

Nanhak Singh and ors. Vs. State of Bihar

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Court : Patna

Decided On : May-30-1996

Judge : Lok Nath Prasad, J.

Appeal No. : Criminal Revision No. 148 of 1994 (R)

Appellant : Nanhak Singh and ors.

Respondent : State of Bihar

Disposition : Application Allowed

Prior history : Lok Nath Prasad, J. 1. This revision is directed against the order dated 27.8.1993 passed by Shri K.N. Sah, Asstt. Session Judge, Chatra in S.T. No. 280/92 through which all these three petitioners were convinced and sentenced to undergo R.I. for 7 years and also against the judgment and order dated 16.6.94 passed in Cr. Appeal No. 210/93 by Shri Ramayan Pandey, Addl. Session Judge, Chatra through which the order of conviction passed by the Asstt. Session Judge Chatra as mentioned above was co

Judgement :

Lok Nath Prasad, J.

1. This revision is directed against the order dated 27.8.1993 passed by Shri K.N. Sah, Asstt. Session Judge, Chatra in S.T. No. 280/92 through which all these

three petitioners were convinced and sentenced to undergo R.I. for 7 years and also against the judgment and order dated 16.6.94 passed in Cr. Appeal No. 210/93 by Shri Ramayan Pandey, Addl. Session Judge, Chatra through which the order of conviction passed by the Asstt. Session Judge Chatra as mentioned above was confirmed and the appeal was dismissed.

2. The fact in short for the purpose of this revision is that it is the prosecution case that on 28.7.91 the informant, Doman Mahto along with his co-villagers, namely, Jagdish Das, Puran Mahto, Baldeo, Lurki Devi, Latan Mahto etc. had gone to Sheregarha weekly market and they were returning to their home village Dahu but at about 7 p.m. or so when they reached near Hanumansthan Chowk of village Dahu within Tandwa P.S. then found that all in a sudden 8 persons came out from jungle and come of them were armed with gun, dagger, garajisa etc It has been alleged by the informant that the dacoits way led them and they forcibly taken away cash from the informant and the other witnesses and some articles and they had also assaulted Sohrai Mahto and all the dacoits had covered their faces by towel but at the time of assault the towels of three dacoits slipped from their faces and in that process the informant and other witnesses could identify, these petitioners namely, Nanhak Singh, Devi Singh, and Chintaman Thakur. As it was late night so on the next day at about 2 p.m. a written report was submitted by the informant at Tandwa P.S. and on that basis a case was instituted as against the petitioners and unknown under Section 395 of the Indian Penal Code.

3. After investigation police submitted charge sheet as against these petitioners only under Section 395 of the Indian Penal Code and in due course the case after commitment was taken up for trial by Shri K.N. Sah, Asstt. Session Judge, Chatra. In the court below all the petitioners claimed themselves innocents and denied to have taken part in the occurrence and it is their defence that all the petitioners are of village Ganeshpur which is near to the village of the informant and there was previous enmity between them and so they had been falsely implicated in this case. However, the trial court believed the prosecution story and convicted all these three petitioners and sentenced them R.I. for 7 days under Section 395 of the I.P.C. After that all the petitioners preferred an appeal bearing Cr. Appeal No. 210/93 but Shri Ramayan Pandey, Asstt. Sessions Judge, Chatra also dismissed

the appeal confirming the sentence as awarded by the trial court.

4. Being aggrieved by and dissatisfied with the dismissal of the appeal this revision has been preferred and the findings of the trial court had been challenged mainly on the ground that both the courts below had not been able to appreciate the evidence on record and the identification of the petitioners had not established without any shadow of doubt and further though the petitioners are the men of the contiguous village of the informant and there was prior enmity, still these aspect were not considered which resulted in miscarriage of the justice.

