

(2002) 08 PAT CK 0032

In the Patna High Court

Case No : Criminal Appeal (DB) No. 645 of 1987

Ram Sunder Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-08-2002

Acts Referred:

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

Citation : (2002) 4 PLJR 98

Hon'ble Judges : Prabhat Kumar Sinha, J; Braj Nandan Prasad Singh, J

Bench : Division Bench

Advocate : Arun Kumar Tripathi, for the Appellant; Ganesh Pd. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

Prabhat Kumar Sinha and Braj Nandan Prasad Singh, JJ.—All the Appellants aforesaid stand convicted u/s 395 of the Indian Penal Code (hereinafter referred to as "the Code") and have been sentenced to imprisonment for life.

2. The case of prosecution, as per informant Jai Kishun Mahto, in his fardbayan (Exhibit-1), is that in the night intervening between 29th and 30th of November, 1981 at about mid-night while he was sleeping, someone struck him on the head with a rod and he identified six persons out of them who were burning torches, namely, Sundar Mahto, Bindeshwar Mahto, Ram Ekbal Mahto, Ram Lagan Mahto, Ram Swarup and Nantun alias Nand Kishore Mahto. Nantun assaulted him with iron rod in his hand causing tearing injury in between his thumb and the finger. Nantun took away keys from his was and opened his box and took away the goods. They also demanded watch from his son Dhaneshwar Mahto but since he had none, he was Inflicted injury in the neck and thigh with a katta like weapon. Thereafter, they took away ornaments. After committing dacoity in his house they also committed dacoity in the houses of Mishri Lal Mahto, Ram Swarath Mahto, Ganga Ram Mahto, Sonfi Mahto and Ram Swarup Mahto. They had also

fired three times causing injuries to Sonfi Mahto and Ganga Ram Mahto. The dacoits were twenty five to thirty in number and had committed dacoity from mid-night to 12.45 A.M. whereafter they fled away. As per the informant the wives of Sonfi Mahto and Ganga Ram Mahto had also identified those six persons, as named in the first information report. As claimed, the informant had no previous enmity with any of the dacoits.

3. It will appear that subsequently other names also came in the statement of witnesses and in all twelve accused, who are Appellants, faced the trial. Accused Arun Singh is said to have been caught in Panpaker village in morning with fire arm, and one looted glass and one ?lota?(material Exhibits-I and II).

4. The defence, in course of trial, is their false implication out of enmity. Defence witnesses have been produced to prove the case of the defence that there had been difference between the informant and Ganga Ram Mahto, on one hand, and Appellant Ram Sarup Mahto (Swarup Mahto), on the other, relating to a land which Ram Swarup Mahto had purchased from one Abhiram Singh. As per defence witness, Ganga Ram and others had on structed house on that land for which a Panchayati was also held but the differences had continued.

5. In all, prosecution has examined twenty one witnesses, out of whom P.W. 3, Ram Swarath Mahto, P.W. 6, Ful Kumari @ Chal Kumari, P.W. 9, Dhaneshwar Mahto, P.W. 14, Ram Kripal Rai, and P.W. 19, Wasi Ahmad were tendered for cross-examination. P.W. 17, Shyam Nandan Shukla, is the Investigating Police Officer whereas P.W. 18 Dr. Kishori Prasad Sah and Dr. Bishwanath Bijoria (P.W. 20) are the witnesses who had examined the injured. P.W. 11, Jitendra Jha is a formal witness who has proved formal first information report (Exhibit-3) and P.W. 21, Ram Pukar Prasad has also proved entry in the case diary.

6. Out of the tendered witnesses, P.W. 3 in cross-examination has said that in his house also dacoity was committed at which time he was sleeping inside the house. He said that he had seen the faces of the dacoits but he further clarified that before him only about five dacoits had come. Obviously this witness has not named them. P.W. 6, another tendered witness, has claimed that even her ornaments were looted but said that she had not identified any one. P.W. 9 Dhaneshwar Mahto, has not at all said anything of any value. Similar is the case of P.W. 14, another tendered witness and Wasi Ahmad, P.W. 19. Out of other witnesses, Mishri Lal Mahto, P.W. 1, has not named any one though he has supported the commission of dacoity in six houses. He said that he woke up on sound of firings and thereafter he fled away and came back only after the dacoits had fled away. He is a witness to the recording of fardbayan also and has also has proved the seizure-list (Exhibit-2). Though this witness has expressed his ignorance about the land contiguous south to the house of the informant allegedly sold by Abhiram Singh, but said that one Bilas Mahto and Ganga Ram Mahto kept their "khalian" on that land. He has admitted that dacoity was also committed in his house.

7. P.W. 2 Badri Mahto said that he also woke up on the sound of gun fire and found that dacoity was being committed in the house of Ganga Ram Mahto and Sonfi Mahto. He also saw twenty to twenty five dacoits. Thereafter he closeted himself inside his house. He has named the six persons in whose houses the dacoity was committed. He also said that next morning he came to know that in village Panpaker one dacoit was arrested.

