
(2002) 05 PAT CK 0037

In the Patna High Court

Case No : Criminal Appeal No. 414 of 1987

Shiva Manjhi and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0037

Final Decision : Dismissed

Judgement

M.L. Visa, J.—Shiva Manjhi and Jagdish Dom, both appellants before us, are aggrieved by the judgment and order dated 9th July, 1987 of XIIIth Additional Sessions Judge, Patna passed in Sessions Trial No. 595 of 1986 convicting and sentencing both of them to undergo imprisonment for life u/s 395, Indian Penal Code.

2. The case of prosecution, in short, is that on the night intervening between 5.2.1986 and 6.2.1986, informant Kamla Devi (PW-1) posted at that time as a clerk in Bikram Block Office, after taking meal was sleeping in her official residence situated in Bikram Block campus alongwith her family members. She was sleeping alongwith her daughter Sandhya Kumari (PW-5) in the central room of her residence and in the adjoining eastern room, her younger son Raju Kumar (PW-4) was sleeping and in the adjoining western room on the entrance side, her elder son Manoj Kumar (PW-2) was sleeping. At about 1 o'clock, the door of room of informant was opened by a push and at the same time, a firing was made in the courtyard of the house of informant on the sound of which informant awoke and she wanted to rise from her bed when three miscreants suddenly entered her room and two of them caught hold of her and threw her on the bed and the third one put a pistol on her neck and ordered his two companions to take out boxes kept beneath the bed. On this, the two miscreants, after taking out boxes from the room, proceeded towards courtyard and when the boxes were taken out of the room, the miscreants who had put pistol on the neck of informant, dragged her and brought her in the courtyard and started assaulting

her. Raju Kumar (PW-4), after hearing the voice of miscreants, managed to come out of the house after removing the iron rods of window and raised alarm of Chor Chor and elder son of informant also followed him. The miscreants, carrying pistol, snatched ear tops from the ears of informant and handed those ear tops alongwith the boxes to two or three other miscreants who were standing outside the house near the northern wall of the house whose presence was felt by informant by their voices. When the neighbours started assembling there, all the miscreants, through the northern door of the house, fled away towards western side and they also opened fire. A muffler of one of the miscreants was left at the bed of informant. The miscreants took away the articles from the house of informant. All the miscreants were identified by informant and her family members because at the time of occurrence, electric bulbs were lighting in the entire portion of the house of informant. M.A. Fatmi (PW-8), the then Inspector of Police, posted in Bikram Block, was on patrolling duty in the night and when he was crossing Bikram Bazar at about 1.45 hours, he heard sound of firing from the side of Bikram Block and also heard hulla and he then went to Block compound where he came to know that dacoity had taken place in the house of informant. He then went to the house of informant, saw the situation and came to know that dacoits had fled away towards northern canal and in the meantime, other police officers from Bikram Police Station also reached the place of occurrence and he ordered them to record the fardbayan of informant and he himself proceeded to chase the miscreants. In her fardbayan the informant raised suspicion on one Bigan Ram to whom she had given a sum of Rs. 40 as loan and on the morning of 5-2-1986, she had gone to his house for taking back her money on which some altercation had taken place. According to informant, he used to visit her house and had knowledge about her house. Informant also gave a list of articles stolen in dacoity and this list includes different types of ornaments, different types of clothes, silver coins of Rs. 1000 and a cash sum of Rs. 500. On the basis of fardbayan of informant, a case u/s 395, Indian Penal Code against six unknown was drawn. MA Fatmi (PW-8) took up the investigation of the case. He visited place of occurrence and seized a muffler left by miscreants and an empty cartridge alongwith a broken latch of back door of the house. In the morning at about 7.50 a.m., he came to know that towards northern side of house of informant, some boxes, clothes and papers were found scattered under a tree and he then, alongwith Manoj Kumar, son of informant, went there and Manoj Kumar identified those articles. He seized those articles also. He squad of sniffer dogs, after smelling the muffler, first went to the place where scattered articles were found and thereafter, went to village-Naghar and entered the house of appellant Jagdish Dom who was arrested and thereafter the sniffer dog went to Raghapur Mushari and entered the house of appellant Shiva Manjhi and caught him and he was also arrested. Later on both appellants were put on test identification parade and were identified by informant and her daughter Sandhya Kumari (PW-5). On 18.3.1986, Investigating Officer was informed by Assistant Sub-Inspector Bashishtha Pandey (PW-7) that during the investigation of Bikram Police Station Case No. 73 of 1986 u/s 395, Indian Penal

Code, some articles from the house of Manik Dom and Naresh Dom were recovered and who had been arrested. Manik Dom and Naresh Dom were remanded in this case and articles recovered from their house were put on test identification parade and some articles were identified by informant. The police, after investigation, submitted charge-sheet against both the appellants as well as against Manik Dom and Naresh Dom u/s 395, Indian Penal Code.

