) would

state that she was sleeping in the inner house along with her brother and mother and while her mother took out son to ease, the Appellants having trespassed her house holding arms, broke open the boxes and removed belongings which include wearing apparel, ornaments and cash. When her mother registered protest, they assaulted her and such allegations were attributed to Mukhlal Mahto also about dealing blows on her mother with knife, though the aim was lost. She alleged to have received assault at the hands of Appellant Dasrath Mahton and allegations about removing golden ring from her nose was attributed to Appellant Ram Dayal Mahto. She stated to have sustained injuries in her nose due to removal of the golden ring by the Appellants. Evidence of Phul Kumari (P.W. 5) was reiteration of her early version, recitals of which were made in the petition of complaint about Appellants gaining access in the inner apartment of house, breaking open boxes, removing belongings and dealing blows on her. This is all the evidence that has been adduced on behalf of the State in respect of the charges brought against the Appellants.

4. Learned Counsel for the Appellants would assail the findings recorded by the trial Court on premises that though the petition of complaint in the Court of Subdivisional Judicial Magistrate, was made as early as on 28th October, 1977, it was not before lapse of two days that statement of the complainant was shown to have been recorded on solemn affirmation by the Magistrate. Contentions were raised that though a quite number of persons were suggested to have flocked to the place of occurrence during the commission of dacoity, the prosecution case would suffer set back for the simple reason that none of them claimed to have witnessed the incident. The next limb of argument canvassed on behalf of the Appellants was that there was admitted hostility, persisting between the parties since long due to land dispute and in that backdrop false implication of the Appellants could not be ruled out. Paucity of evidence on the record about mother and daughter sustaining injuries on their persons, in the backdrop of such assertions made by them, was also highlighted by the learned Counsel for the Appellants as an infirmity in the prosecution case.

5. True it is that this case has a chequered history, as has been stated earlier but dismissal of the petition of complaint at some stage of the proceeding would not constitute an infirmity in the prosecution version, once cognizance of the offence has been taken by the Court on the strength of evidences placed on the record, during inquiry u/s 202 of the Code of Criminal Procedure. Yet I find that there are some distressing features in the prosecution case which cannot remain unnoticed. Though in her early version, Phul Kumari Devi was alleging about Krishna Devi also sustaining injuries on her person when they resisted the nefarious design of the Appellants while committing dacoity in the house, such assertions were conspicuously wanting in her evidence which she laid before the Court. Though mother was alleging about injuries sustained by her and also similar statement having been rendered by daughter, injury report was sought to be proved by a formal witness and hence, one feels frustrated about there being no evidence of doctor to sustain the charges about the assault on these two

witnesses. Even in her early version and also in Court Phul Kumari Devi was alleging that hostility was persisting with the Appellants as they used to damage standing crops in the field. Krishna Kumari in her evidence admitted that she was not knowing Appellants Ram Dayal Mahto and Dashrath Mahto from before and it seems quite unlikely that she will know their names during commission of offence without getting their names disclosed by some one, and to crown all she would admit in positive terms that the prosecution was launched against the Appellants for the simple reason of land dispute, pending between the parties. Ram Lal and Bhikhari were suggested to have witnessed the incident and also sustaining assault at the hands of the Appellants, but while Bhikhari Mahto did not lend assurance to the prosecution allegation about commission of dacoity in the house of Phul Kumari, Ramlal was not examined at the trial by the State. Now prosecution was left with the evidences of only mother and daughter and as I have noticed, their evidences too are not free from blemishes to consider them reliable. Though a serious offence was committed in the house of Phul Kumari as that of dacoity and if the lower Police authority did not take cognizance of the offence on being approached, there was no evidence to suggest that the complainant ever took recourse to higher Police authority considering the gravity of the offence.

6. Having given my anxious consideration to the evidences placed on record and also contentions raised at Bar on behalf of the Appellants and regard being had to the hostility persisting between the parties, I do not find myself persuaded to concur with the findings recorded by the trial Court and thus the findings of conviction and sentence against the Appellants are accordingly set aside. The Appellants are acquitted of the charges and are discharged from the liability of bail bonds. The appeal accordingly succeeds.