

(2004) 01 JH CK 0016

In the Jharkhand High Court

Case No : Criminal Appeal No's. 178 and 217 of 1998 (R)

Rajesh Kumar Jha @ Raju Jha and Another etc.

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 395, 411, 412

Citation : (2005) 2 JCR 500

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : Sandeep Jha, Amicus Curiae and Subodh Kumar Jha, for the Appellant; M. Patra, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—The appeals aforesaid have been directed at the instance of the appellants against the impugned judgment and order dated 23.4.1998, and 25.4.1998, respectively passed in Sessions Trial No. 31 of 1997/3 of 1997 by Shri Prabodh Ranjan Dash, 3rd Additional Sessions Judge, Deoghar whereby and where-under the appellants aforesaid were found guilty for the offence punishable u/s 412 of the Indian Penal Code and they were convicted and sentenced to undergo rigorous imprisonment for seven years each and further to pay a fine of Rs. 1000/- each and in default thereof to undergo rigorous imprisonment for two months. However, they are not found guilty for the offence u/s 395 of the Indian Penal Code and they were accordingly acquitted. Co-accused Sanjay Kumar Mandal was also found guilty for the offence punishable u/s 411 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- and in default thereof to undergo rigorous imprisonment for two months, but he was also not found guilty for the offence u/s 395 of the Indian Penal Code. He has not preferred any appeal against his conviction.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 4) of PW 8 Professor Priti Prasad, the informant recorded by Arun Kumar Rai O/C Town Police Station, Deoghar on 1.8.1996, at 21.00 hours at her residence situate in Moholla-Bilashi Town, Deoghar regarding the occurrence which is said to have taken place on that very day at 19.45 hours regarding the dacoity committed in her house and a case was instituted in respect thereof u/s 395 of the Indian Penal Code against unknown dacoits by drawing of a formal first information report on that very day at 20.30 hours and the said fardbeyan and the formal first information report were received on 3.8.1996 in the Court empowered to take cognizance.

3. The prosecution case, in brief, is that the informant was teaching her children at 19.45 hours on 1.8.1996, in the southern room of her house and the door of that room was open and her servant Bulloo (since dead and not examined in this case) was sleeping on the roof and her maidservant Mini (not examined in this case) was cooking in the kitchen at that time. It is alleged that two dacoits armed with pistol and dagger respectively entered in her room and one dacoit pointed the said pistol at her and directed her to hand over all her ornaments to him which she was wearing and the other dacoit who was armed with dagger snatched her gold chain from her neck and asked her to hand over wrist watch to him and she handed over her Titan Quartz wrist watch to the said dacoit and thereafter both the dacoits asked her to deliver them the key of the almirah and also enquired as to where are the valuables and telephone and she out of fear told them that the key of the almirah is in her bedroom and telephone is also there and they brought her to her bedroom at the point of pistol and one of the dacoit disconnected the telephone wire and broke the cordless telephone and the other dacoit who was armed with dagger took the V.C.P. of Funai Company and its remote control from the bed. The prosecution case further is that she opened the almirah at the instance of the dacoits and the dacoits scattered all the articles of the almirah and picked up several ornaments of gold and silver fully detailed in the fardbeyan, besides currency notes of different denominations totalling is Rs. 38,150/- and several other articles. The prosecution case further is that in the meantime two other dacoits came there and they brought her children and the maid-servant and they also took her sky coloured attachee from the southern room of her house containing clothes etc. and one other dacoit also picked up National Panasonic Tape Recorder from the rack in her bedroom, besides Photo-Camera, two rechargeable torches, one spectacle and one crystal knife. It is further alleged that one of the dacoits also removed her two rings from her fingers and the other dacoits also removed quartz wristwatch from the hand of her daughter and one Timex quartz wristwatch from the hand of her son. It is also alleged that thereafter the dacoits tied their hands with gamcha and handkerchief and confined them in the bathroom and bolted the door of the said bathroom from outside. It is also alleged that she does not know as to where the dacoits had fled away and thereafter she opened the back door of her bathroom anyhow and after jumping over the wall of her house she narrated the incident to

her neighbours. There is averment in the fardbeyan regarding the physical feature and dress of the dacoits and she claimed to have identified them in the light of the electricity and she can identify the dacoits and her articles taken away by them.