5. It is the prosecution case that the alleged occurrence took place on 28.7.91 at about 7 p.m. near the village of the informant in a place known as Hanuman Chowk which falls the jurisdiction of Tandwa P.S. and according to prosecution case several co-villagers of the informant were apprehended and some articles were looted and further the dacoits assaulted P.W. 6, Sohrai Mahto and he also sustained injury. So far as factum of dacoity is concerned which took place on 28.7.91 near a, place known as Hanuman Chowk. He defence has not specifically challenged the factum of dacoity and only they had denied their participation, Moreover from the evidence of the informant and other witnesses including that of the Doctor who found only injury on Sohrai Mahto P.W. 6, the factum of dacoity is well proved. So far as the participation of the petitioners is concerned it is the prosecution case as mentioned in the F.I.R that is Ext. 2 that tall the 8 dacoits had covered their faces by towels and when some of the dacoits began to assault Mahto, P.W. 6 then covering towels of three dacoits slipped from their faces and the informant and other witnesses could identify these three petitioners who are all residents of Ganeshpur which is admittedly situated near the village of the Informant as admitted by the informant and it is the prosecution case that all the three petitioners are well known to the informant and others from before.

6. So far as identification of all the three petitioners are concerned I have carefully scrutinised the evidences of all the witnesses and only P.W. 1, Doman Mahto, who is the informant in this case has stated in the court below that he could identify all the three petitioners at the time of occurrence and P.W.3 Lakhan Mahto had not identified any of the petitioners wherein P.W. Jagdish Mahto, had identified only

the petitioner Nanhak and P.W.5, Lurki Devi had identified the petitioner Deni Singh and P.W. 6 Sohrai Mahto only-identified the petitioner Nanhak Singh, So the informant could only identified all the three petitioners and other witnesses only identify only one petitioner as mentioned above. Admittedly all the petitioners are men of the neighbouring village and it is the prosecution case that the witnesses are known to the petitioners from before. In that situation non-identification of all the petitioners save and except by the informant creates suspension so far as claim of identification of the informant is concerned that he could identify all the petitioners. This suspicion further finds supports of the reason that it is the defence version that they had been implicated only out of enmity and P.W. 4 and 5, Jagdish Mahto and Lurki Devi respectively also admitted in their cross-examination that immediately after the occurrence a panchayati was held in the village about this occurrences in which the villagers of he informant's village and that of other villagers had taken part; This indicate that there was some dispute between the informant ands the petitioners otherwise the question of having a panchayati immediately after the occurrence does not arise at all.

7. Further more the claim of identification of the witnesses also appears to be doubtful and not liable to be accepted for the reason that it is the prosecution case as mentioned in the F.I.R. witnesses they had also stated before the Investigating Officer that all the 8 dacoits had covered their faces by towels and in course of beating but the dacoits to one Sohrai Mahto, P.W. 6, the covering towels of these three petitioners slipped from their faces and so the informant and witnesses could identify these three petitioners only but in the trial court all the witnesses including the informant had not supported this version of the prosecution and they had not stated that in courts of beating to Sohrai Mahto, the towels covering the faces of the petitioners slipped from their faces, in that view of the matter, the identification of the petitioners as claimed by them in the trial court appears to be highly suspicious and doubtful and not to be relied upon.

8. So from the discussions made above it appears that the trial court and appellate court apparently ignored the aforesaid aspect of the case so far as the identification of the petitioners are concerned and they had not taken notice of the facts of the enmity and the panchayati which specifically held after the occurrence.

Under the circumstances the trial court and the appellate court definitely examine the entire evidence with due care and caution.

9. Considering all these facts it appears that identification of the petitioners as claimed by the witnesses is not wholly reliable and appears to be doubtful, in that view of the matter, their conviction under Section 395 of the Indian Penal Code is bad in law. Accordingly, this revision is allowed and the order of conviction as recorded in S.T. No. 280/92 by Shri K.N. Sah, Asstt. Sessions Judge, Chatra and the order passed in appeal that is Cr. Appeal No.210/93 by Shri Ramayan Pandey, Addl. Sessions Judge, Chatra confirming the sentence of the petitioners are hereby set aside and all the three petitioners, namely, Nanhak Singh, Deni Singh and Chintaman Thakur are hereby acquitted of the charge levelled against them and they are to be released forthwith from the jail custody, if not required in any other case.

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