

(2001) 08 PAT CK 0102

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 305 of 2000

Musafir Rajbanshi and Sadhoo Beldar @ Matua

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 391, 395

Citation : (2001) 4 PLJR 110

Hon'ble Judges : P.N. Yadav, J

Bench : Single Bench

Advocate : Baxi S.R.P. Sinha, M.C. Narain, in Cr. Appeal SJ No. 305 of 2000, A.K. Arun, V.R. Sanvadra and Lav Kush Kumar, in Cr. Appeal SJ No. 331 of 2000, for the Appellant; Din Bandhu Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Yadav, J.—Criminal Appeal No. 305 of 2000 filed by Musafir Rajbanshi and Criminal Appeal No. 331 of 2000 filed on behalf of Sadhoo Beldar alias Motua alias Ram Chandra Chauhan arise out of one and the same judgment and order passed by Shri Devendra Kumar Lal, 2nd Additional Sessions Judge, Nawadah in Sessions Trial No. 26 of 1992/319 of 1996 whereby and whereunder he found and held the Appellants guilty and convicted and sentenced them to undergo rigorous imprisonment for seven years each u/s 395 of the Indian Penal Code (hereinafter referred to as the Code) and as such they have been heard together and are going to be disposed of by this common judgment.

2. The prosecution case, as unfolded in the first information report and the evidence of the prosecution witnesses, in brief, is as follows:

3. Yamuna Singh, informant (P.W. 2) and Md. Enamul Haque (P.W. 1) on 22.5.1990 at about 10.00 P.M. in the night were returning home from village Dadpur on a Scooter. When at about 10.15 P.M. they reached near Mubarakpur Dak Asthan on Nawadah Sikandara road enroute to their native place, they saw

that the road was blocked by branch of seasam tree. Both P.Ws. 1 and 2 suspecting some foul play got ready to return back to Nawadah and no sooner had they turned the scooter than about 15-20 miscreants appeared from the bushes and they surrounded them. The miscreants were armed with lethal weapons including pistols and revolvers. The miscreants forcibly snatched away cash worth Rs. 475/- and a torch from the possession of the informant (P.W. 2) and cash worth Rs. 76/- and an Alwyn automatic wrist watch worth Rs. 375/- from the possession of Enamul Haque (P.W. 1). After ransacking the informant and his companion, the miscreants retreated. Soon the police party on ambush duty happened to reach the scene of incident. The informant got his Fardbeyan (Ext. 1) recorded at the place of occurrence itself at about 11.30 P.M. on the basis of which Nawadah P.S. Case No. 129/90 giving rise to the instant case was registered. Investigation was taken up and after completion thereof charge sheet was submitted and finally the trial commenced after commitment.

4. The Appellant did not enter into defence. However, from the trend of cross examination of the prosecution witnesses, written statement submitted on behalf of the Appellants and the statements of the Appellants recorded u/s 313 Code of Criminal procedure the defence seemed to be that of total denial and false implication out of sheer enmity.

5. In order to prove its case, the prosecution examined Sitaram Singh (P.W. 3) besides the aforesaid two witnesses (P.Ws. 1 and 2).

6. The learned Additional Sessions Judge after taking the facts, circumstances and evidence brought on record, into account found and held the Appellants guilty and convicted and sentenced them, as stated above, vide the impugned judgment and order.

7. Aggrieved by the judgment and order of conviction and sentence passed against them, the Appellants preferred the instant appeals. The Appellants assailed the judgment and order of conviction and sentence passed by the learned trial court by contending that identification of the Appellants was doubtful particularly when no test identification parade was held that the witnesses did not speak of specific overt act committed by the Appellants nor could they say which of the miscreants had robbed them of their belongings that all the circumstances appearing against the Appellants were not put to them while they were examined u/s 313 Code of Criminal Procedure and that the I.O. was not examined and that caused serious prejudice to the Appellants.

