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Court : Patna

Decided On : May-24-2002

Judge : P.K. Sinha and B.N.P. Singh, JJ.

Appeal No. : Criminal Appeal Nos. 492 and 495 of 1987 (DB)

Appellant : Satya Narayan Bind and ors.

Respondent : State of Bihar and ors.

Disposition : Appeals Dismissed

Judgement :

B.N.P. Singh, J.

1. While only mother and her son were in the house, it is alleged that in the intervening night of 2nd/3rd April, 1984, miscreants, having scaled over roof of house with help of bamboos, gained their access in the inner apartment of the house and coercing the house inmates, removed wearing apparel, ornaments and cash and decamped with the booty. It was alleged that when Lal Babu having identified one of them, raised alarm, shouting for help, Kesho Ahir shot him dead and with these accusations, fardbeyan of mother of the deceased was recorded by Shri M.P. Sharma, Sub-Inspector of police of Sonbarsa Police Station at 8.30 a.m. on 3rd March, 1984, pursuant to which first information report was drawn up. The police came in action, collected evidences, recorded statement of witnesses,

visited the place of occurrence, sent the dead body to mortuary for post mortem examination, and having received post mortem report, concluded investigation and laid charge sheet before the Court. In the eventual trial that commenced, the State examined altogether seven witnesses, including mother of the deceased, the doctor who held autopsy over the dead body of Lal Babu, the Police Officer who investigated the case, formal witnesses and others, who stated to have reached the place of occurrence, pursuant to which identification of the appellants was disclosed by Jonihia Devi (P.W. 2) to them.

2. The defence of the appellants, it seems, before the Court below and also this Court had been that of innocence and they ascribed their false implication. The defence pleaded by the appellants was that due to dispute with regard to irrigation of land and also dispute with regard to passage of water through drain, there had been false implication of them. However, the trial Court having negated contentions raised at Bar on behalf of the appellants, about their innocence, and having place implicit reliance on the testimony of witnesses, rendered verdict of guilt, finding the appellants guilty under Section 396 of the Indian Penal Code (IPC) and sentenced them to suffer rigorous imprisonment for life.

3. Before we discuss the evidence adduced on behalf of the State, we may notice some criticisms made by the learned Counsel for the appellants which have been made to assail the propriety of the findings recorded by the Court below. Contentions are raised that complicity of the appellants becomes extremely doubtful even from evidence of the Police Officer which itself manifestly suggests that only after fardbeyan of Jonihia Devi was recorded by the Police, it came to know about complicity of the appellants. Yet, it is urged that though a lantern was suggested to have been burning in the bed room where Lal Babu had slept on the fateful night and an earthen lamp burning on the verandah, contrary to these assertions made by the witness, recitals of which have also been made in the fardbeyan, the Police Officer who visited the place of occurrence noticed only an earthen lamp in the bed room of Lal Babu, and reiterating his submission, it is urged that in the meagre light of earthen lamp regard being had to the optical potency of a man, the possibility of identification of the appellants would be extremely remote. Learned Counsel would urge that the appellants were none else

but quite known to the informant, as while some of them hail from the same village, others hail from adjoining village who too were known to her, preceding the date of incident, and in backdrop of these mitigating circumstances, it was quite unlikely that the appellants would indulge in commission of dacoity without taking any precaution for concealment of their identity. Admitted enmity between the parties and there being no mark of violence at the place of occurrence, were also one of the grounds on which bona fide of the prosecution case has been suspected. It is urged that informant had been stating before the Court, recitals of which have also been made in the fardbeyan, that one of the miscreants namely, Kesho Ahir shot at Lal Babu, who was inside the room, through window and this circumstance too, which appears to be hypothetical and imaginary, did not stand to reason, and as for motive, it is urged that though some sort of motive was sought to be assigned by the State for commission of offence, taking the same to be true, it was most weak motive which is not expected to have mobilised the appellants to commit an offence of dacoity and gruesome killing of Lal Babu. Learned Counsel for the State, while for the resisting submissions raised on behalf of the appellants, would urge that the lone eye witness has claimed identification of the appellants who was the victim of the incident and hence, he deserves all credence. It is urged that though other witnesses, who stated to have reached the place of occurrence, did not claim to be ocular witness to the incident, their evidence too was not of less significance, as complicity of the appellants soon after the incident was disclosed to them by Jonihia Devi (P.W. 2), the informant. About the source of identification of the appellants, which was an earthen lamp, that was burning in the house, it is urged on behalf of the State, that even in the meagre light, the victims are accustomed to have vision, and identification of the appellants cannot be said to be a remote possibility. Even though the appellants were quite known to the informant, it is not very uncommon that such crimes are committed by known persons without concealing their identity.

