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Court : Patna

Decided On : Oct-13-1999

Judge : D.N. Prasad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; Probation Offenders Act; Indian Penal Code (IPC), 1860 - Sections 391, 395 and 412

Appeal No. : Criminal Appeal Nos. 39, 40, 49 and 55 of 1997 (R)

Appellant : Raja Singh and ors.

Respondent : State of Bihar

Advocate for Def. : N.N. Mahto, A.P.P.

Advocate for Pet/Ap. : S.L. Agrawal, D.K. Prasad, P.P.N. Roy, S. Sinha, S.N. Rai and Praveen Shankar Dayal, Advs.

Disposition : Appeal dismissed

Judgement :

D.N. Prasad, J.

1. All these four appeals were heard together and are being disposed of by this common judgment as they have arisen out of the same judgment of conviction and sentence dated 13-2-1997 passed in S.T. No. 319 of 1996, whereby the learned

Sessions Judge convicted the appellants under Section 395/412, I.P.C. and sentenced them to undergo rigorous imprisonment of 10 years each under Section 395, I.P.C, whereas no separate sentence was passed for the offence under Section 412, I.P.C.

2. The case of the prosecution runs as follows: One Smt. Dhrupa Ranpara gave Fardbayan before the police alleging therein that on 11-3-1996 at about 7.30 p.m. one of the miscreants pressed the Call bell and when the informant opened the door the miscreants entered into the Flat and bolted the door from inside. Thereafter, one of the miscreants put Katari on her body and increased the volume of T.V. Set also threatened her of dire consequences. It is further alleged that the miscreants started looting gold and silver ornaments after opening the Almirah and after committing dacoity the miscreants fled away. Thereafter the informant telephoned her husband and also to the police station about the occurrence. Her husband rushed there by car and proceeded for search of the miscreants along with the informant and in the meantime the police party also arrived there. With the help of police party and passers-by they managed to apprehend the miscreants with the looted property. Looted property were recovered and seized from the possession of the mis creants/dacoits. The informant also identified the appellant/accused persons. The articles were also identified by the informant. Accordingly, the seizure list was prepared at the spot in presence of other witnesses. The Fardbayan of the informant was recorded, on the basis of which the F.I.R. was lodged against all the accused persons including the appellants.

3. The police investigated into the case and submitted charge sheet against the accused persons/appellants. The appellants appeared before the trial Court. Charge under Section 395/412, I.P.C. was framed, to which they pleaded not guilty. The witnesses were examined in the lower Court. After considering the evidence on record, the trial Court convicted the appellants for the offences under Section 395/412, I.P.C. and they were sentenced to undergo R.I. in the manner as stated above.

4. After being dissatisfied with the judgment impugned, the appellants preferred the appeals claiming therein that they have been falsely implicated in the case and

they have been apprehended from their houses. It is also claimed that the learned Court below has committed error in convicting the appellants.

5. The learned counsel appearing for the appellants submitted that the appellants have been falsely implicated in this case out of previous enmity and actually they have been apprehended from their houses. It is also submitted that the appellant Shankar Poddar is juvenile and this fact has not been considered by the lower Court as his case should have been tried by the Juvenile Court. It is also submitted that the appellants have not been given proper opportunity to explain the circumstances as no proper question was put during the statement recorded under Section 313, Cr.P.C. and due to which the appellants have been seriously prejudiced.It is also submitted that there is vital contradiction in the evidence of the witnesses and the watchman Santosh Tiwary who accompanied the miscreants at the relevant time has not been examined by the prosecution due to which the whole prosecution case becomes very suspicious. It is also submitted that two other miscreants said to be standing outside the house with the Watchman and as such the offence under Section 395, I.P.C. is not made out as well as the detailed Fardbayan has been recorded which is not possible and it is tutored and afterthought story and, therefore, the impugned judgment is fit to be set aside.

6. The learned counsel appearing for the prosecution contended before me that there is no illegality in the impugned judgment to be interfered with as all the accused persons including the appellants were apprehended then and there after chase and they were apprehended along with the articles looted away from the house. It is also submitted that the evidence of witnesses are very much consistent and as such the appeal have got no merit which are fit to be dismissed.

