

Md. Rahman Vs. State of Bihar

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Court : Patna

Decided On : Sep-10-1999

Judge : R.N. Sahay, J.

Appeal No. : Cr. Appl. No. 190 of 1989

Appellant : Md. Rahman

Respondent : State of Bihar

Advocate for Pet/Ap. : Mrs. Mridula Mishra

Disposition : Appeal Allowed

Judgement :

R.N. Sahay, J.

1. Both the appellants, namely, Md. Rahman and Md. Manjoor were residents of village Gaiyari Sisona, P.S. and District Purnea, have appeared against their conviction under Section 395, I.P.C. in which they have been sentenced to 10 years' imprisonment by the 6th Additional Sessions Judge, Purnea in Sessions Case No. 228/88. The charges against the appellant was that they, along with their companions, committed road dacoity on 27-6-1987 at 8.50 p.m. at Kosi Canal. Araria.

2. The version of the occurrence has been given by Subodh Chandra Choudhary in his fardbeyan given to the Araria Police immediately after the occurrence. Subodh Chandra Choudhary had got down from train at Araria at 8.35 p.m. He boarded a Tamtam to Araria Town. There were other passengers also in the Tamtam. Suddenly, the Tamtam was stopped by the robbers at Kosi Canal at about 8.50 p.m. The Robbers looted the passengers sitting on the Tamtam. The informant saw several criminals. Two of them were armed with country-made pistol and others were armed with lathi and daggers. Incidentally, the informant knew the appellants from before. The appellants used to work as night watchmen at Zero Mile. The informant had occasion to see the appellants at Zero Mile, and he had also ascertained their names and the address. The informant, claimed to have identified the appellants in the flash of torch light. After looting the passengers, the dacoits fled towards south.

3. Most of the passengers told that the criminals belong to village Gaiyari. Name of Wazuddin was also disclosed as one of the dacoits but no charge-sheet was submitted against him. Another passenger Rajendra Prasad Biswas who had also got down at Araria Court Station and boarded the same Tamtam also identified the appellant. This witness claimed to have identified these appellants along with Wazuddin and Arif. Other passengers were also robbed, but they have not named the appellants.

4. Mr. Maheshwar Singh (P.W. 9), who is the Investigating Officer of this was posted at Araria Police Station as Officer-in-Charge. He recorded the fardbeyan of the Informant at Kosi Bandh. He, however, does not state how he reached there. It appears that the police party had gone there on some secret informant that dacoity had been committed at Kosi Bandh. After recording fardbeyan, he inspected the place of occurrence and recorded the statement of two witnesses. The Officer-in-Charge then proceeded to Zero Mile along with armed police party. He arrested the appellants near the Canal. He claims to have recovered country-made pistol from the possession of both the appellants but it has come in the evidence that two three Nott Pistols and cartridges were found but no recovery memo was prepared.

5. The evidence of Rajendra Prasad Biswas shows that he had gone to the Police Station on the Tamtam and narrated to the Officer-in-Charge about the incident of dacoity, then the Officer-in-Charge went to the place of occurrence along with them. According to this witness, two pistols with cartridges were found at the place of occurrence. Nothing has been stated by the Officer-in-Charge about this. The informant has not stated that any pistol or cartridges were recovered. None of the witnesses stated about the arrest of the appellants by the Officer-in-Charge. Rajendra Prasad Biswas saw the appellants in the police lock-up when he went to the Police Station next morning. This witness did not identify the appellants by name in Court. He had no occasion to see them at Zero Mile. This fact has not been stated by the Investigating Officer. A suggestion was given by this witness that he had named the appellants on being told by the Officer-in-Charge. He did not know them from before.

6. The informant also failed to correctly identify the appellant by their names in Court. The informant, however, stated that arrested persons were dacoits. It is not stated as to when they were arrested. This witness in his fardbeyan stated that he also verified from the villagers the names of the appellants. The informant said that he used to see the appellants at Zero Mile.

7. Mrs. Mridula Mishra, learned Counsel for the appellants has strongly submitted that the appellants were arrested merely on suspicion. It is submitted that though the appellants were arrested by the police shortly after the alleged occurrence but no looted article was recovered from their possession. The evidence of the Investigating Officer that the appellants were arrested with fire-arms ought to be rejected. The appellants are acquitted of the charges under the Arms Act. If the country-made pistols were recovered, seizure memo must have been prepared but no seizure memo was prepared by the Investigating Officer. The Officer-in-Charge did not find any looted articles taken by the dacoits, who visited the place of occurrence. It is submitted that if the appellants had committed dacoity, they would have run away and could not have waited near Zero Mile to be arrested by the police. The defence of the appellant was that Zero Mile at Araria has become a favourite haunt of criminals and anti-social elements and several occurrence of major crimes had been witnessed by the local people. The police did not take any

step to curb the crime causing great suffering to local people. They were convinced that though the police is responsible for maintaining law and order but they were unable to curb the crime at Zero Mile. The shopkeepers of Gram Panchayat Gairari convened a meeting and appointed the appellants along with others as night guards at Zero Mile. Informant was also given to the S.D.O. and Officer-in-Charge of Araria Police Station. The appellants earned commendation of the local people which made them eyesore of the police. The police wanted the appellants to become their informer and accompany them during raids and search of criminals but the appellants refused to oblige them. Several cases were instituted against the appellants but they were either acquitted or final reports were submitted.

8. Mr. Lala Kailash Behari Prasad, learned A.P.P. submitted that the conviction of the appellants is fully justified despite several clear infirmities noticed above

9. On proper analysis of the evidence, I am hesitant to accept the evidence of two witnesses that they knew the appellants from before and were able to identify them. It is true that the two appellants were arrested, they were not taken on remand to ascertain the names of other dacoits. The claim of the Investigating Officer that the appellants were arrested with country-made pistol is absolutely untrustworthy in absence of any seizure memo or production of arms. There is great possibility that the Investigating Officer was aware that no seizure was made but arrested the appellants on mere suspicion. It is possible that the name of the appellants were supplied by the investigating Officer himself otherwise all the persons could have identified the appellants. The appellants however, remained in custody for about two years, in view of the facts and circumstances of the case discussed above, I am unable to sustain the conviction of the appellants. In my view, they should be acquitted by giving them benefit of doubt.

10. In the result, this appeal is allowed, conviction of the appellants is set aside and both the appellants are acquitted of the charges. They are on bail. They are discharged from the liability of their bail-bonds.