8. Before dwelling upon the evidence of witnesses who have supported the occurrence and have identified the Appellants, evidence of P.Ws. 18 and 20 may be seen. P.W. 18 is the doctor who had examined injuries upon Dhaneshwar Mahto, son of the informant, and had found a sharp cut injury in front of the neck and a swelling on the left thigh, both simple in nature. He also had examined Jai Kishun Mahto, the informant, and had found three abrasions on his person including two on the head, but all simple in nature. P.W. 20 had examined Ganga Ram Mahto (P.W. 4) and had found three injuries upon his person including one lacerated wound, bone deep, below and behind left ear, and chopping and lacerated wound on a portion of left ear and a burnt portion surrounding injury Nos. 1 and 2. Injury No. 2 was found grievous whereas other two were simple, caused by fire arm. In X-ray one pellet was also seen in the wound. This doctor also had examined Sonfi Mahto (P.W. 10) and had found two incised wounds upon him, on the right side of face and in the dorsum of the hand, and the third, a piercing injury on the right fore-arm. Injury No. 2 was grievous, rest simple. Injury No. 3 was caused by fire arm and the other two by sharp cutting weapon.

9. Accused Arun Singh had also been convicted u/s 395 of the Code who, however, is not an Appellant here. In so far as Appellants are concerned, case of Appellants Bilas Baitha, Ganeshi Mahto Panchu Mahto, Thaga Mahto and Deo Narain Mahto stands on different footing. Whereas the rest six Appellants have been identified by many witnesses, these five, not named in the first information report, have been identified by one witness, each. Appellants Bilas Baitha and Panchu Mahto have been identified by P.W. 4 whereas the rest three have been identified by P.W. 10 These all Appellants are said to be belonging to the same village. The witnesses who have identified the dacoits also belonged to the same village. When so many witnesses had seen so many dacoits and the witnesses have claimed that they had identified the dacoits in the light of the orches which was switched on by the Appellants, it is unlikely that five of the co-villagers could have been identified by only one witness, each. It, therefore, is not safe to convict these five Appellants on such evidence. In view of that, in our opinion, these five Appellants also deserve benefit of doubt and should be acquitted.

10. In so far as Appellants Ram Sunder Mahto, Bindeshwar Mahto, Ram Ekbal Mahto, Ram Lagan Mahto, Nand Kishore Mahto and Sarup Mahto are concerned, they have been identified by P.W. 4, Ganga Ram. Mahto, P.W. 5, Murti Devi, P.W. 8 Razia Devi, P.W. 10 Sonfi Mahto and P.W. 16 Jai Kishun Mahto, the informant. Appellant Ram Sunder Mahto has been identified by one more witness, P.W. 7,

Ram Dulari Devi.

11. All these witnesses have fully supported commission of dacoity in six houses including that of the informant. They have been cross-examined at length and some contradictions were also taken from them which contradictions are, however, not so vital so as to make their evidence untrustworthy. Their evidence on record has been discussed by the learned trial court in deJail, which may not be repeated here. That two witnesses had named more persons than these six Appellants can hardly be a ground to brush aside their evidence about these Appellants. In most of the cases grain has to be separated from chaff. In so far these Appellants are concerned, evidence of witnesses, in the light of discussion entered into hereinafter, would appear to be trustworthy and acceptable.

12. Learned Counsel for the Appellants has argued that these six Appellants are co-villagers, hence it was not possible for them to commit dacoity in a way so that the witnesses could identify them. When the accused in a case of dacoity are co-villagers, the evidence on record has to be evaluated carefully but blanket acceptance of the argument that since they had not concealed their faces in a way so as to make them indistinguishable, the prosecution case should be doubted and benefit of that should go to the accused, may amount to giving a licence to an errant co-villager to commit such a crime in the house of a neighbour, undisguised, and thereafter get away with the aforesaid argument. Such a crime may not always be committed just for money, but also for some personal reasons. Identification of the known persons can also be made by their appearances, physical features and movements.

13. Witnesses have said that the dacoits had Galmocha but they also have said that even with that their faces were recognizable. They have meant to say that concealing of faces was not effective. When the Investigating Police Officer was confronted with the evidence of some of the witnesses in that regard he admitted that witnesses Ganga Ram Mahto, Murti Devi and Razia Devi had not said before him that the dacoits had. Galmocha. However, what had been pointed out to the Investigating Officer were omissions by those three witnesses. But from the evidence of the witnesses, taken together, it would appear that even if the dacoits had taken care to conceal their faces, that was not effective and that they could have been identified by the witnesses. The witnesses are unanimous that they had identified the dacoits in the light of their torches. The claim of victims having received injuries, has been supported by the doctor witnesses.

14. It may not be lost sight of that the dacoity had taken place in six houses, up to 12.45 A.M., starting from 12.00, as per evidence. The fardbayan was recorded in the village of the informant the same night at 3.00 A.M. and investigation thereafter started in right earnest. It appears that not only in the first information report but the witnesses in their statements had also named these Appellants, though not all the witnesses had named Bilas Baitha and four other whose cases have been discussed earlier. Moreover, the Investigating Police Officer in his evidence has said that, just after commencing investigation in the

village he had raided the houses of these six Appellants and though he did not find anything there, but he also found these Appellants absconding from their houses. Nothing has come on the record to show as to why these six Appellants would be found absent from their houses soon after the occurrence.