8. It is to be considered as to whether the dacoity was committed at the time and place and in the manner alleged by the prosecution. P.W. 2 Yamuna Singh, the informant and P.W. 1 Md. Enamul Haque stated that when they reached near Mubarakpur Dak Asthan enroute to their native place on a scooter they found the road blocked with a branch of tree in consequence of which they wanted to return back to Nawadah but before they could flee away, they were surrounded by 15-20 miscreants, all armed with lethal weapons including fire arms and at

the point of fire arm they robbed RW. 2 of cash worth about Rs. 500/- and a torch and they snatched cash worth Rs. 76/-and an Alwyn wrist watch from the possession of RW. 1. RW. 3 Sitaram Singh was a local dafadar. He stated that he was on ambush duty and he heard that a dacoity took place at the time and place of incident. The factum of dacoity was not disputed by the Appellants. Under the circumstances it has got to be held that the dacoity did take place at the time and place of occurrence.

9. Having been established that dacoity was committed the next most important question for consideration is whether the Appellants were involved and participants in the commission of dacoity. Both RWs. 1 and 2 consistently stated on oath that they were acquainted with the Appellants from before and at the time and place of occurrence they did identify them. The informant (P.W. 2) in his Fardbeyan recorded soon after the commission of dacoity at the place of occurrence itself stated the names of the Appellants with their village address. There was no chance or opportunity available to the informant to make concoction and embellishment. The Appellants belonged to the locality where the house of the witnesses (P.Ws. 1 and 2) situated and as such it was quite natural that they knew them from before. It is in the evidence of P.Ws. 1 and 2 that the bandits had not concealed their faces with some clothes etc. As P.Ws. 1 and 2 were familiar with the Appellants who all belonged to the same locality and they had not concealed their faces at the time of commission of dacoity they could very well identify them while committing dacoity. The identification of the Appellants by the aforesaid two witnesses can in no manner be said to have been rendered doubtful.

10. Though the statements of P.Ws. 1 and 2 on the point of identification was consistent and corroborative it would be relevant and convenient to refer to the criticisms levelled against their evidence. P.W. 1 stated that it was moonlit night (full moon) when the dacoity took place whereas RW. 2 said that it was dark night. In the light of the aforesaid statement of P.W. 2 it was submitted that as it was dark night, the Appellants could not have been identified for, no other means of identification was brought on record. The criticism levelled against the statements of the witnesses must be over looked for the reasons stated hereinafter. P.W. 1 asserted that it was a day of full moon and it was a moonlit night and he identified the Appellants in the light of the moon. The witnesses deposed over nine years after the incident. Some significance is attached to full moon and on that account P.W. 1 might have remembered that he was ransacked by the bandits in the night of full moon. In view of the importance attached to full moon, the evidence of P.W. 1 on that point can be accepted. P.W. 2 appeared to have spontaneously admitted in cross examination the answer put in his mouth by the defence lawyer that it was dark night. Be that as it may, even if it is assumed though there is no ground for such assumption that it was dark night, the Appellants could have very well been identified by the witnesses even in the dark night for, the witnesses had been acquainted with them since their childhood and the witnesses and the Appellants belonged to the same locality.

P.Ws. 1 and 2 were not required to be called to identify the Appellants on T.I. parade. Under the circumstance identification of the Appellants and their involvement and participation in the commission of dacoity cannot be doubted on the ground that no T.I. parade was held and there was no artificial means of identification available at the place of occurrence.

11. P.W. 2 in his cross examination stated that the name of Appellant Sadhoo Beldar was uttered by his associates and he named him on that basis. His statement is misconceived and no importance could be attached to that nor can that be accepted, particularly when the witnesses specifically stated their names and village address in the Fardbeyan. The associates of Appellant Sadhoo Beldar could not have uttered the names of the Appellants with their village address. Hence this part of the statement of P.W. 2 cannot instill suspicion in the identification of the Appellants. It was contended that none of the two witnesses stated which of the miscreants had robbed them of their belongings; particularly it was urged that TO overt act was alleged against Appellant Sadhoo Beldar. The contention is non-meritous.