4. Now coming to the evidence that has been laid on behalf of the State, we have noticed Jonihiya Devi (P.W. 2) reiterating her statement which she rendered before the Court about she having got awakened on some sound when she called her son suspecting that the bullock had got untied. When she came to verandah, she noticed 10/15 dacoits in the burning light of earthen lamp and those who had

gained access in the inner house were holding arms with them. They secured key from her on coercing her and made plunder in the house, removing house belongings that include ornaments, wearing apparels, cash, and also shot dead Lal Babu when he raised alarm. The house inmate claimed to have identified Kesho Ahir, Ramjee Bind, Sukhari Ahir, Satya Narayan Bind, Kedar Bind and Harihar Bind. After one of the appellants, namely, Kesho Ahir fired shot from gun through the window, Lal Babu dropped dead. She would state to have disclosed complicity of the appellants to a number of villagers who shortly happened to reach the place of occurrence. After the Police came, she rendered her statement. The motive assigned by the witness behind the incident was that the appellants had borrowed rice and cash from her and as she had been insisting for payment, they had committed such offence.

5. One of the witnesses, who were suggested to have flocked to the place of occurrence shortly after the occurrence, was Vishwanath Singh (P.W. 1) who stated that shortly on hearing alarms raised by Jonihia Devi and Lai Babu, he rushed there when noticed the dacoits making good their escape. Jonihia Devi also disclosed complicity of Sukhari, Kesho, Ramji Bind and Satya Narain Bind and Harihar Bind who had removed house belongings from the house. The other witness was Paras Nath Singh (P.W. 3) who too came to the place of occurrence on alarm raised by the house inmates, when he noticed Lai Babu dead on account of receipt of gun shot injuries on his person. Jonihia Devi was weeping and she disclosed complicity of Kedar Bind, Harihar Bind, Satya Narayan Bind, Ramji Bind, Kesho and Sukhari who had committed dacoity in the house. She would state about Kesho Bind having shot dead her son. Sheojanam Mahto (P.W. 4) was among them who stated to have rushed to the place of occurrence on hearing screamings of the mother of Lai Babu, when she disclosed complicity of Kesho Ahir, Sukhari Ahir, Kedar Bind, Harihar Bind, Satya Narayan Bind, and Ramji Bind. Dr Kamta Prasad Roy, who stated to have held autopsy over the dead body, noticed following ante mortem injuries on his person:

(1) One round punctured wound of 1-1/2' diameter on chest, right side, 2' below clavicle and above right nipple. Depth to be 4'. On dissection, he found whole chest cavity full of blood and blood clots. Lungs of both sides were punctured at

many places and heart was also punctured at many places with all chamber empty.

The doctor would state to have recovered 20 pellets from the chest cavity with one cap of cartridge. The injury in the estimation of the doctor was caused by fire arm, which were sufficient in ordinary course of nature to cause death.