3. The case of appellants, as it appears from the trend of cross-examination of prosecution witnesses, is that they are innocent and have been falsely implicated in this case. Appellant Jagdish Dom, in his examination u/s 313, Code of Criminal Procedure, stated that he used to visit block office, therefore, he was known to all persons of block office.

4. After the case was committed to the Court of Session, charges u/s 395, Indian Penal Code against both the appellants and co-accused Manik Dom and Naresh Dom and a separate charge u/s 412, Indian Penal Code against Manik Dom and Naresh Dom were framed and after trial, co-accused Manik Dom and Naresh Dom were not found guilty and they were acquitted. So far as the case of appellants is concerned, they both were found guilty u/s 395, Indian Penal Code and accordingly, they were convicted and sentenced, as indicated above.

5. Altogether, eight witnesses have been examined on behalf of the prosecution. Kamla Devi (PW-1) is the informant. Manoj Kumar (PW-2) and Sandhya Kumari (PW-5) are son and daughter respectively of informant. Raju Kumar (PW-4), another son of informant is a tendered witness. Dr. Amrendra Narain Jha (PW-6), a neighbour of informant, had reached the place of occurrence immediately after the occurrence and was told about the occurrence by the informant and he also found some injuries on the persons of informant and later on when the informant was forwarded to him for medical examination he examined her injuries. Bashishtha Pandey (PW-7) was posted as Assistant Sub-Inspector at Bikram Police Station and Alongwith Assistant Sub-Inspector Bhupendra Sahay, he had gone to the house of informant where he saw some injuries on the person of informant and in his presence, Assistant Sub-Inspector Bhupendra Sahay recorded the fardbayan of informant. He has proved this fardbayan (Exhibit 1). He has further said that in course of investigation of Bikram Police Station Case No."73 of 1986, he had raided the house of Suresh Dom, Tanik Dom, Manik Dom and Naresh Dom, all sons of Muneshwar Dom and arrested Manik Dom and Naresh Dom and on the basis of confessional statement of Manik Dom, searched the joint house of all the four brothers and recovered some articles and prepared seizure list (Exhibit 4) and because Manik Dom, in his confessional statement had mentioned about dacoity in the house of informant, therefore, he informed this fact to M.A. Fatmi, Investigating Officer of this case. M.A. Fatmi (PW-8) is the Investigating Officer. Rajendra Prasad Yadav (PW-3) is a Judicial Magistrate who had conducted test identification parade of appellants.

6. Kamla Devi (PW-1) the informant in her evidence supporting the factum of dacoity in her house, has stated that on the alongwith between 5.2.1986 and

