

Dharmendra Yadav Vs. the State of Bihar

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Court : Patna

Decided On : Apr-04-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No. 1172 of 2012

Appellant : Dharmendra Yadav

Respondent : The State of Bihar

Judgement :

S.P. Singh, J.

1. The appeal is directed against judgment, dated 11th October, 2012, passed, in Sessions Trial No. 409 of 2009, arising out of Raghunathpur Police station Case No. 67 of 2007, by learned 5th Ad-hoc Additional Sessions Judge, Siwan, convicting the appellant under Sections 364A and 395 of the Indian Penal Code and sentencing him to undergo imprisonment for life and rigorous imprisonment for ten years for his conviction under Sections 364A and 395 of the Indian Penal Code respectively with further direction to pay fine of Rs.1000/- on each count and, in default of payment of fine, to undergo further imprisonment for one month.

2. The prosecutions case, as made out in Fardbeyan of one Harendra Sah, S/o Radhe Kishan Sah, of village Gaijour Police station Andar, District Siwan, recorded by Sub inspector R. N. Singh, Raghunathpur Police Station, on 17.06.2007, at 00.15 AM, at the house of the informants brother-in-law, Surendra

Sah, in village Rajpur, Police station Raghunathpur, is, in short, as follows:- While serving in army, the informant, on 16.07.2007, came, alongwith his wife and children to the house of his in-laws at village Rajpur. In the evening of the fateful day, while they were sleeping on the roof of their house after taking food, his brother-in-law, Surendra Sah, along with his wife and children, proceeded to his in-laws house at Sultanpur. At about 11:00 PM, all of a sudden, four miscreants, armed with country-made pistols, woke them up. The miscreants forcibly brought all the persons, who were sleeping on the roof, to the ground floor and coerced them to open the outer door. Soon thereafter, two of the accused, with their fire arms, entered into the said house and locked all the inmates in one room. Thereafter, the miscreants started looting household things. The accused persons were looking for informants brother-in-law, Surendra Sah, and his son. The miscreants looted ornaments, clothes, watch, mobile phone, etc. and while retreating, the miscreants also kidnapped informants five years old son, Akash Kumar. On hearing hulla, the neighbourers came, who opened the room, wherein the informant and the members of his family stood locked. Altogether there were eight miscreants, who were in the age group of 25 to 35 years. Some of them were lean, thin and tall; whereas others were of medium height. The miscreants were speaking mixed Bhojpuri and Hindi. Accused persons, in fact, had come to abduct informants brother-in-laws son.

3. On the basis of the fardbeyan of the informant, namely, Harendra Sah, Raghunathpur Police Station Case No. 67 of 2007, dated 17.06.2007, was registered under Sections 395 and 364A of the Code against unknown persons. After investigation, police submitted charge sheet, bearing No. 84 of 2008, for offences under Sections 395/364A/120(B) of the Indian Penal Code.

4. At the trial, charges were framed under Sections 395 and 364A of the Indian Penal Code. To the charges so framed, the accused pleaded not guilty and claimed to be tried.

5. The prosecution, in support of its case, examined 10 witnesses. PW 1 is Lalmati Devi, PW 2 is Rinku Kumari, PW 3 is Sheopujan Sah, PW 4 is Saroj Sah, PW 5 is Meera Devi, PW 6 is Harendra Sah (informant), PW 7 is Nilambar Bhagat, PW.8 is

Surendra Sah, PW.9, Satendra Chaudhary, is Investigating Officer of the case, and PW.10, Dinanath Prasad was, at the relevant point of time, the Officer-in-Charge, Raghunathpur Police Station.

6. After examination of prosecution witnesses, statement of accused was taken, on 03.10.2012, under Section 313 of the Code of Criminal Procedure, wherein he pleaded innocence and completely denied his role in the occurrence. No witness was examined on behalf of the defence.

7. PW.1 (Lalmati Devi), mother-in-law of the informant, has stated that in the light of lantern, she recognized three of the accused persons as Yogendra Yadav, Babloo Chaubey and Pawan Mishra. She has also stated that one of the accused, whose hand was cut, had lifted five-and-a-half year old son of her daughter. She has further deposed that she had seen these three accused persons along with other four to five persons sitting under a palm tree near her house on the previous evening and, at that time, those persons were pointing fingers towards her house. It is in the evidence of PW 1 that the victim was recovered after a month from Balia, Uttar Pradesh. This witness has identified the appellant as one of the accused persons and claimed that she can also identify other accused persons.

8. PW.2 (Rinku Kumari) is the daughter of PW.1. She has supported the prosecutions case and stated that the accused person, whose three fingers stood amputated, had lifted her sisters son, namely, Akash. She has stated that in the light of the lantern, she had recognized three of the accused persons, namely, Yogendra Yadav, Babloo Chaubey and Pawan Mishra. This witness identified the present appellant as one of the dacoits.

