

Bhola Bind Vs. State of Bihar

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Court : Patna

Decided On : May-08-2007

Judge : Abhijit Sinha, J.

Appellant : Bhola Bind

Respondent : State of Bihar

Judgement :

Abhijit Sinha, J.

1. The sole appellant along with one Datta Kahar was put on trial for commission of offence punishable under Section 395 of the Indian Penal Code in Sessions Trial No. 1071/45 of 1979/90, arising out of Chainpur P.S. Case No. 3 of 1976 and Sri Diwakar Jha, the then 1st Additional Sessions Judge, Bhabua, by his judgment and order dated 21st November, 1992 while acquitting Datta Kahar of the charges framed against him recorded a verdict of conviction against Bhola Bind and sentenced him to undergo rigorous imprisonment for ten years.

2. The criminal prosecution was set in motion when the informant, Durga Prasad Singh, gave his fardbeyan at about 5 a.m. on 4-7-1976 in respect of the alleged dacoity which took place in his house in the night between 3rd/4th July, 1976. According to the informant he was sleeping at his Darwaja in his sahan and the female and other inmates were sleeping inside the house when at around 1.30 a.m. he was awakened by the barking of a dog. The father of the informant also

awoke and went towards the south of his residence to have a look. In the meantime the informant saw 5-6 dacoits catching hold of his father and dragging him and asking for the keys of the house. Some 8-10 dacoits came near the informant caught hold of him and tied his hands behind his back. It is said that whereas 2-3 dacoits stood guard near the informant-two others tried to climb on to the roof of the house by means of bamboo ladder but could not succeed. However, the main gate of the house was broken open by the dacoits who entered inside and looted away the belongings. The informant claimed that he did not offer any resistance out of fear. The informant in the light of the torches being flashed by the dacoits claims to have identified Bhola Bind with gun and torch in his hand and Nageshwar Upadhyay, Bindu Upadhyay, Bahadur Dusadh, Datta Kahar and Nathuni Bind amongst dacoits who were 15-20 in number and were variously armed with lathi. guns and torches. Having completed the looting operation the dacoits fled towards the south whereafter the informant learnt from his wife that the dacoits had assaulted her with slaps and fists and looted away Rs. 7,000/- in cash along with ornaments and other household materials. He also learnt from his father that he had identified Nageshwar Upadhyay, Bhola Bind, Bindu Upadhyay amongst the dacoits. On alarm being raised co-villagers, Ram Bali Singh, Daya Shankar Singh, Ganga Dhar Lai, Islam and others arrived to whom the informant narrated the occurrence and also disclosed the names of the dacoits who had been identified. On the basis of the said fard-beyan, Chainpur P.S. Case No. 3 of 1976 under Section 395, I.P.C. was registered.

3. After due investigation police submitted a charge-sheet against six persons and after the commitment of the case to the Court of Session the case so far as Lal Jee Dusadh and Bahadur Dusadh are concerned was dropped by reason of their death vide order dated 28-1-1991 and the case of Nageshwar Upadhyay and Bindu Upadhyay were separated from that of the present appellant and Datta Kahar as they were reported to be absconding. Eventually charge under Section 395 of I.P.C. was framed against the present appellant and Datta Kahar on 25-6-1992 to which they pleaded not guilty and claimed to be tried.

4. At the trial the prosecution sought to examine as many as six witnesses in support of its case of whom Islam Khan (P.W. 1) and Ram Ekbal Singh (P.W. 4)

have been tendered. The informant, Durga Prasad Singh is P.W. 6 and his father Baliram Singh figured as P.W. 5. However, the I.O. has not been examined and there is no explanation offered for the same.

5. After due consideration of the materials on record and the submissions advanced by both the parties the learned trial Judge acquitted accused Datta Kahar as in his opinion the prosecution had failed to bring home the charges against him. However, accused, Bholu Bind, was convicted and sentenced as stated hereinbefore.

6. The impugned Judgment and Order are sought to be assailed by the appellant on several grounds. It was sought to be submitted that the cardinal principle which are always to be kept in mind for system of administration of criminal justice is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as made showing him to be guilty of the offence with which he is charged and unless the prosecution relieves itself of the burden of proving the guilt the Court cannot record a finding of guilt of the accused. On this premise it was pointed out that apart from the informant and his father the other witnesses had not supported the prosecution case and, therefore, the testimonies of the informant and his father would be those of 'interested' or 'partisan' witnesses, and the conviction on the basis of the testimony of partisan witness is vitiated.