7. Before appreciating the contentions of the learned counsel of both sides, it is pertinent to analyse the evidence on record. It is evident from the record that all the appellants were apprehended after chase along with the alleged articles, which is established from the seizure list, Ext. 1 series which were prepared on the same day at 8.40 p.m. onwards. The appellants were apprehended at the place of Maila Tanki. The seizure list witness, P.W.-2 who also accompanied with the husband of the informant in the said car and he claimed to have identified all the appellants in

the light of the said car when they were fleeing away towards Maila-tanki and all of them were apprehended as the police party also reached there. According to him, the miscreants/ appellants were apprehended at the spot with the help of passers-by and police party. He further deposed that the looted articles were recovered and seized from all the accused persons including the appellants in his presence and accordingly the seizure list was prepared as Ext. I series. He stated in his cross-examination that he came to know from Mukesh about the occurrence and there is a distance of about one kilometer from Complex to Maila-tanki, the place of occurrence. Other seizure list witness, PW-5 have been tendered by the prosecution. It appears from the seizure list, Ext. I/a that a Katar was recovered and seized from the possession of accused Raja Singh. There is a specific allegation in the Fardbayan that one of the miscreants put Katar on the body of the Informant and threatened her to be killed and not to raise Halla. The Informant gave out in her Fardbayan that she along with her child and maid servant were only present in the house at the relevant time.

8. PW-1, the informant stated that one of the miscreants pushed Call bell and she found the watchman Santosh Tiwary standing with three other boys and on seeing watchman she opened the door and thereafter the watchman returned to his duty and thereafter three miscreants stated that one Doman Manjhi sent them as there is a need of servant, but in the meantime all of them entered into the house and bolted the door from inside. She further stated that the miscreants demanded a sum of Rs. 5 lakhs cash and put the Katari on her neck and also threatened to be killed, if raised Halla as well as the volume of the T.V. was increased and thereafter they started looting away the articles including ornaments, cash etc. They also threatened to kill her child. The miscreants after looting the articles fled away and thereafter she raised Halla as 'Chor-Chor'. She also claimed to have identified two miscreants who were catching the watchman at the relevant time and they were Diwakar Karmkar, who is the son of servant of her shop and other was Rajesh Agrawal, who was the son of Pakauriwala, whose shop is situated in front of her shop. Thereafter she telephoned to the Bistupur Police Station and also to her husband at the shop. Her husband along with others came on car and thereafter they also started searching the miscreants and they came to know at the relevant time that the miscreants were fleeing away towards Maila-tanki and

thereafter all the miscreants including the appellants were apprehended at the spot. According to her, the articles looted were also recovered and seized from their possession of which the seizure list was prepared and the miscreants also put their signature on the seizure list and thereafter she gave her Fardbayan there also. She also stated in her cross-examination that her husband reached by car just after 5-7 minutes of phone. She also claimed that she had named those two miscreants at the time of recording Fardbayan. She emphatically stated that all the articles were recovered from the exclusive possession of the miscreants as the search was made at the place of occurrence and the miscreants were apprehended at the Maila-tanki and were brought to the side of the road.

9. PW-3, Mukesh Ranpara, who is the husband of the Informant stated that he came to know about the commission of dacoity from his wife on phone and thereafter he along with Ashok Burman and Rasmil Kumar Ranpara, PW-5 and PW-2 proceeded on car towards his house and they reached to the gate from where his wife and maid servant also accompanied them and they started searching the dacoits. He further stated that on enquiry they came to know that the dacoits were fleeing away towards Maila-tanki and in the meantime, the police party also came there and after chase the miscreants were apprehended. Then search was made by the police and looted articles were recovered and seized from their possession. Accordingly, the seizure list was prepared. According to him, all the articles looted away were produced in the Court in course of trial and all the articles were marked as material Ext. I to XXXVIII and those articles were identified in course oftrial. He stated in his cross-examination that he was informed about the dacoity on phone by his wife and they started chasing the miscreants. He was also present at the time of recording of the Fardbayan which was recorded at the place of occurrence. It is true that he admitted that he does not remember as to what articles were recovered or seized from each of the five miscreants at the relevant time.

10. PW-4, Asha Chopra, the maid servant who was present in the house at the relevant time deposed that she was busy in the domestic work when the miscreants pushed the Call bell and her Malkin, PW-1, opened the door and thereafter three miscreants who came with the Bahadur entered into the room and

her Malkin tried to phone but the wire of the said phone was disconnected by the miscreants and thereafter one of the miscreants put Katari on the body of her Malkin and they demanded a sum of Rs. 5 lakhs and they had also threatened to be killed. She further stated that they started looting away the articles, ornaments, money etc. from the Almirah and after committing dacoity they fled away. She further deposed that she had also reached to the spot along with her Malkin when the miscreants were chased towards Maila-tanki and they were caught red handed with the looted articles. According to her, the police party also came there and search was made in her presence. She identified all the dacoits along with the two others who were standing outside the house near the gate. She categorically stated in her cross-examination that the dacoits were threatening to kill and out of fear they could not came out of the house and they took away the articles from one Almirah. She further deposed that the phone was made from the nearby house. She claimed to have accompanied her Malkin at the time of chase of the miscreants. According to her, the Bahadur (night guard) was also present at the time of chase.