6.2.1986, dacoits after firing and breaking the door of her house, entered her room where she was sleeping alongwith her daughter and all the three dacoits who had entered in her room were carrying revolvers and one of them put a revolver on her neck and she was not allowed to rise from the bed because she was thrown on the bed and two dacoits took out boxes, kept beneath her bed and they also took out articles from two small boxes, after breaking their locks. She has also said that some dacoits were standing outside her house and from their voices, she guessed that their number was not less then ten to twelve and one dacoit brought her to courtyard by dragging from her room and snatched ear tops from her both ears causing injury on one of her ears. She has further said that she had become unconscious in her courtyard and her daughter who had escaped from the back side of the house informed other persons and she was brought back to her consciousness and she was given water and thereafter police reached there and recorded her fardbayan. About the articles, which the dacoits took away, she has said that these included ornaments, clothes, etc. She has further said that she and her daughter identified both the appellants in test identification parade. About the identification of articles said to have been recovered from the joint house of co-accused Manik Dom and Naresh Dom she has said that she identified one petticoat and one Khojdani in test identification parade but at the same time, she further admitted that before identifying these articles, they were shown to her by police. The Court below, on the bass of this admission of informant, did not believe the case of prosecution against Manik Dom and Naresh Dom and, accordingly, acquitted them. Manoj Kumar (PW-2)), the son of informant has said that a dacoity was committed in his house on the night between 5.2.1986 and 6.2.1986 and he has said that he after raising hulla of Chor-Chor, ran from his house towards colony and reached the treasury guard and thereafter, that treasury guard alongwith two constables, armed with rifles, came to his house and by that time, a number of other persons from colony, had also assembled there and saw his mother fallen near the door of room who was weeping and also saw injuries on the ears of her mother and boxes of his house were stolen. He has clearly said that he did not see any dacoit because dacoits had fled away and therefore, he could not identify and one of them. His evidence supports the case of prosecution that a dacoity at the alleged time, was committed in the house of informant. Sandhya Kumari (PW-5), the daughter of informant, has said that on the night of 6.2.1986 at about 12 O'clock, when she was sleeping in her house all of a sudden she awoke, on hearing the sound of firing and breaking door of her house and she saw that three to four persons were standing in her room carrying pistols. She saw all of them in the light of electric bulbs and those persons had pointed pistol on her and her mother and started taking out boxes containing ornaments and clothes from the room and snatched ear tops from the ears of her mother and assaulted her in the courtyard and thereafter dacoits fled away. She has said that she identified both the appellants in test identification parade. About the time of occurrence, she has stated that it was at about 12 O'clock in the night of 6.2.1986 and by explaining it further she said that on the next day it was 7.2.1986 whereas the case of

prosecution is that the occurrence took place on the night intervening 5.2.1986 and 6.2.1986 but then this witness is a minor girl aged about fifteen years and she was examined on 7.10.1986 that is about eight months from the time of occurrence and except the aforesaid discrepancy, her evidence about the commission of dacoity in her house and her identification of the appellants in test identification parade fully supports the case of prosecution. Dr. Amrendra Narain Jha (PW-6) has said that his residence was situate in the same block in which the residence of informant was situate at the time of occurrence and he woke up on hearing the sound of firing and when he went to the house of informant he found that police had already reached there and he saw the informant in injured condition and she was nervous and was weeping and she told him that dacoits had taken away her belongings and she was assaulted by them. He has further said that informant was forwarded to him two to three hours after the occurrence and he examined the informant and found a lacerated wound 1 1/4" x 1/8" on both the lobes of the ears and a bruise 2" x 1/2" at left forearm and injuries were simple in nature. He has said that injury was possible by snatching of ornaments from the ears. He has proved injury report which is marked Exhibit 3. M.A. Fatmi (PW-8), the Investigating Officer of this case has said that on the night between 5.2.1986 and 6.2.1986 when he was on night duty, he heard sound of firing from Bikram block and he went in block compound where he came to know that a dacoity had taken place in the house of informant and he then went to the house of informant where he came to know that dacoits had run away towards northern canal and in the meantime, other officers of Bikram Police Station came there and he ordered them to record the fardbayan of informant and he proceeded in the direction in which the dacoits had fled away and he then at about 3.30 a.m. returned to block, and by that time, fardbayan of informant had already been recorded. He then took up investigation. He recorded restatement of informant and because it was night, therefore, he did not inspect the place of occurrence which he inspected in the morning at about 5.30 a.m. He has further said that he had found foot marks near the northern window of the house, a broken latch of back door, marks of breaking on the door of central room and he also found a muffler and found the articles of room of informant scattered and also saw marks of pulling boxes on floor and found a fired cartridge in the courtyard of the house, at about 7.50 a.m. he came to know that towards north of the house of informant, some boxes, clothes, papers were found lying under a tree and he alongwith Manoj Kumar (PW-2) went there. There Manoj Kumar identified the articles and he then seized those articles and prepared the seizure list (Exhibit 5). A squad of sniffer dogs was deployed and sniffer dog, after smelling the muffler, first went to the place situate north to the house of informant where articles of the house of informant were found lying scattered and thereafter the sniffer dog went to the village-Naghar and entered the house of appellant Jagdish Dom and thereafter, the sniffer dog went to Raghapur Mushari and entered the house of appellant Shiva Manjhi.