6. Mathura Prasad Ram (P.W. 7), who happened to be the Investigating Officer of the case, stated to have rushed to village Nawanagar shortly on receipt of information through the Chowkidar about commission of dacoity, when he recorded statement of Mosst. Jonihia Devi (P.W. 2), pursuant to which first information report was drawn up. The Police Officer noticed dead body of Lal Babu in pool of blood on a cot in the northern room of the house. He stated to have prepared the inquest report of the dead body of the deceased and there was also blood, below the cot which was seized. The Police Officer noticed that beside the plank of the door, there was a window. There were signs of keeping earthen lamp, and that apart, even an earthen lamp was noticed inside the house and the said earthen lamp was seized by him and during trial, the seized earthen lamp was produced in Court too. The Police Officer also noticed a bamboo near the door of the house which too was seized by him. Murat Ram (P.W. 6) was a formal witness who brought on record the first information report, inquest report and certain paragraphs of the Police case diary and this witness being quite formal, did not merit elaborate discussion. This is all the evidence that has been adduced on behalf of the State.

7. Now, while appreciating the criticisms made by the learned Counsel for the appellants, we notice that since the Police Officer stated before the Court that shortly after recording the fardbeyan, he came to know about the name of the appellants, it is urged that complicity of the appellants was introduced notwithstanding there being no such evidence. However, we find that this argument was meritless for the simple reason that the complicity of the appellants had explicitly transpired in the fardbeyan of Jonihia Devi (P.W. 2) and narration made by the Police Officer would not rob the vitality of the prosecution version as transpiring in the fardbeyan of P. W. 2.

8. Though much stress has been laid at the existence of earthen lamp in the bed room of Lal Babu where he was shot dead, that criticism, too, though it appears alluring, was bereft of merit. True it is that in the early version, it was stated before the Police that while a lamp was burning in the bed room of Lal Babu, an earthen lamp was burning in the verandah. The Police Officer, who visited the place of occurrence, noticed only one earthen lamp inside the bedroom of Lal Babu and since these are portable articles their fixture at a place was not expected and that apart, identification of the appellants even in the earthen lamp particularly when they were not the strangers, was not a remote possibility. In almost similar circumstances, following observations were made by the Apex Court in the case : 1997 CriLJ2531 Kalika Tiwari and Ors. v. State of Bihar.

Where the only source of light at place of occurrence which was village where dacoity in question took place was an earthen lamp, the identification of accused even in such light would not be a problem for villagers especially when many of dacoits were direct relations of complainant. The visibility capacity of urban people who are acclimated of fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such lights.

Since the appellants were quite known to the house mistress, even in the meager light, their identification was not a remote possibility as her optical potency, as has been observed by the Apex Court, was attuned to such country made lamp.

9. The other limb of argument canvassed on behalf of the appellants was that since the appellants were quite known to the house mistress, it was most unlikely that they would commit such an offence without concealment of their identity. Though this argument too appears to be quite attractive and shows ingenuity of the learned Counsel, but is bereft of merit. It is not very uncommon that even known persons without taking any precaution of concealment of their identity do indulge in such offence and on this score too we are tempted to quote the observation made by the Apex Court of the land : AIR 1973 SC760 Saktu and Anr. State of U.P.

There is no substance in this submission because appellants who are residents of adjoining village, were admittedly known to the several witnesses who have identified them and it is not disputed that the dacoits had not covered or masked their faces.

10. In similar circumstances though the dacoits were known to the witnesses, they were considered to be credible by the Apex Court. True it is that no mark of violence was noticed at the place of occurrence by the Investigating Officer but that ground alone was not of such a mitigating circumstance which can militate against the bona fide of commission of dacoity in the house of Mosst. Jonihia Devi (P.W. 2) in the night of incident. The Police Officer had noticed a bamboo which was suggested to be the means by which the miscreants, having scaled over wall, had gained access in the house, and that apart, the Police Officer had also noticed earthen lamp in the house which was suggested to be the means of identification.

11. Though some of the witnesses whose name very much appeared in the first information report had not been examined by the State but for that, good reasons have been assigned by the informant in her evidence, as they had gone in collusion with the appellants.