15. Now it may be seen as to whether the defence witnesses have made any dent in the prosecution case. D.W. 1 is Jogendra Baitha who has claimed that a dacoity was committed in his house also and said that the persons in whose houses dacoity was committed in the village, none of them during the night had named any one. However, the witnesses have not said that any dacoity was committed that night in the house of Jogendra Baitha, nor the Investigating Police Officer has said so though he has described his inspection of the places of occurrence in six abodes naming those other victims in whose houses dacoity was said to have been committed. In so far as the Appellants are concerned, the first information report was recorded at 3.00 A.M. in which the names of all these six Appellants had come. In so far as the victims not naming the dacoits in his presence is concerned, the evidence is negative. His evidence does not help the Appellants.

16. D.Ws. 2 to 4 have spoken about holding of a Panchayati to resolve the differences in between the informant and Ganga Ram Mahto on one hand, and Appellant Ram Sarup Mahto, on the other, relating to the purchase of land of Abhiram Singh by Ram Sarup Mahto causing bad blood between the two sides. But even on its face the evidence of these witnesses speaks only about the differences with only one accused, Ram Sarup Mahto. Nowhere it has come in evidence as to how other Appellants figured in the alleged differences between Ram Sarup Mahto and the informant plus Ganga Ram Mahto. According to the evidence on record and the suggestions thrown to the witnesses, it was Ram Sarup who was the aggrieved party because some of the prosecution people are said to have occupied some of the aforesaid purchased land. Obviously, the enmity, if any, cuts both ways. Therefore, the evidence of these witnesses cannot help the defence for repudiating the prosecution case.

17. In view of the aforesaid and on consideration of the entire evidence on record, we find that the prosecution has been able to prove its case against Appellants Ram Sunder Mahto, Bindeshwar Mahto, Ram Ekbal Mahto, Ram Lagan Mahto, Sarup Mahto (Ram Swarup Mahto), and Nand Kishore Mahto beyond reasonable doubts.

18. Now coming to the sentence of these six Appellants, they all have been sentenced to undergo imprisonment for life. However, it has come in the evidence of the Investigating Officer (paragraph 25) that none of the named accused had any criminal history. Obviously, these six Appellants were not professionals so far commission of such a crime is concerned. However, it stands proved that such a crime in the houses of six persons who all are somehow related to each other, as has come in the evidence, had been committed for whatever reason. It has also come in evidence that these Appellants were

farmers in their own rights.

19. In view of that, we are of the opinion that the sentences awarded to these Appellants need reconsideration.

20. We have noted that out of these six Appellants, while recording their statements u/s 313 of the Code of Criminal Procedure, in the year 1985, the court had assessed the age of Nand Kishore Mahto to be sixty five years and that of Ram Sarup Mahto to be seventy years. This is a case in which occurrence had taken place in the year 1981 and this case has reached this stage roughly after twenty one years. Nand Kishore Mahto and Ram Sarup Mahto, who were so old in the year 1985 are now above eighty years of age. Their present age, therefore, would be eighty two years and eighty seven years, respectively. These two Appellants appear to be very old. They already, as also admitted by both sides, appear to have undergone custody at the trial stage as well after their convictions, for a period more than two years. Keeping in view their extreme old age and other circumstances noted above, we are not inclined to incarcerate them in custody again. Their sentence, while maintaining conviction, is reduced to the period already undergone in custody.

21. In so far as Ram Lagan Mahto, Ram Ekbal Mahto, Bindeshwar Mahto and Ram Sarup Mahto are concerned, as already stated that they do not have any criminal history, were co-villagers and appear to have committed the crime for some reason which, according to the evidence on record, appear to be the one aberration in their otherwise peaceful life. They have already faced the prosecution for twenty one years. Taking all these circumstances into consideration we are of the opinion that their sentences should be reduced to five years of rigorous imprisonment, each, u/s 395 of the Code.

22. In the result, appeal of Appellants Panchu Mahto, Bilas Baitha, Thaga Mahto, Deo Narain Mahto and Ganeshi Mahto is hereby allowed and their convictions as well as sentences, are set aside. They are acquitted of the charge and are released from the liability of their bail bonds.

23. In so far as Appellants Nand Kishore Mahto and Ram Sarup Mahto are concerned, their convictions are maintained but their sentences are reduced to the period undergone in custody. In so far as Ram Lagan Mahto, Ram Ekbal Mahto, Bindeshwar Mahto and Ram Sunder Mahto are concerned, their convictions are upheld but, in the circumstances already discussed, their sentences are reduced to five years of rigorous imprisonment, each. Bail bonds of each of these four Appellants are hereby cancelled and the lower court is directed to take them into custody and intern them in order to undergo rest of their sentences.

24. With the aforesaid modifications, the appeal of these six Appellants is hereby dismissed.

25. Sri Arun Kumar Tripathy, Advocate has argued the appeal as amicus curiae,

for the Appellants, has rendered good help to the Court. He will be paid his remuneration by the Legal Aid Committee of this Court.