4. On getting information regarding the commission of the dacoity in the house of the informant on telephone by an anonymous person, the O/C Deoghar directed the police officials of all the check posts and outposts around the town of Deoghar to check the vehicles crossing their respective check posts and outposts and also informed them about the dacoity in question and in pursuance to that direction a trekker bearing Registration No. BHJ 2833 was checked at Ghatghar Police Check Post on Deoghar Sharwan Road at 22.00 hours on that day and some of the incriminating articles being the subject matter of dacoity of this case were recovered from the possession of the appellants besides loaded country-made pistols and seizure lists (Ext. 2 series) were prepared and thereafter some other incriminating articles being the subject matter of this dacoity were also recovered from the bush, south of Deoghar Bus Stand in pursuance to the confessional statement of co-accused Sanjay Kumar Mandal and the seizure list in respect thereof was also prepared which is Ext. 6 in this case. The aforesaid incriminating articles were put on test identification parade conducted by PW 10 Ashok Kumar Singh, the Block Development Officer, Sharwan on 8.8.1996, which were identified by the informant, her son and daughter.

5. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and no incriminating article has been recovered from their possession and they have been falsely implicated in this case at the instance of the police.

6. The prosecution has, in all examined twelve witnesses to substantiate its case. PW 8 professor Priti Prasad is the informant of this case and PW 5 Deo Priya and PW 6 Divya Srivastava are her son and daughter respectively. PW 5 Deo Priya was eleven years old at the time of occurrence. PW 6 has been tendered in this case. PW 9 Ram Prakash Singh was the incharge of Ghatghar Police Check Post at the relevant time and he has conducted the search of the trekker aforesaid from which the booty of dacoity of this case was recovered from the possession of the appellants and he has prepared the seizure lists (Ext. 2 series) in respect thereof witnessed by PW 2 Naresh Das and PW 4 Uday Shankar Singh and the signature of PW 2 thereon are Exts. 1/1 and 1/2. PW 12 Mahendra Prasad, the then A.S.I. Deoghar P.S. had arrested co-accused Sanjay Kumar Mandal from the house of his in-law form village-Farda, Sitarampur tola and on the basis of his confessional statement some of the articles of this dacoity were recovered from the bush of Deoghar Bus Stand and he prepared the seizure list (Ext. 6) in respect thereof which was witnessed by PW 1 Banku Mandal @ Saha and PW 3 Sitaram Modi and the signature of PW 1 there on is Ext. 1 but both the witnesses of search have turned hostile they do not support the prosecution case in respect

thereof. PW 7 Haricharan Singh Yadav was the then A.S.I. Deoghar Police Station who has participated in the recovery of the stolen articles from the bush of Deoghar Bus Stand and was also present at the time of search of the appellants at Ghatghar Police Check Post. PW 10 Ashok Kumar Singh is the Block Development Officer, Sharwan, who has conducted the test identification parade of the aforesaid recovered articles and has prepared test identification chart (Ext.3) which bears the signature of PW 8, PW 6 and PW 5 marked as Exts. 1/3 1/4 and 1/5 respectively. PW 11 Arun Kumar Singh, O/C Deoghar P.S. is the I.O. of this case. No oral evidence has been brought on behalf of the appellants. However, certified copies of deposition of PW 3 Kanhai Prasad Sah and PW 2 Gangadhar Singh G.R. Case No. 555 of 1996 of the Court of S.C. Sinha, Judicial Magistrate, 1st Class, Deoghar have been brought on the record on behalf of the appellants which are Ext. A and A/1 respectively and the said G.R. Case has been separately instituted of the recovery of the arms from the appellants and the said Kanhai Prasad Sah and Gangadhar Singh were the Home Guards said to be posted at the relevant time on the Ghatghar Police Check Post.

7. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that the conviction of the appellants u/s 412 of the Indian Penal Code when they were not found guilty for the offence u/s 395 of the Indian Penal Code is erroneous and the learned Court below has been wrongly swayed by illustration (a) u/s 114 of the Indian Evidence Act, 1872. It has further been contended that there were sixteen passengers on the trekker which was intercepted and checked by PW 9 Ram Prakash Singh at Ghatghar Police Check Post on Deoghar Sharwan road and no incriminating article has been recovered from the conscious possession of the appellants and there is no legal evidence on the record to substantiate the fact that the alleged recovered articles were in conscious possession of the appellants and further there is no iota of evidence on the record to show that the possession of such property to the appellants was transferred by the commission of dacoity and thus no offence u/s 412 of the Indian Penal Code is made out against the appellants in the facts and circumstances of this case. It has also been contended that the test identification parade of the alleged recovered articles conducted by PW 10 is replete with legal infirmities as the stolen articles were not mixed up with three or four articles of similar nature and also no care was taken by PW 10 so that the witnesses may not see the suspected articles before their identification and PW 10 in his evidence has specifically stated that no other article was kept there beyond the list and he has conducted the test identification parade in respect of the articles only which are contained in the list and according to PW 10 the said T.I.P. was conducted in the premises of the police station but PW 8, the informant in his evidence has contradicted the evidence of PW 10 and she has deposed that T.I.P. was conducted in the Courtroom of Chief Judicial Magistrate and the police had earlier shown her some of the recovered articles and the learned Court below did not consider this aspect of the matter and has wrongly come to the finding that the alleged recovered articles are the subject matter of the dacoity in question

and the false implication of the appellants, who are the agents of bus, at the instance of the police official appears to be natural and probable. It has also been submitted that the evidence of PW 12 Mahendra Prasad has to be discarded in this case in view of the fact that his statement u/s 161 Cr PC has not been recorded by the I.O. in course of investigation. Lastly, it has been contended that the learned Court below did not at all consider the evidence of the record meticulously and has committed a manifest error in finding the appellants guilty u/s 412, IPC and thus the impugned judgment is unsustainable.

8. Refuting the contention aforesaid it has been submitted by the learned Additional Public Prosecutor that immediately soon after the occurrence all the police check posts in the vicinity of Deoghar town were informed by wireless regarding the commission of the said dacoity and they were directed to make search of all the vehicles that pass through their respective check posts and within three hours of the occurrence a trekker bearing Registration No. BHJ-2833 was checked at Ghatghar Police Check Post on Deoghar Sharwan road, which is hardly eight kilometres away from Deoghar town and all the appellants aforesaid attempted to flee away from the said trekker and they were caught at few paces from the said trekker while fleeing towards north of the road and from them the stolen articles of the dacoity in question were recovered and two country-made pistols were also recovered from the possession of two of the appellants and seizure list was prepared and the aforesaid recovered incriminating articles were identified by PW 8, the informant and others in the T.I.P. conducted by PW 1. It has further been submitted that there is no infirmity at all in conducting the T.I.P. of the said recovered articles by PW 10 and the evidence of PW 8, Prof. Priti Prasad, the informant to have identified the recovered articles in the Courtroom of Chief Judicial Magistrate is her mistaken statement. It has further been submitted that in this case the stolen articles were recovered very soon after the dacoity had taken place and those recovered articles have been duly identified as the subject matter of the said dacoity and therefore, Section 412 of the IPC has its application to the fact of this case and in this view of the matter the prosecution is not required to prove that the receiver should know or have reasons to believe that the property had been transferred to the appellants by the commission of a dacoity. In support of his contention reliance has been placed upon the ratio of the case of Amar Singh and Others Vs. State of Madhya Pradesh, . Lastly, it has been contended that the learned Court below has considered the evidence on the record in proper perspective and has rightly come to the finding of the guilt of the appellants and there is no illegality in respect thereof.

9. It is pertinent to mention at the very outset that the fact of commission of the dacoity in the house of the informant at 19.45 hours on 1.8.1996, has not been challenged by the appellants. PW 8 Priti Prasad, the informant has deposed that at the time of the occurrence she was teaching her children i.e. PW 5 and PW 6 in the southern room of her house when two of the dacoits entered in her room and to the point of pistol and dagger they have removed her ornaments, wrist

