
(1991) 08 PAT CK 0008
In the Patna High Court
Case No : Criminal Appeal No. 101 of 1983

Sarju Singh @ Sarju Mahto and Others	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0008

Final Decision : Allowed

Judgement

Nunumani Prasad Singh, J.—The four appellants, have been convicted u/s 396 of the Indian Penal Code and sentenced to imprisonment for life.

2. Briefly, stated the prosecution case is that on 29-1-1978 at about 7 p.m. appellants along with several others entered into the house of Jagdish Singh, P.W. 3 and they demanded licensee gun from him, Jagdish Singh made a pretext that his gun was at Arrah. The miscreants then entered into his Janani Kita (Ladies Apartment; and committed theft of his gun, four boxes containing cloths, ornaments and other articles and short dead his servant Raghuni Yadav. Somehow, he escaped in the village and raised alarm. On the way he met the informant Dafadar, Ram Tapeswar Singh, P.W. 6 and one Bakleo (not examined) who were coming in that direction on hearing the firing of gun shot. He disclosed to them about the dacoits being committed in his house. Where upon, informant, Ram Tapeswar Singh along with Jagdish Singh and Bakleo came to the house of Jagdish Singh but by that time the dacoits has escaped towards the west. The informant, Ram Tapeswar Singh saw Raguni Yadav lying dead in the lane towards the southwest in between the house and boundary wail of Jagdish Singh. Jagdish Singh told him that dacoits were in the age group of 22--30 years" and were wearing dhoti kurta. He claimed to have identified the appellants Sarju Singh, Ram Subhag and Sipahi Singh, He also told him that his brother"s wife had also identified these three appellants. He sent the informant, Ram Tapeswar Singh to the police station to lodge information about the occurrence as no male member was present in his house.

3. On the information lodged by the informant, Ram Tapeshwar Singh, P.W. 6, F.I.R. (Ext. 7) was drawn and the Investigating Officer, P.W. 10 Barahmdeo Singh arrived at the P.O. village at 2 a.m. in the night and took up the investigation of the case.

4. After the charge-sheet and cognizance, the case was committed to the court of Sessions for trial.

5. The defense was total denial of the occurrence and false implication of the appellants on account of Panchayat Election. Further defense was that the deceased Raghuni Yadav had affair with the brother's wife of Jagdish and for that reason he was shot dead by the prosecution party to save the prestige of the family. The father of the deceased, Raghuni had also filed a complaint case against Jagdish Singh, P.W. 3 for the murder of his son which was subsequently compromised.

6. Out of 12 witnesses examined by the prosecution, P.W. 1 Ram Sawarup Yadav has given contradictory statement in paragraphs 1 and 6 of his evidence. In Para-1 he has stated that he saw the dacoits fleeing away but in Paragraph 6 he has stated that he had not seen them. P.W. 2 Ram Pravesh Singh has not supported the manner of occurrence. He has stated that Jagdish Singh had not disclosed the name of the dacoits to him. P.W. 4 Lallan Singh has also not supported the prosecution case. P.W. 6 Ram Tapeshwar Singh, is informant of this case. He is not eye-witness to the occurrence. He learnt about the occurrence and identification of the appellants from Jagdish Singh, P.W. 3. Dr. Manoranjan Prasad, P.W. 7 has held the autopsy on the dead body of the deceased Raghuni Yadav and has proved post-mortem examination report (Ext. 5). P.W. 9 Prem Den Prasad and P.W. 11 Arun Kumar Dutt the two Judicial Magistrate, have conducted the T.I. Prades of suspect Mahadeo and appellant Jagu Kahar. P.W. 10 Brahmdeo Singh is Investigating Officer of the case. P.W. 12 Ram Chandra Prasad had proved electric bills and gun licence (Ext. 8, 9 and 10 respectively). P.W. 3 Jagdish Singh, P.W. 5, Mahesha Kucr (brother's wife of Jagdish Singh, P.W. 3) and P.W. 8 Ram Nath Singh (son of P.W. 5 are the only material witnesses of this case.

