
(2002) 11 PAT CK 0060
In the Patna High Court
Case No : Criminal Appeal No. 368 of 1991

Singheshwar Manjhi and Muneshwar Manjhi	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2003) 1 PLJR 705

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Saroj Kr. Tiwary, for the Appellant; Vivekanand Vivek, for the Respondent

Final Decision : Allowed

Judgement

S.N. Pathak, J.—This appeal is directed against the judgment dated 24th September, 1991, passed by Addl. Sessions Judge IX, Patna, in session trial No. 99/90. The Appellants were convicted u/s 395 IPC and were sentenced to undergo RI for 10 years.

2. The prosecution case originated on the fardbeyan of one Dukhani Devi, wherein she stated that in the night between 3/4th July, 89, at about 1 a.m., she was sleeping at the Osera of her house on a cot. Suddenly, she was disturbed in her slumber and when she woke up, she found that the door planks of her house were open. She wanted to close the door, but two of the marauders started pressing her neck. She identified these two persons as Singheshwar Manjhi and Muneshwar Manjhi (Appellants) of village Danara (P.S. Daniyama). The informant announced that she identified these two persons. Then she was assaulted by Singheshwar Manjhi on her head. She started bleeding from the injury on her head. Thereafter she found that other dacoits entered inside the house and had ransacked articles including steel boxes etc. One of the dacoits fired from his gun when they came out of the house. There was alarm raised by the informant which attracted the villagers. Thereafter there was firing from "Galiara". Later on

she learnt that Ram Kishun Mahto had brickbatted the marauders which was retaliated by the culprits in firing from the fire arms. On the eastern side of the courtyard, the informant's cousin sister was sleeping at the Osera and her aunt was also sleeping at the same place. Dacoits had received the cousin sister of the informant of her golden ear-ring. The informant further learnt that 3/4 dacoits were standing outside the house and four of them entered inside the house and three culprits were having turbans on their heads. They were having no apparel on their person. The dacoits fled away towards eastern direction of the village.

3. The informant gave a list of articles looted from the house. She further stated in her fardbeyan that the dacoits were carrying torches and guns etc. and on hulla, villagers namely, Nimi Mahto, Subash Pd., Pramod Pd., Umesh Kumar, Ram Kishun Mahto, Chandrashekhar Pd. had gathered who had seen the alleged occurrence.

4. The accused Appellants had taken the defence of false implication because they had worked at the house of the informant and at houses of the witnesses and they were demanding wages which were not paid.

5. The prosecution examined in all 9 witnesses to prove its case. P. Ws. 9 and 7 were two T.I. Magistrates who conducted the TI Parade of some of the accused who faced trial alongwith the others, but who were acquitted by the trial court. P.W. 8 was the I.O. who had also recorded the fardbeyan of the informant at her house at 1.30 a.m. of 4th July, 89. P.W. 6 was the son of the informant, P.W. 4 was the informant herself and P.W. 3 was her husband. Thus, P. Ws. 3, 4 and 6 are inmates of the house who speak of the (sic) in their house. P.W. 5 was the neighbour of the informant who also reached the P.O. on hearing alarm. This witness claimed to identify one Saroj Manjhi who was acquitted by the trial court, P.W. 2 was tendered. P.W. 1 was ASI in Daniyama police station. This witness stated that he was on patrolling duty on the relevant date or time and when the patrolling party reached the PO village, they learnt about the alleged dacoity in the house of the informant. He was directed to apprehend flying dacoits. The patrolling party chased the flying dacoits towards eastern and northern direction of the PO village and two of the alleged dacoits namely, Singheshwar Manjhi and Muneshwar Manjhi were arrested from Kund Khanda. Nothing was recovered from their possession. One Naresh Manjhi was also arrested.

6. So far evidence of P. Ws. 3, 4 and 6 is concerned, of course, they speak of alleged dacoity in the house of the informant. Except P.W. 4, none of the P. Ws. including P.W. 5 claimed to identify any of the dacoits at the spot. Other accused persons who were facing trial alongwith the appellants were perhaps identified in TI Parade; but the trial court doubted their complicity and the evidence regarding TI Parade because all these accused persons were known to be informant's family and to the prosecution witnesses from before. So TI was a farce in the opinion of the trial court Now the question is whether the Appellants who were convicted by the trial court were identified at the spot by any of the witnesses. The evidence of P.W. 3, husband of the informant, and P.W. 6, son of