watch from her person and they took her at the point of pistol in the other room and they got the steel almirah opened by her and they removed currency notes of different denominations, ornaments, camera, V.C.P., torches and other articles. She has also deposed to have identified the aforesaid articles in the T.I.P. PW 1, the eleven years old son of the informant, has also deposed that four dacoits had come inside his house and they all pointed pistol at the informant and asked for the ornaments, cash and other valuable articles and his mother has handed over those articles to them. He has also deposed that dacoits had taken away cash, wristwatch, V.C.P. and ornaments from his house. PW 11, the I.O. in course of inspection of the place of occurrence had found the articles of the almirah scattered in the room and the telephone wire severed and cordless telephone broken. The I.O. has also found a briefcase lying on the bed in a tampered condition having marks of violence thereon caused by dagger. The objective findings of the I.O. also support the factum of the commission of dacoity in the house of the informant. The non-examination of the cook and the maidservant of the informant in this case has no relevancy in view of the testimony of PW 8, PW 5 and PW 6 regarding the commission of the dacoity in the house of the informant. It, thereafter, becomes an established fact that the dacoity has taken place in the house of the informant as averred by her in her fardbeyan (Ext. 4). It is equally pertinent to mention here that she has fully detailed the articles taken away by the dacoit in her fardbeyan.

10. PW 11 Arun Kumar Rai who is also the I.O. of this case has deposed that on getting telephonic information regarding the commission of the dacoity in the house of the informant at 22.40 hours he informed all the police check posts set up during the period of Shrawani Mela regarding the commission of the said dacoity and directed the police officials posted there to check all the vehicles which pass through their respective check posts. PW 9 Ram Prakash Singh was the in-charge of Ghatghar Police Check Post on Deoghar Sharwan road at the relevant time and after getting the said information through wireless he started checking all the vehicles which crossed his check post from 21.00 hours on 1.8.1996. He has deposed that a trekker bearing Registration No. BHJ 2833 was coming from Deoghar side at 22.00 hours at the said check post and he started checking the said vehicle and in course of check, four persons who were sitting on the back seat in the said trekker got down from it and started fleeing away towards north and he caught them with the help of the Home Guards posted at the check post. He has further deposed that in course of search of their person incriminating articles were recovered from their possession such as currency notes, ornaments of gold and silver and loaded pistol etc. and the said search was made in presence of the witnesses and seizure lists were also prepared in respect thereof. Ext. 2 series are the seizure list in respect of the incriminating articles recovered from the possession of the four appellants. Ext. 2 is the seizure list in respect of the articles along with one sky coloured attachee, one V.C.P., clothes, one remote of the V.C.P., one spectacle and ornaments etc. recovered from appellant Pahalad Singh and one country-made pistol was also

recovered from his possession in which 303 cartridge was loaded. Ext. 2/1 is the seizure list of the recovered articles from the possession of appellant Pramod Kumar Ray which contains currency notes, one dagger, chargeable torch, wristwatch etc. Ext. 2/2 is the seizure list of the incriminating articles recovered from the possession of appellant Rajesh Kumar Jha which contains currency notes of 100 rupees denominations, ornaments, Tape-Recorder and one Yasica Photo Camera etc. and these articles were found kept in a red coloured gamcha. Ext. 2/3 is the seizure list in respect of the articles recovered from the possession of appellant Kamdeo Pandey which contains gold and silver ornaments, clothes, re-chargeable torch. Timex quartz wrist watch, 100 rupees currency notes, clothes etc. and a country made pistol was also recovered from his person. He has also deposed that other police officials also came to Ghatghar Police Check Post on information when the seizure lists were being prepared. He has also deposed that a copy of the seizure lists was handed over to each of the appellants who have put their signatures on the seizure lists. PW 7 Hari Charan Singh Yadav has deposed that as per direction of the O/C Town P.S. Deoghar he was making search of the dacoits along with his companion A.S.I. A.K. Thakur and in that course he reached Ghatghar Police Check Post where he found trekker bearing Registration No. BHJ 2833 standing and he found PW 9 Ram Prakash Singh making search of all the passengers and A.S.I. A.K. Thakur also helped PW 9 in making search of their person and he himself was keeping watch over the four apprehended persons. He has further deposed regarding the recovery of the several incriminating articles from the possession of the four apprehended persons aforesaid. PW 11 Arun Kumar Rai O/C Deoghar P.S. has deposed that the Superintendent of Police Deoghar got information regarding the apprehension of some of the dacoits along with incriminating articles of the dacoity in question and on the said information he went to Ghatghar Police Check Post along with A.S.I. Surendra Prasad where he found trekker bearing Registration No. BHJ 2833 and PW 9 and A.S.I. A.K. Thakur were making the search of the appellants and also of the passengers of the said trekker and PW 7 was also assisting them in making the said search. He has further deposed that incriminating articles were recovered from the possession of the appellants and seizure lists were prepared in respect thereof. He has further deposed to have recorded the confessional statement of the appellants which are Ext. 5 series in this case. The evidence of PW 12 Mahendra Prasad has no relevancy in this case for the reasons that his evidence has co-relation with the arrest of co-accused Sanjay Kumar Mandal and recovery of some of the stolen articles at his instance and said Sanjay Kumar Mandal is not appellant in these appeals and secondly the I.O. has not recorded his statement u/s 161, Cr PC. Ext. 5 series the confessional statement of the appellants recorded by the Investigating Officer has also no legal value in this case.

