
(2009) 03 PAT CK 0010
In the Patna High Court

Raghubans Singh and etc.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Citation : (2009) 03 PAT CK 0010

Judgement

Sheema Ali Khan, J.—These three appeals arise out of a common judgment and order of conviction and sentence, dated 12-2-1998 and 13-2-1998 passed by 3rd Additional Sessions Judge, Saran in S. T. No. 7 of 1983 by which the appellants have been sentenced to undergo rigorous imprisonment for ten years for the offences u/s 395 of the Penal Code.

2. Raghubans Singh is appellant in Cr. Appeal No. 54 of 1998, Hadis Mian is appellant in Cr. Appeal No. 109 of 1998 whereas Abbas Mian is the appellant in Cr. Appeal No. 135 of 1998.

3. The prosecution case, in brief, is that in the night of 19/20-8-1982 the informant Sheonandan Singh, PW 5 was sleeping outside his house when he heard the sound of steps. When he woke up, he found a number of dacoits carrying lathi, Bhala and Farsa in their hands. In the light of the lantern which was burning he identified Raghubans Singh who was carrying a Farsa. It is alleged that Raghubans Singh gave a Farsa blow whereas others assaulted him with Bhala and lathi. Some of the dacoits then entered the house where his daughters-in-law were sleeping and took away several articles and ornaments. The informant raised alarm on which villagers and his other family members came to the place of occurrence.

4. Eight witnesses have been examined in the case during the trial. PW 1 is a formal witness. PWs. 7 and 8 are the Magistrates who conducted test identification parade marked as Exts. 3 and 3/1. PW 2 is son of the informant and is a hearsay witness as he was not present at the time when the alleged occurrence took place. The important witnesses of the case are PW 5, Sheonandan Singh who is the informant, his daughter-in-law, Indu Devi, PW 4.

PW 6 is Gita Devi who is also daughter -in-law of the informant but she has not identified any of the appellants.

5. The test identification parade was conducted which is Ext. 3 from which it transpires that Indu Devi, PW 4 identified one Ramnath (not appellant) and Abbas Mian (appellant in Cr. Appeal No. 135 of 1998). Ext. 3/1 is test identification chart with respect to Hadis Mian, appellant in Cr. Appeal No. 109 of 1998 who has been identified by the informant.

6. At the outset it is stated that the counsel for the appellants does not challenge the occurrence i.e. commission of dacoity but challenges the identification and involvement of the appellants in the said occurrence, For the purpose of examining whether the identification and the involvement of the appellants is justified, it would be necessary to discuss the evidence of PWs. 4 and 5 and the Investigating Officer, PW 9.

7. I shall begin with the evidence of the informant Sheonandan Singh. According to him Raghubans Singh and some unknown persons first assaulted him and then entered his house and committed dacoity.

8. As noticed above, Raghubans Singh has been named in the F.I.R. The reasons for naming Raghubans Singh, according to counsel for the appellants, is apparent from the cross-examination of PW-5 where the informant says that there are several litigations and cases, criminal and civil, pending between the informant and Raghubans Singh. He admits that there is a land dispute between the parties which relates to the property i.e. the share that he is likely to get from his wife's share in the family property which is commonly known as "Tarka". The reason disclosed by the informant for living in village Galimapur is that the appellant hopes to inherit the property belonging to his wife. He further states that if he does not inherit the property, Raghubans Singh is the only other person who would be entitled to inherit the same.

9. Learned Counsel for the appellants, on the basis of the evidence disclosed in the cross-examination, submits that the reason for involvement of Raghubans Singh in this case of dacoity becomes obvious and leads to the conclusion that he has been named due to the property dispute. The facts that have emerged in the cross-examination are that there is land dispute, several cases are pending between the parties and that the only beneficiary to the property belonging to the wife's family, apart from the informant, is Raghubans Singh which leads this Court to the conclusion that Raghubans Singh may be involved in this case because of the litigation pending between the parties. In a case of dacoity where someone is named in the First Information Report, a suspicion is raised that the person may have been named due to some personal vendetta, unless the person so named is a known criminal. In this case, the evidence which has emerged shows admitted land dispute and as such I do not think it would be proper to assume that Raghubans was involved in the dacoity and his conviction is accordingly set aside.

10. In this context, I may refer to the manner of investigation and the preparation of the I. O. during the trial. The I. O. seems not to remember anything regarding the case. Strangely enough a pair of gold ear ring was produced by one Raj Kumar Sah before the I. O. on 27-8-1982 which was subsequently put on test identification parade and identified by PWs. 4 and 6. The said Raj Kumar Sah has not been produced as a witness before the Court to disclose the circumstances under which he was able to produce those ear-rings before the I. O. The I. O. further states that he had searched the house of Raghubans Singh and no recovery was made from his house which also leads me to the conclusion that the name of Raghubans Singh has been given due to the litigations pending between the parties.

11. P.Ws. 4, Indu Devi, the daughter-in-law of the informant has stated in her chief that she was sleeping in the AANGAN inside the house when four dacoits entered the house. She claims that she was able to identify the dacoits in the light of the lantern which was burning in the AANGAN. In the chief she has also stated that she learnt from her father-in-law that Raghubans Singh was also accompanying the dacoits. In my opinion, the evidence of Indu Devi in the chief does not inspire confidence for the reasons that she has stated that she identified Raghubans Singh, Enamul Haque, Ramnath Singh and Abbas Mian by name in the dock by saying that "WE LOG KATEHRE MAIN HAIN". On the other hand, in her cross-examination she has specifically stated that she could not identify Raghubans Singh by face and that ;she has never met him. She further states that she does not know the name of any of the miscreants and yet she has identified them by name in the dock which goes to show that she had been tutored and was able to name persons whom she otherwise did not know by name.

12. This Court, thus, finds that the manner in which the evidence has been led by PW-4 is not reliable and having found that the evidence suffers from serious defects and lacunae, the test identification wherein Indu Devi is said to have claimed that she identified Abbas Mian cannot be given credence. This Court, therefore, finds that the conviction of appellant-Abbas Mian on the basis of the test identification parade (Ext. 3) coupled with the evidence regarding the manner of identification has to be disbelieved and the conviction of appellant-Abbas Mian is to be set aside by this Court.

13. Hadis Mian has been identified by a single witness that is PW-5, the informant. It is submitted by the learned Counsel for the appellants that PW-5 has not disclosed any special features of the miscreants and as such the conviction on the basis of a single identification would not be safe. The Supreme Court in the case of Wakil Singh and Others Vs. State of Bihar, has held that it would not be safe to connect the appellant on the basis of single identification. This view has been reiterated by a decision of the Patna High Court in the case of Lalli alias Chiranjib Bhowmick Vs. State of West Bengal, The facts of the present case are similar, moreover the manner in which the identification parade was

conducted has been doubted by this Court in the case of identification of Abbas Miya, as such the conviction of Hadis Mian is set aside.

14. For the reasons aforesaid, these three appeals are allowed and the judgment/ order of conviction and order of sentence passed against the above named appellants are set aside and the appellants are also discharged from the liabilities of their bail bonds furnished earlier in this case before the Trial Court.