

Sadanand Singh and ors. Vs. State of Bihar

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Court : Patna

Decided On : Mar-02-1995

Judge : Surinder Sarup, J.

Appeal No. : Civil Appeal No. 69 of 1994 (R)

Appellant : Sadanand Singh and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

Surinder Sarup, J.

1. This appeal is against the judgment of the court of Sri S.N. Mandal, Assistant Sessions Judge, Koderma, dated 5th March, 1994, whereby the appellants, namely, Sadanand Singh, Kameshwar Singh, Dashrath Singh, Mahadeo Singh, Raj Kishore Singh and Kishun Yadav have been convicted under Section 395, IPC. Appellant Dashrath Singh has further been convicted under Section 412, IPC. They have been sentenced to undergo rigorous imprisonment for 10 years each and to pay a fine of Rs. 100 each and in default to undergo R.I. for one month under Section 395, IPC. However, no separate sentence has been awarded against appellant Dashrath Singh, under Section 412, IPC.

2. The prosecution case against the appellants is that at about 11.30 p.m. on 24th November, 1992, while the informant Jagdish Yadav was sleeping in his house along with his family members, 3-4 dacoits armed with pistol entered inside the house by scaling the tiled roof and threatened the informant to open the door at the point of pistol. Out of fear, the informant opened the door of the house and the dacoits looted woolen shawl, torch, clothes, ornament and cash belonging to the inmates of the house. Thereafter they looted the house of Mahendra Yadav, brother of the informant, taking away certain articles. Next they entered the house of Babulal Yadav, neighbour of the informant, from there also they looted certain articles.

3. During the course of investigation the raised the house of various accused persons on suspicion and recovered some articles. The same were put on T.I. parade and were identified by the victim. After completion of other necessary formalities, the accused were put on trial.

4. Various witnesses were examined at the trial, which ultimately ended in conviction of the appellants.

5. A perusal of the judgment of the trial court indicate that it has gone out of its way in praising the I.O. in the judgment. He has gone to the extent of mentioning in the last paragraph that a copy thereof should be sent to him as well as to the controlling officer to make entry in his service book. This goes to show that the learned trial court has not considered the case with open mind.

6. Apart from the above, the prosecution case suffers from various illegality. It has been submitted by the learned Counsel for the appellants that the recoveries effected are of common articles available in every house; for example, Dhoti, and Nylon bag. In (he FIR it is stated that woolen shawl and Everyday Torch were looted from the house of the informant, Jagdish Yadav, but in the T.I. parade, vide Ext. 4, the informant has identified a bag and a Sari. In other words, he identified the articles which were not allegedly looted away from his house. Similarly, two Saris and certain articles are stated to have been taken away from the house of Ram Kishun and from the house of Babu Lai, ornaments, clothes and cash were taken away, but in the T.I. parade, vide Ext. 4, Babulal Yadav has identified two

Dhotis only. Therefore, persons from whose houses specific articles were looted, have not identified the recovered articles.

7. It has then been submitted that there is delay of five days in recovery of the articles from the date of occurrence. In this connection, he has relied upon the case of Babulal v. The State of Bihar, reported in 1990 (1) BLJ 440. In that case, recovery was made one day after the alleged Dacoity took place. It was held therein that the recovery was made after much delay. Therefore, in the facts and circumstances of the present case, delay of five days in the recovery vitiates the prosecution case.

8. It is clear from the record as well as Paragraphs 12 of the impugned judgment that some identified witnesses were available to the prosecution, being the witnesses of the seizure list, which was prepared just after the recovery of the looted articles, but they have not been examined. The main witnesses, who have been examined, namely, Jagdish Yadav, Ram Kishun and Babulal, all PWs are related to each other. learned Counsel for the appellants has relied upon the case of Mega Ram Rajak and Ors. v. The State of Bihar, reported in 1985 East CrC 445 (Pat), in which it has been laid down that when independent witnesses were available, the prosecution ought to have examined them or atleast some of them. This is yet another infirmity in the prosecution case.

9. In the present case, the I.O. did not record the statement of the informant, Jagdish Yadav under Section 161, Cr.P.C. during the investigation. He examined him after the T.I. parade. Therefore, the statement made by this witness in the court is of no consequence, as has been laid down in Mega Ram Rajak's case (supra).

10. The T.I. parade is also defective inasmuch as in column No. 7 of Ext. 2/2, the description of the dacoits has to be mentioned but the said column has been left blank. Even in their testimony in court, none of the witnesses have stated as to the identification of the dacoits by amplifying as to what part was played by which dacoit at the time of commission of the dacoity.

11. One of the witnesses, PW 5, Mahendra Yadav, on the question being put to him by the court at the time of his deposition has stated that the accused persons were identified in the torch light, but that torch has not been produced in the court. In this connection, learned Counsel for the appellants has cited the case of-Arjun Mandal v. The State of Bihar, reported in 1985 BLJ 301, where the source of identification was a lantern and the same was not produced in the court. In that case, benefit of doubt was given to the accused.

12. In his statement, PW 4 has stated that some of the dacoits had muffled faces, but in the T.I. parade the suspects were not paraded before the PWs with muffled faces.

13. To sum up, the prosecution case bristles with seriousness and is full of infirmities. Therefore, no conviction can be based on the same; rather the appellants were entitled to the benefit of doubt in the circumstances of the case.

14. For the reasons recorded above, this appeal is allowed. The order of conviction and sentence passed against them is set aside and they are acquitted of the charges. Since the appellants are in jail, they are directed to be released forthwith, if not wanted in any other case.

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