It, therefore, appears from the evidence of PWs 9, 7 and 11 that all the four appellants have been apprehended in course of checking of trekker bearing Registration No. BHJ 2833 and incriminating articles as per Ext. 2 series have

been recovered from their possession. PW 2 and PW 4 are the witnesses regarding the search and seizure aforesaid and they are khalsi and driver of the trekker bearing Registration No. BHJ 2833. They have deposed that the said trekker was going towards Sharwan from Deoghar and at Ghatghar Police Check Post the said vehicle was intercepted by the police. PW 2 has deposed that the police checked the said vehicle and also apprehended some of the passengers and from them a briefcase was recovered and a document was prepared on which he has signed. However, in his cross-examination he has deposed to have signed on the blank paper. PW 4 has also deposed to have put his signature on a blank paper and in his cross-examination he has deposed that nothing was recovered from the said vehicle. Both the seizure witnesses however admit the signature on the seizure lists (Ext. 2 series) and the search of their vehicle aforesaid by the Police at Ghatghar Police Check Post. PW 2 also admits regarding the recovery of an attachee from the apprehended persons. Therefore, the evidence of PW 2 and PW 4 also lends support to the factum of search, recovery and seizure from the aforesaid appellants. PW 10 has deposed to have conducted the test identification parade of the recovered articles in the premises of the town P.S. on 8.8.1996, in which PW 8, the informant and her children PW 5 and PW 6 have identified the recovered articles fully detailed in the test identification chart (Ext. 3). The evidence of the informant that she has identified the aforesaid articles in the Court campus in course of test identification parade appears to be an error on her part and in view of the testimony of PW 10 the evidence of the informant in respect thereof cannot be lived and the learned Court below has rightly discarded the evidence of the informant in respect thereof. From the evidence aforesaid it becomes an established fact that a dacoity was committed in the house of the informant at 19.45 hours at 1.8.1996, and the said body of the dacoity was recovered from the conscious possession of the appellants at 22.00 hours i.e. within two hours and fifteen minutes of the occurrence and thus it does not require for the, prosecution to establish the fact that the appellants should know or have reasons to believe that the possession of the aforesaid recovered article has been transferred to them by the commission of a dacoity. It has been observed by the Apex Court in the case of Amar Singh and other, (supra) that when the articles were recovered very soon after the dacoity had taken place and had been proved to have been stolen in course of the dacoity, the case of the appellants clearly falls within the ambit of Section 412, IPC. Therefore, there is no substance in the contention of the learned counsel for the appellants in the facts and circumstances of this case. The test identification parade also cannot be said to have any legal infirmity and there is also no reason for the false implication of the appellants in this case u/s 412 of the IPC. The learned Court below has meticulously considered the evidence on the record has rightly come to the finding of the guilt of the appellants and I see no reason to disagree with the finding of the learned Court below regarding the guilt of the appellants u/s 412, IPC.

11. The sentence awarded to the appellants in the facts and circumstances in this

case cannot be said to be severe and excessive requiring any modification therein.

12. There is no merit in these appeals and they fail. The impugned judgment of the learned Court below is hereby affirmed. Both the appeals are hereby dismissed. The bail bonds of the appellants are cancelled and they are directed to surrender before the Court below to serve out the sentence. The learned Court below is also directed to take all coercive steps in accordance with law for the apprehension of the appellants for serving out the sentence.