
(2007) 05 PAT CK 0149
In the Patna High Court
Case No : Criminal Appeal No. 313 of 1992

Nand Kishore Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2007) PLJR 730

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Anjana Prakash and Juhi Kumari, for the Appellant; Jharkhandi Upadhaya, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The eighteen appellants along with three others, namely, Sitaram Yadav, Sahdeo Yadav and Jaldhari Yadav were put on trial for commission of offences punishable u/s 395 I.P.C. in Sessions Trial No. 685/540 of 1986/92 arising out of Sikandara P.S. Case No. 68 of 1986. Sri Nagendra Narain Singh, the then 2nd Additional Sessions Judge, Jamui, by his judgment dated 5th December 1992 convicted all the accused u/s 395 I.P.C. and by his order dated 7th December 1992 sentenced each of them to undergo rigorous imprisonment for 7 years. It will not be out of place to mention here that during the pendency of the appeal before this Court appellants Sitaram Yadav, Sahdeo Yadav and Jaldhari Yadav expired on 8.6.1999, 13.2.2007 and 16.3 2005 respectively and on an affidavitted petition being filed regarding their death their names were deleted from the memorandum of appeal by order dated 8.5.2007 and the appeal so far as they are concerned stands abated.

2. The prosecution case was set in motion on a written report (Ext. 4) being submitted by one Shiv Tahal Mahto on 6.4.1986, inter alia, stating that at about 12 noon that day all the 20 named persons along with 5-6 unknown others entered into his house and looted away household articles, full details whereof

have been furnished, including gold and silver ornaments to the tune of Rs. 8,000/-. It has been alleged that Harsahai Mahto the alleged leader of the dacoits had got this dacoity committed to create a fear in the mind of the informant in an effort to bring him within the fold of his party. It is also said that the said Harsahai Mahto extorts money from those who are not inclined to join his party. It has also been stated that the occurrence was witnessed by several co-villagers including Lakhan Mahto and Harcharan Mahto who had arrived. On the basis of the said written report Sikandara P.S. case No. 68 of 1986 u/s 395 I.P.C. was registered and after due investigation a charge sheet under the said penal provision was submitted against 22 persons showing Harsahai Mahto and Chunnilal Yadav @ Narendra Yadav as absconder. Accused Yogendra Mahto died during the pendency of the trial and trial so far as he was concerned was dropped.

3. The defence plea is one of innocence and false implication due to enmity and rivalry between Shivdhang Mahto and Ram Bhajan Yadav wherein Harsahai Mahto is a partner of Ram Bhajan Mahto. The further defence is that the informant had filed this false case at the instance of Shivdhang Mahto.

4. The prosecution in support of its case examined as many as 8 witnesses of whom P.W. 3 Sabita Devi has been tendered and P.W. 4 Bhola Singh and P.W. 8 Kamta Singh are formal witnesses and Shivtahal Mahto, the informant, figures as P.W. 7 with his sons Ramautar Mahto and Chhote Mahto figuring as P.Ws. 1 and 2 respectively. The prosecution has also filed certain documents as Exhibits to bolster its case.

5. To the contrary the defence has not examined any witness in support of its case but has filed certain documents which happen to be certified copies of Jamui P.S. Case No. 28 of 87 (Ext. A), Sikandra P.S. Case No. 18/91 (Ext. A/1), certified copy of F.I.R. of Sikandra P.S. Case No. 75/91 (Ext. A/2), certified copy of F.I.R. of Sikandra P.S. Case No. 76/91 (Ext. A/3), certified copy of F.I.R. of Sikandra P.S. Case No. 69/86 (Ext. A/4) and certified copy of deposition of Faguni Manjhi and Ramashish in G.R. Case No. 337/86.

6. In support of the appeal learned counsel for the appellants submitted that there are several infirmities which rendered the prosecution version vulnerable but the trial Court lost sight of these vital factors. Had these factors been taken with consideration then there would be no scope of finding the appellants guilty.