7. The defense has examined D.W. 1 Pasupati Nath Upadhyaya. He has proved affidavits sworn by Jagdish Singh, P.W. 3 and Ram Nath Singh, P.W. 8 (Exts. C and C/1). In the affidavits Jagdish Singh and Ram Nath Singh have denied the participation of Gupteshwar Singh in the commission, of alleged dacoits in their house.

8. Learned Counsel for the appellants has contended that the first information report in this case was not promptly sent to the Court of Magistrate. It was purposely withheld to introduce improvements and embellishments in the prosecution case. He farther contended that the prosecution has not been able to establish the nexus between the murder of Raghani Yadav and the commission of alleged dacoits in the house of Jagdish Singh. The conviction of the appellants u/

s 396 of the Indian Penal Code, therefore, cannot be sustained.

9. As regards, the commission of dacoits in the house of Jagdish Singh is concerned, it appears that the Investigating Officer, P.W. 10 went to the P.O. village in the same night but he did not find any objective evidence about the commission of dacoity in the house of Jagdish Singh.. He also did not find any thing scattered in. the house. No doubt, broken boxes were found at about 1 km. from the house of Jagdish Singh but neither there was any trembling mark nor any broken lock was found there. The jewellery box or any other incriminating articles were not found there, P.W. 5 Mahesha Kuer who was present in the house has not stated anything about taking away of any property by the dacoits. The informant-P.W. 6 or other villagers who arrived at the house of Jagdish Singh immediately after the occurrence did not find anything scattered in the house. No independent or reliable witness has come to support the prosecution case that any dacoits was actually committed in the house of Jagdish Singh. The absence of recovery of any incriminating articles from the place where the boxes were found broken creates a doubt about the prosecution case. This lends support to the defense that some broken boxes were thrown away, by the prosecution party for fabricating evidence about the commission of alleged dacoity in his house.

10. As regards, the evidence of Jagdish Singh, P.W. 3 is concerned he has stated that he identified the appellants in the electric light which was burning in the house at the time of occurrence.

11. The prosecution, has also filed electric bills (Exts. 8 and 2) to show that the house of Jagdish Singh was electrified but not electric bill or receipt for the payment of consumption of electrical energy during the period of occurrence has been filed by the prosecution. On the other hand, informant, Dafadar, Ram Tapeswar Singh, P.W. 6 in Paragraph 44 of his evidence has stated that he saw a lantern burning at the Darwaza of Jagdish Singh when he went there along with Baldeo (not examined) and Jagdish Singh after the occurrence. The evidence of informant, P.W. 6 falsify the prosecution case and the evidence of P.W. 3 that electric light was burning in the house of Jagdish Singh at the time of occurrence. There is nothing in the evidence of P.W. 3 Jagdish Singh that there was any other source for the identification of the appellants.

12. The informant, P.W. 6 has further stated in Para 21 of his evidence that Jagdish Singh had not disclosed, about the identification of the appellants, when he met him on the way while ho was raising the alarm of dacoits being committed in his house. He has further stated P.W. 3 Jagdish Singh had told him at his Darwaza in presence of other villagers that dacoits had put masks on their faces. The identification of the appellants in the commission of alleged dacoits, without aid of any bright light, in the month of January at 7 p.m., when darkness prevails completely, is highly improbable. The identification of the appellants were all the more improbable because of the fact that the appellants had put on masks on their faces and concealed their identity.

13. PW 5-Mahesha Kuer has deposed that at the time of occurrence, she was boiling paddy in her gohal which was situated on the west of Janani Kita. Her servant Raghuni Yadav was also there and electric light was burning there. On the cry of Kesha Kure, wife of PW 3 she peeped through the window and identified five--seven dacoits who were standing there with various weapons. Out of them, she identified Sarju Singh, Ram Subhag Singh and Sipahi Singh.