7. Rajendra Prasad Yadav (PW-3), in his evidence, has said that on 18.2.1986,

he was posted as Judicial Magistrate, 1st Class Danapur and on that day he conducted test identification parade of both the appellants and they were identified by informant and her daughter Sandhya Kumari (PW-5). He has proved test identification chart which is in his pen and certificate and which is marked Exhibit 2. From the evidence of informant, her son Raju Kumar and daughter Sandhya Kumari (PW-5) we find that a dacoity in the house of informant was committed in the night between 5.2.1986 and 6.2.1986 in which articles such as ornaments clothes etc. were taken away from her house. The evidence of Dr. Amrendra Narain Jha, who was a neighbour of informant and who had reached the place of occurrence after hearing the sound of firing the evidence of MA Fatmi (PW-6), the Investigating Officer of this case, who at the relevant time, was posted as Police Inspector in Bikram Police Station and had reached the house of informant after hearing the sound of firing, the evidence of Bashishtha Pandey (PW-7), (PW-5), he then Assistant Sub-Inspector of Police of Bikram Police Station who had also reached the house of informant on hearing the rumours of dacoity, further support that a dacoity in the house of informant was committed on the night between 5.2.1986 and 6.2.1986. The evidence of informant and her daughter Sandhya Kumari (PW-5) that they both identified both the appellants in test identification parade coupled with the evidence of Rajendra Prasad Yadav (PW-3), Judicial Magistrate who held test identification parade proves that appellants were identified among those dacoits who committed dacoity in the house of informant. The learned Counsel for the appellants has argued that the informant, him her evidence has admitted that some articles said to have been recovered from the joint house of co-accused Naresh Dom and Manik Dom were shown to her by calling her to police station before those articles were put on test identification parade and this conduct of police does not rule out the possibility that the appellants, in similar way might have been shown to informant and her daughter before they were put on test identification parade, there was no occasion for her not admitting the fact that appellants had been shown to her, had it been done so. Considering her admission that those articles which she identified in test identification parade were shown to her before test identification parade, two other co-accused persons Naresh Dom and Manik have already been granted acquittal by the Court below. The basis of acquittal of these two co-accused is the admission of informant. So, in absence of any evidence or circumstance, that appellants were shown to informant and her daughter before they were put on test identification parade it cannot be presumed that they were shown to them before they were put on test identification parade. There is no scope of any conjecture or surmises in this regard. Beside this had the police shown the appellants to informant or her daughter before they were put on test identification parade, at least appellant Jagdish Dom must have stated this fact in his examination u/s 313, Code of Criminal Procedure because when a specific question was put to him that he was identified in test identification parade; he simply replied that he used to visit the block office, therefore, he was well known to all persons and at that time, he did not say that he was shown to informant and her daughter before he

was put on test identification parade.

8. From the evidence of Rajendra Prasad Yadav (PW-3), the Judicial Magistrate, who held test identification parade, we find that in para 4, he has admitted that appellant Jagdish Dom is having marks of small pox on his face but at the same time, we further find that this admission he gave when appellant Jagdish Dom was brought very near to him suggesting thereby that marks are visible from a very close range. Besides this, in para 5 of his evidence, he said that although he does not remember whether any other person having marks of small pox on his face was put on test identification parade but about eight to ten other persons having marks on their faces, were put with appellants in test identification parade. In this view of the matter, this special identification of appellant Jagdish Dom, in our opinion, has not materially affected the credibility of test identification parade.

9. Considering the entire evidence on record we find that prosecution has proved its case beyond all reasonable doubts against both the appellant that they took part with others in committing dacoity in the house of informant. About the sentence we find that both the appellants have been sentenced for imprisonment for life. The apex Court in the case of Kusho Mahton and Another Vs. State of Bihar, after finding that while carrying stolen property, the dacoits exploded the crackers to frighten the persons who wanted to pursue them and all the appellants were young men and there was no attempt by them to cause injury to any of the inmates of the house or other persons at the time of commission of offence or even thereafter reduced the sentence of appellants to imprisonment already undergone by them which was about one and half years. The present case is squarely covered by the aforesaid decision of the apex Court because in the present case also, the age of both the appellants was assessed by the Court below as twenty-five years at the time of their examination u/s 313, Code of Criminal Procedure, they were also armed with pistols but no injury either to inmates of the house or any other person was caused and they remained in jail custody during the trial and after passing of this judgment for a period of two years, ten months and six days that is about three years. So, we find that ends of justice will meet if the sentence of appellants is reduced to the period already undergone by them in custody. Accordingly, upholding the conviction of appellant u/s 395, Indian Penal Code, we reduce their sentence from imprisonment for life to the sentence already undergone in custody. With this modification this appeal is dismissed.

B.K. Jha, J.

I agree.