7. As has been the testimony of the witnesses, a dacoity was committed in broad daylight in the house of the informant, Shiv Tahal Mahto (P.W. 7), Sabita Devi (P.W. 3), Ramautar Mahto (P.W. 1), Chhotu Mahto (P.W. 2), Alta Devi (P.W. 5) and Jitni Devi (P.W. 6) and it is submitted on behalf of the appellants that whereas Jitni Devi happens to be the wife of the informant, Ramautar and Chhotu are their sons and Alta Devi their daughter and Sabita Devi the wife of P.W. 2. Evidence is also available that the dacoits decamped with house hold articles to the tune of Rs. 8000/- which included ornaments but curiously the

witnesses have not made any allegation of the dacoits resorting to assault or firing at the inmates of the house. It is also an admitted position that the names of Ramautar and Chhotu, the sons of the informant, does not find place in the written report and Lakhan Mahto and Harcharan Mahto who are specifically named in the written report as having arrived at the scene, of occurrence along with other villagers and seen the occurrence as also the Investigating Officer have not been examined and there is no explanation at all for their non-examination.

8. As stated hereinbefore, though the defence did not examine any witness in support of its case, it certainly brought on record Annexure A series to build up a strong case of proven enmity with the informant.

9. On the aforesaid premise it was inter alia submitted that there was no independent witnesses examined although the alleged dacoity took place in broad day light and several villagers appeared, as per the written report, including Lakhan Mahto and Harcharan Mahto at the scene of occurrence and saw the incident. It were only the family members of the informant who had been examined. No co-villager came to depose for the prosecution which was rather unusual. The trial Court's conclusion that independent witnesses are not easy to find was a mere surmise. On the contrary enmity and strained relations between the parties have been admitted by the witnesses and this fact has been bolstered by Exhibit "A" series and there is no attempt to conceal them.

10. It is true that relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last person to screen the real culprit and falsely implicate an innocent person. But when feelings run high and there is a personal cause for enmity, as in the instant case, then there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty.

11. As stated above, learned counsel for the appellants was critical to the quality of evidence that was adduced by the prosecution and it is contended that while names of those who were suggested to have arrived at the place of occurrence and whose names very much find place in the written report of the informant were withheld by the prosecution, conversely some witnesses whose names were conspicuously wanting in the written report and happened to be the sons of the informant have been examined. My attention has been drawn towards Ramautar (P.W. 1) and Chhotu Mahto (P.W. 2) on this score. Such discordant note in the prosecution case has caught the attention of courts time and again and it would only be gainful to reiterate that if material witnesses who would unfold the genesis of the evidence or an essential part of the prosecution case are not brought to the forefront otherwise or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case, in such situation can be termed as suffering from deficiency. In the instant case the non-examination of independent witnesses Lakhan Mahto and Haricharan Mahto as

also the I.O. are vital deficiency in the prosecution case as the vital point of enmity and false implication are sought to be suppressed.

12. There is another aspect of the matter. It is evident from the testimony of P.Ws. 1, 5 and 7 that while the dacoits were busy in their operation Alta Devi (P.W. 5), the daughter of the informant, managed to escape and rush to Sikandara P.S. wherefrom the police arrived.

14. The learned counsel for the appellants has raised grievance of the fact that the earliest version of the occurrence as was disclosed by Alta Devi at the Sikandara Police Station has not been produced before the Court and that by itself was sufficient to vitiate the trial.

15. If the testimony of P.Ws. 1, 5 and 7 are to be believed, it would appear that Alta Devi had managed to escape from the eyes of the alleged dacoits and gone to the Sikandra P.S. and brought back the police. In that event she must have narrated the occurrence to the police which obviously would be the earliest version of the prosecution story which has not been produced before the Court by the prosecution. An adverse inference has to be drawn on this count.

16. Due regard being had to the embellishments pointed above the existing enmity as also the fact that the Investigating Officer has not been examined whereby the defence case has been prejudiced as vital points have not seen the light of day the impugned judgment and order cannot be sustained and is required to be set aside. Accordingly, the appeal is allowed. All the appellants are on bail. They are discharged from the liabilities of their respective bail bonds.