9. PW.3 (Shiv Pujan Sah) has also supported the prosecution version stating that the dacoity took place, in his house about 11.30 PM, when he was sleeping in his Palani (i.e., cot) near the door. This witness has deposed that one of the accused threatened him and asked him to go inside the house or else, he would be killed by bomb. This witness has also deposed that he identified, on the basis of their voices, the aforesaid three accused persons, who happened to be his co-villagers.

10. PW.4 is not an eye witness to the occurrence. He came to the place of occurrence only after he came to learn that a dacoity had been committed in the house of Surendra Sah. He has stated that the accused persons demanded ransom on mobile phone and that he, along with two others, delivered money to two persons as per instructions given on the phone. This witness identified two of the accused persons in the dock as the persons to whom he gave the ransom.

11. PW.5 (Meera Devi) is the wife of the informant, who, too, supported the prosecutions case. She claimed that she had recognized the accused persons in the light of the lantern. She has identified accused Yogendra Yadav, Babloo Chaubey and Pawan Mishra, who belonged to her parental village, at the trial.

12. PW. 6 (Harendra Sah), the informant, supported the prosecutions case. He has stated that on the fateful night, he, along with his wife and children, had come to his in-laws house and was sleeping on the roof of the house at the relevant time. In the meantime, at about 11 PM, four accused persons, armed with country-made pistols and gun, reached the roof, woke them up and forced them to come down to the courtyard and made them open the main gate and, thereafter, they looted ornaments, clothes, mobile phone, watch, clothes, etc. and snatched away his son from the lap of his wife. This witness has identified the accused persons, standing in the dock of the courtroom, as persons, who had guarded them, while others looted household items.

13. PW.7 (Nilambar Bhagat) is also not an eye witness of the occurrence. He has stated that he, later on, learnt about the incident from the mother of Surendra Sah.

14. PW.8 (Surendra Sah) is the brother of the wife of the informant. He has stated that on the fateful day, he had come to his In-laws house. He has also stated that the demand for ransom was made, on his mobile phone, which was settled at Rs.3 lakhs and that Saroj Sah and Gyanchand Sah had gone to Bansdih to pay the ransom.

15. PW 9 (Satendra Chaudhary) is the Investigating Officer of the case. He has proved the fardbeyan. He has stated that he took down the statements of the witnesses including the statement of Akash Kumar, the victim boy.

16. Learned Counsel, appearing for the appellant submits that neither the witnesses named the appellant in the First Information Report nor was any Test Identification Parade conducted in the case, though witnesses claimed that they could identify the accused on seeing them. He submits that some of the witnesses had identified the appellant, for the first time, in the court, though such identification is evidence of very weak nature and insufficient to establish guilt of the appellant. Learned Counsel submits that the victim boy was not recovered from the possession of the appellant nor was any incriminating article recovered from his house; more so, there is no allegation of demand of ransom having been made by the appellant. It is the further case of the appellant that witnesses have claimed to have recognized the accused persons in the light of the lantern, but the said lantern has not been seized/exhibited at the trial.

17. On the other hand, learned Additional Public Prosecutor submits that the appellant was identified by some of the witnesses, at the trial, as a person, who was involved in the commission of dacoity.

18. We find that the appellant has not been named as an accused in the FIR, though some of the accused are claimed to have been recognized by the witnesses on the basis of their voices. Further-more, the victim boy was not recovered from the possession/premises of the appellant. None of the witnesses has stated that it was the appellant, who had made demand for ransom. It appears that only material against the appellant is that he was identified, at the trial, for the first time, as an accused, who had participated in the commission of the dacoity. The appellant has been in custody for about seven years i.e. since 26.07.2007.

19. What is, now, of immense importance to note is that though identification of an accused, at the trial, is substantive piece of evidence and there is no impediment in placing reliance on the identification of an accused at the trial, prudence demand that such identification, ordinarily, proceeds by a Test Identification Parade so that the possibility of false implication can be ruled out. This apart, in the case at hand, the appellant, as has already been indicated above, had not been named in the First Information Report, though some of the dacoits were claimed to have been recognized by their voices. Further-more, the dacoits were

claimed to have covered their faces and, in such circumstances, it was the bounden duty of the prosecution to have put the appellant herein on Test Identification Parade. In the absence of any such Test Identification Parade having been carried out, the identification of the appellant, at the trial, for the first time, was too unsafe to place implicit reliance upon.

20. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the appellant ought to have been accorded, at least benefit of doubt.

21. In the result and for the forgoing reasons, we allow the appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

22. Let the accused-appellant be set at liberty, forthwith, unless he is required to be detained in connection with any other case.

23. Send back the lower Court Records along with a copy of this judgment and order.

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