12. Now, coming to the credibility of the witnesses, we have noticed that in the fateful night of incident only mother and son were in the house as the daughter-in-law had gone to her parents' house. Since son was dead only mother was left alone to witness the gruesome killing of her son and in the backdrop of these circumstances there was no possibility of other persons being eye witnesses and that apart, we have noticed the evidence of P.Ws. 2, 3 and 4 who claimed to have rushed to the place of occurrence shortly after the incident to whom complicity of the appellants had been disclosed by Johinia Devi (P.W. 2) and their evidences also have rendered assurance to the prosecution allegation about complicity of the appellants. As has been noticed, Most. Jonihiya Devi is the mother of the deceased and her credibility can never be questioned. As for P.W. 3, the deceased was his uncle and his house situates just south to the house of the informant. He was the nearest neighbour and his claim about having rushed to the house of Lal Babu shortly on hearing alarm appears to be most natural. He

appears to be most natural and probable witness. Similar was the case with P.W. 4, whose house situates hardly at a distance of 25/30 paces from the house of the deceased. He too was one of them who rushed to the place of occurrence shortly on hearing alarm from Most. Jonihiya Devi (P.W. 2). These witnesses, in our opinion, were most probable and natural witnesses. Their evidences were corroborative and they deserve credence Since there was light in the house where Lal Babu was shot dead, identification of the appellants or even manner of occurrence cannot be seriously questioned. The motive assigned by the prosecution behind the incident was that the appellants had borrowed rice and money from Mostt. Jonihia. The motive may be quite weak to mobilise the offender to commit such offence over such petty matter, but since motive is within the perpetrator of crime, in all cases, it may not be known to others as to what mobilised the offender to commit an offence and that apart, when the evidences are direct, existence of motive was not of much significance and it was a matter of academic interest only.

13. Suggestion was given to the witnesses by the appellants about there being some sort of enmity with them, as it was suggested that the house of Satya Narain Bind situates at a distance of 10 paces from the house of the deceased and there was a dispute between them with regard to passage of water through drainage. Similarly, it was suggested to the witnesses that there was a dispute of the appellants with the deceased with regard to irrigation of land, but barring bald suggestions made to the witnesses, which was strongly refuted by them, neither any evidence was laid on behalf of the appellants to fortify their defence nor any document was ever placed on the record to suggest any sort of enmity with them. The evidence of Mosst. Jonihia Devi and also that of the Investigating Officer would suggest that while some of the appellants did hail from village Naudiha, others hail from the adjoining village and while Sukhari Ahir and Kesho Ahir were father and sons, Kedar Bind and Harihar Bind were own brothers who hail from village Ramnagar which was an adjoining village. The possibility of acquaintance of those persons, who come from the adjoining village, does not appear to be remote. This fact cannot be lost sight of that the incident happened in the mid night of 2nd and 3rd March, 1984. Police Station lies at a distance of 16 Kms from village Naudiha. The police Officer stated that shortly on receipt of the information

of the incident, he rushed to the place of occurrence when fardbeyan of Mosst. Jonihia Devi was recorded at about 8.30 a.m. on 3rd March, 1984. Since the prosecution was launched shortly after the incident with all promptitude, in this backdrop, false implication of the appellants was completely ruled out, there being no occasion for any embellishment or improvement about the incident. There was no time to implicate those who were not the offenders. Positive finding recorded by the doctor was also in conformity with the mode of killing of Lal Babu who dropped dead shortly on receipt of gun shot injuries. The State has led good and positive evidence and the witnesses deserved all credence and we find that neither factum of dacoity nor question of death of Lal Babu can be seriously assailed. We accordingly find that the State has established the charges against the appellants beyond all shadow of reasonable doubts.

14. Having given our anxious and deepest consideration to the facts and circumstances of the case and also evidences placed on record, we have noticed that the finding recorded by the Court below was based on good and positive evidence which did not require interference. Both the appeals being meritless are accordingly dismissed and are being disposed of by this common order. Since the appellants are on bail, their bail bonds are cancelled and the trial Court is directed to take all coercive steps for their apprehension to consign them to custody to serve out the sentence.

P.K. Sinha.J.

I, agree

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