the informant, as also P.W. 5, villager, does not disclose that any of them had identified the Appellants in course of dacoity. So evidence of P.W. 4 is to be analysed and scrutinised in order to find out positive and sufficient evidence and beyond suspicion in order to hold the Appellants guilty. Admittedly, these two Appellants were identified by their names by the informant and her statements in the fardbeyan (exhibit 2) show that they were known to her from before. So it can be presumed that these two Appellant's were known to other family members of the informant as well, but none of other family members of the informant said in their evidence in court that they had also identified these two Appellants during the course of dacoity or in course of flight from the P.O. It is in the fardbeyan of the informant that the dacoits who had entered inside the house, had covered their heads by turbans. Perhaps, this statement denotes that culprits had covered their identity by covering their faces by something like turbans. It has already been stated above that the Appellants were known to the informant and, admittedly, they had appeared where the informant was sleeping and they had also assaulted her. So it does not stand to reason why the Appellants will not cover their faces in order to avoid their identification by the informant. So far means of identification is concerned, witnesses in court have said that they identified the culprits in the electric light in the house of the informant. The informant's husband, P.W. 3, and her son P.W. 6, said that they had taken electric connection by extending wire from the house of their neighbour namely, Sanjay Kumar. Sanjay Kumar was not examined in the court to confirm the claim of the son of the informant and others regarding the electric connection. Moreover, P.W. 5 said that in his village flour mills and rice mills were running by diesel pumping set and village Danara is situated in between Fatuha and Hilsa. Village Danara is towards eastern side of the road. Electric line is on the western side of the road. The trial court stated in its judgment that inspite of the statement of this witness, the claim of the informant or her husband or son that their house was electrified could not be dismissed. The trial court also stated that even though Sanjay Kumar was not examined, the informant's claim that she had taken electric line could not also be dismissed. I think the aforesaid opinion by the trial court has no leg to stand. No court can legitimately be allowed to form opinion on assumption or presumption. An inference in favour of the prosecution must be drawn on the basis of the evidence on record. I am, therefore, of the opinion that there was, of course, no positive evidence on record that the informant's house was, of course, electrified on the alleged date of occurrence. Admittedly, the informant had taken electric connection from the house of her neighbour which was admittedly illegal. Rustic villagers cannot dare to take electric connection from the neighbours. Moreover, it cannot be assumed that a particular person will allow his own neighbour to take electric connection from his own house, which may expose him to prosecution under the Electricity Act. So examination of Sanjay Kumar was essential to substantiate that, of course, the informant's house was electrified on the alleged date of the occurrence.

7. There is another circumstance which attracts notice and which was unleashed by the evidence on record. Admittedly, Appellants were not arrested at the spot nor they were apprehended by the villagers on chase. They were rather, arrested by P.W. 1 as assisted by other members of the patrolling party at a particular khanda at 3 a.m. It is not understandable how the Appellants will remain in the particular khanda just to be arrested by the police party after all other culprits had escaped. Appellants are residents of village Denara and if at all they wanted to flee away from the scene of the occurrence, I think in two hours, they would go much beyond the reach of the police party so that they could not be arrested. The informant had given fardbeyan at 1.30 a.m. The occurrence took place at 1 a.m. I am, therefore, of the opinion that there was sufficient time for the alleged culprits to fly to their safety. Admittedly, no incriminating article was found in possession of the Appellants. So, identification of the Appellants as claimed by P.W. 4 is doubtful in view of the above circumstances on record.

8. In the fardbeyan, itself, several villagers were named who had gathered at the house of the informant and it was specifically stated by the informant that they had seen the occurrence. P.W. 1 also said in his evidence that when he arrested the two Appellants, some villagers were also present. This is paras 2 and 3 of his deposition. I find that except P.W. 5 no independent witness was examined in the case and perhaps none of the witnesses named in the fardbeyan was also examined. This P.W. 5 did not say in his evidence that P.W. 1 arrested two Appellants in his presence. So, non-examination of the independent witness is also a negative and retrograde circumstance in order to belie the participation of the accused-Appellants even if it is assumed that there was dacoity in the house of the informant on the alleged date or time;

9. As a result of the aforesaid discussions on the evidence on record and in view of circumstances which I have enumerated above, I am of the opinion that there was no unimpeachable, positive evidence, to convict the accused-Appellants.

10. In the result, this appeal is allowed and the order of conviction and sentence is set aside. Accused Appellants shall stand acquitted and discharged from the liability of bail bonds.