14. The testimony of P.W. 5 on the identification of three appellants does not inspire any confidence in view of the evidence of the informant P.W. 6 who did not find any electric light in her house at the time of occurrence. Moreover there is nothing in the evidence of P.W. 5 that how she could identify the appellants when they had concealed their faces.

15. So far, the evidence of P.W. 8-Ram Nath Singh is concerned he has deposed that at the time of occurrence he was returning to his home from Khutaha Bazar when he was ten yards away from his house he heard sound of firing of gun. shot and alarm of dacoit-dacoit being raised by Jagdish Singh. He concealed himself near the boundary wall and saw 14-15 dacoits going away with four boxes and a gun. Out of them he identified Sarju Singh, Ram Subhag Singh and Sipahi Singh in the flash of their torch light. After fleeing away of the dacoits he went to his house then his uncle Jagdish Singh-P.W. 3 and mother Mahesha Kuer P.W. 5 also told him about the identification of the three appellants in the commission of alleged dacoits. He also identified Jagu Kahar in the dock and also claimed to have identified him in the T.I. Parade. The presence of the P.W. 8-Ram Nath Singh at his house immediately after the occurrence is not corroborated by the F. I. R. (Ext. 7) wherein the informant PW 6-Ram Tapeswar Singh has stated that Jagdish Singh-PW 3 had not accompany him to the police station on the ground that no male member was present in his house. PW 3-Jagdish Singh in his evidence has not denied this fact. The evidence of this witness that he arrived at his house immediately after the alleged occurrence is not consistent with the prosecution case.

16. Moreover, there is nothing in the evidence of PW 8-Ram Nath Singh that any of the dacoits had flashed torch light on the face of their associates. Therefore, the evidence of PW 8-Ram Nath Singh that he identified the appellants in flash of torch light while they were fleeing away after the occurrence is not convincing and reliable.

17. The testimony of PWs 3, 5 and 8 on the point of commission of dacoits and as also on the point of identification of the appellants are not reliable.

18. As regards, the murder of Raghuni Yadav is concerned, there is no evidence on the record to show that he was shot dead by the dacoits. There is also no evidence that Raghuni Yadav had challenged the dacoits and resisted the commission of dacoits. There is also no evidence that the dacoits had fired to create panicky. The dacoits had, therefore, no reason to shot dead Raghuni Yadav, a poor servant of the house. The manner of occurrence as alleged by the

prosecution is not supported by any reliable evidence.

19. Further, it appears that the first information report in this case was sent to the Court of Magistrate after inordinate delay. The occurrence took place on 29-1-1978 in the evening at 7 p. m. whereas the first information report was sent to the Court of Magistrate on 30-1-1978. There is no explanation for the delay in sending the first information report to the Court of Magistrate, Section 157(1) of the Code of Criminal Procedure lays down that the information received about the commission of cognizable offence at the police station shall be sent forthwith to the Court of Magistrate competent to take cognizance. In the case of *Ishwar Singh Vs. State of U.P.*, it has been held that the extraordinary delay in sending the first information report is a circumstance which provides a legitimate basis for suspecting that the first information report was recorded much later than the stated date, time and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set-up a distorted version of occurrence.

20. In the present case, the suspicion hardens to a definite possibility from the fact that the father of the deceased Raghuni Yadav had instituted a case against Jagdish Singh-PW 3 for the murder of his son and the case was subsequently compromised as is evident from the order-sheet of the Case No. 536/78 (Ext. E). Ext. E lends support to the defense case that there was no nexus between the murder of the deceased and the alleged dacoits in the house of Jagdish Singh and it was a case of murder pure and simple and not a case of dacoits with murder. The conviction of the appellants u/s 396 of the Indian Penal Code, therefore, cannot be sustained.

21. For the reasons mentioned aforesaid, the conviction and sentence of the appellants are set aside and in the result this appeal is allowed and the appellants are directed to set at liberty forthwith, if not wanted in any other case.

B.N. Sinha, J.

22. I agree.