12. Section 391 of the Code lays down that when five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempt to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person was committing, attempting or aiding, said to commit dacoity. The essentials of offence of dacoity are that the offence should be perpetrated by means either of actual violence or of threatened violence. The threatened violence may be deduced in the conduct and character of mob. It is not necessary that the force or menace should be displayed by any overt act. In the case at hand, as per the statements of P.Ws. 1 and 2 the miscreants were 15 in number and the Appellants were among them. All the miscreants including the Appellants must be said to have committed dacoity conjointly. Commission of no specific overt act is required to be attributed to each and every miscreant participating in the commission of crime. Even if the Appellants themselves did not snatch away cash or other articles from the witnesses (P.Ws. 1 and 2), they cannot escape liability of commission of dacoity.

13. P.Ws. 1 and 2 were cross examined at length but nothing material going to the root of the case was elicited in their cross examination. No major contradictions or discrepancies appeared to have cropped up in their evidence nor was their attention drawn to their statements recorded u/s 161 of the Code of Criminal Procedure. Non-examination of the I.O. cannot be said to have caused any prejudice to the Appellants. It is true that the I.O. ought to have been examined by the prosecution. A perusal of the records would reveal that despite all steps having been taken the attendance of the I.O. could not be procured and as such he was not examined. In the facts and circumstances attending to the case, non examination of the I.O. cannot be said to be fatal to the entire prosecution version. Even if the I.O. was not examined the description

of the place of occurrence given by him in the case diary may be looked into. A perusal of description of the place of occurrence testifies to the blockade of road by a branch of seasam tree.

14. Lastly it was contended that the Appellants while being examined u/s 313 Code of Criminal procedure were not asked to explain all the circumstances appearing against them as a result of which they were prejudiced. All that the Appellants were asked was as to what they had to say on the evidence on record that they on 22.5.1990 committed dacoity at Mubarakpur and they robbed he informant Yamuna Singh of his cash etc. No question regarding snatching away of the belongings of Enamul Haque was put to the Appellants. The Appellants admitted that the entire evidence was adduced in their presence. In the facts and circumstances of the case, I am of the opinion that the Appellants cannot be said to have been prejudiced on account of their being not examined on each and every piece of evidence appearing against them.

15. By putting suggestion to the prosecution witnesses and in their statements under Sections 313 Code of Criminal Procedure the Appellants set up a defence that they had been falsely implicated out of sheer enmity. However, no iota of evidence by putting suggestion to the prosecution witnesses to give rise to an inference that there existed enmity between the witnesses and the Appellants was brought on record. There is nothing on record to ascertain as to how and from which dispute enmity emanated between the witnesses and the Appellants. The defence set up by the Appellants is not at all probable and acceptable.

16. In view of what has been stated and observed in the preceding paragraphs it is to be held that the prosecution brought home the charge levelled against the Appellants beyond reasonable doubt. Learned trial court rightly found and held the Appellants guilty and convicted them.

17. The Appellants have been sentenced to undergo rigorous imprisonment for seven years each. Learned Counsel appearing for the Appellants submitted that the occurrence took place in the year 1990 and since then the Appellants had been running to courts and thus they had obviously suffered a lot of harassment and mental agony and as such they should be sentenced to imprisonment already undergone by them. The Appellants have been languishing in jail for about 15 months. It is a case of road hold up and dacoity. The miscreants involved in commission of such crime do not deserve any leniency. However, regard being had to the facts and circumstances of the case and the contentions put forward on behalf of the Appellants and also keeping in view the fact that the incident took place over a decade ago and the Appellants have already suffered tremendous hardships and harassment and mental agony, the sentence of rigorous imprisonment for seven years is reduced to the rigorous imprisonment for five years. The aforesaid sentence shall, perhaps, meet the ends of justice.

18. With the aforesaid modification in sentence, both the appeals fail and are dismissed.