7. The informant also raised the grievance of the Investigating Officer not being examined and on that ground also the conviction cannot be sustained as the non-examination of the Investigating Officer was prejudicial to the defence.

8. Admittedly a dacoity had taken place in the house of the informant in the night between 3rd/4th July, 1976 and the informant as well as his father had identified some of the dacoits in the light of torch. The fact of dacoity in the house of the informant has been testified by Narbadeshwar Lal (P.W. 3). Daya Shankar Singh (P.W. 2) in his testimony in Court stated that on coming to the house of the informant on being attracted by the sound of gun fire he learnt that a dacoity had taken place in the house of the informant. He also claimed to have had a talk with the informant and he also saw the main door which had been broken open by the

dacoits. Both these witnesses, namely, P.Ws. 2 and 3 stated to have learnt the names of dacoits whom the informant identified as participating in the commission of dacoity.

9. Baliram Singh, P.W. 5, the father of the informant testified in Court in support of the fardbeyan story. He claims to have identified Bhola Bind and Nageshwar Upadhyay armed with guns and Indu Upadhyay armed with Ballam in the light of the torch. He also stated that Bhola Bind and Nageshwar Upadhyay were pointing their guns at him and put him on the ground. They tied him and thereafter Bhola Bind dragged him and pushed him down in the ditch used for storing cow-dung.

10. P.W. 6, Durga Prasad Singh, the informant has supported his fardbeyan in toto. Nothing of any material significance has been extracted from any of these four witnesses during course of cross-examination by the defence. It obviously could not be a case of false implication because neither the informant nor his father, Baliram Singh, had any axe to grind against the appellant. Similarly P.W. 3 who arrived at the scene of occurrence on being attracted by the cries of alarm, divulged the names of the accused as was given out to him by the informant. Obviously there had been no time lag for the informant to have consulted and thought of names whom he could have implicated falsely in respect of the alleged dacoity in his house. Nothing has been pointed out by the defence as to why Bhola Bind, the appellant, herein had been implicated falsely.

11. It is by now well settled that the evidence of 'partisan' or 'interested' witness cannot be discarded only on that ground. As observed by the Apex Court in the State of Rajasthan v. Teja Ram reported in : 1999 CriLJ2588 , the over-insistence on witnesses having no relation with the victims often results in criminal justice going away. It was further observed that if the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such person as a prosecution witness. Otherwise, merely on surmises the Court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those

who have witnessed the events and not those who have not seen it.

12-13. In the instant case the dacoity took place in the house of the informant and it was not expected that neighbours or co-villagers would be present at the house of the informant from before to witness the dacoity. Therefore, the informant and his father who were the victims of the dacoity were the best witnesses. The co-villagers who arrived on the scene after the dacoity have corroborated the fact of dacoity having been committed in the house of the informant and they have also divulged the names of the dacoits who had been identified by the informant and his father. As stated above the informant and his father had no time to consult and figure out names that they had given out as dacoits who have participated in the dacoity. There was no earthly reason for the false implication of the appellant herein. In the circumstances, his name would never have cropped up unless he had really participated in the occurrence.

14. The argument that non-examination of the Investigating Officer invariably resulted in causing prejudice to the accused and should be held to be fatal as an absolute proposition is fallacious. The well settled law in this regard is that non-examination of the Investigating Officer can result in failure of the prosecution case. Only in such case where the defence wants to prove some material contradiction in the deposition of the witnesses by reference to the statements made during the investigation to undo their credibility or in the like manner when some other material evidence could not be brought on record by examining the Investigating Officer.

15. In the present case nothing of this nature has been brought to my notice save and except the fact that the objective findings of the Investigating Officer has not seen the light of the day. I do not find any merit in this submission of the learned Counsel for the appellant and the same is noticed only to be rejected.

16. Having given my anxious thoughts to the materials available on record I am of the opinion that the conviction of the appellant is justified and is accordingly upheld.

17. However, due regard being had to the facts and circumstances of the case as also to the fact that the case was registered in the year 1976, the Sessions Trial is of the year 1979 and the impugned Judgment and Order is of the year 1992, the appellant has suffered trauma and harassment of criminal litigation for almost 31 years. I am of the opinion that the ends of justice will be served if the sentence for the offence under Section 395 of I.P.C. is modified to one of the period undergone.

18. In the result, the appeal is dismissed with modification in sentence as indicated above. The appellant is on bail. He is discharged from the liabilities of his bail bonds.

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