11. PW-6, Abu Zafar Kamal, the Investigating Officer stated that he got a telephonic information about the occurrence and the miscreants were fleeing away to which he recorded the Sanha and he along with other police party proceeded to chase the miscreants and after some chase miscreants were caught red handed near the Maila-tanki. Accordingly, search was made and the looted articles were recovered and seized in presence of the independent witnesses. According to him, the Mobile force also reached to the place of occurrence at the relevant time. Accordingly, the seizure list was prepared, Ext. 1 series. Thereafter, he recorded the Fardbayan of the Informant and accordingly F.I.R. was lodged on the basis of the Fardbayan, Ext. 3. He also inspected the place of occurrence and recorded evidence of witnesses and thereafter submitted the charge-sheet, against all the accused persons including the appellants. He stated in his cross-examination that the seizure list was prepared at the place of occurrence as there was an electric light in the side of the road. He further deposed in his cross-examination that the said looted articles were also brought to the Thana but the said articles were returned to the Informant on the direction of the Court. It has already been discussed that the said articles were produced before the Court in course of trial

and all the articles were identified by PW-3. According to him, the said Katar was recovered and seized from the possession of the appellant, Raja Singh. He identified the said Katar in the Court as indicated in para-21 of his evidence. He also proved the S.D. Entry dated 11-3-1996 (Ext. 5), as it is mentioned that the police party proceeded for chasing the miscreants on the information received after recording the said S. D. Entry.

12. No other witness has been examined from the side of the prosecution and the accused persons including the appellants were examined under Section 313, Cr.P.C. and they have denied the allegations.

13. There is a definite and specific prosecution case that the accused persons including the appellants committed dacoity in the house of the Informant, PW-1 and they fled away after looting the articles and they were apprehended red handed with the said articles near Maila-tanki. PW-1 and PW-4 are the eye-witnesses of the occurrence and both ladies, who were present in their house at the relevant time, are very consistent and definite in disclosing about the prosecution case. The Katar, which was used for threatening the Informant at the time of commission of dacoity, was also seized and recovered from the possession of one of the appellants, namely, Raja Singh and this fact has duly been supported by the I.O., PW-6, who identified the said Katar in the Court as well. The seizure list, Ext. I series go to prove that all the looted articles were recovered and seized from the possession of the appellants in presence of the witnesses. PW-2 is one of the seizure list witnesses who is also consistent in his evidence as what articles were recovered and seized in his presence from the possession of the appellants. Other seizure list witness, PW-5 was tendered by the prosecution, but nothing could have been elicited from this witness from the side of the defence. The stolen articles were also produced in the Court during trial and all the articles were identified by the husband of the Informant, PW-3 in Court and they were marked material Exhibit.

14. The learned counsel appearing on behalf of the appellants, Diwakar Karmkar and Rajesh Kumar Agrawal, submitted that they have been falsely implicated in this case they had not participated in the dacoity, rather they were found to be

present outside the house near the gate and so offence under Section 395, I.P.C. is not made out against these two appellants. But, it is apparent that all the accused persons, five in numbers, came to the house of Informant and they took the help of Chowkidar but three of the dacoits entered into the room and two of them remained near the gate catching the Chowkidar. In this way, apparently all the accused/appellants had come to the place of occurrence for committing dacoity in the house of the Informant.

15. Section 391 of the Indian Penal Code enunciates that 'when five or more persons conjointly committing or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit dacoity'. Thus, the said two appellants, Diwakar Karmkar and Rajesh Kumar Agrawal had come along with other three miscreants jointly with a purpose to commit dacoity in the house of the Informant at the relevant time and at best they can be said to be for watching outsiders by standing near the gate and also keeping watch over the Chowkidar from outside to facilitate in committing the dacoity by his companions who had entered into the house.

16. The accused and his companions numbering five or more attempting to commit robbery at a house but on a hue and cry being raised took to their heels without committing robbery, it has been held that the offence of dacoity was completed, the moment they took to their heels without any booty. The word 'conjointly' is the most important word appearing on the liability of person against an offence of dacoity. No cogent evidence, either oral or documentary adduced from the side of the defence to show about the enmity with the witnesses. Thus, the submission of the learned counsel has got no substance and it is not sustainable.

17. It is further submitted on behalf of the appellants that the witnesses are interested witnesses and they cannot be relied upon. But, I have already discussed above that PW-1 and PW-4 are the eye witnesses and both the ladies are said to be the natural and competent witnesses at the time of occurrence. It is

settled that related is not equivalent to interested. A witness may be called interested only when he or she derives some benefit from result of litigation, but a witness who is natural one and is the only possible eye-witness in the circumstances of the case, cannot be said to be interested.

18. In the instant case, PW-4 is the maid servant, who can be said to be the natural witness at the time of occurrence. PW-1 is the Malkin herself who was present at her house along with her children. The miscreants/appellants were caught red handed along with the looted articles just after the commission of dacoity. In.this way, their evidence can be said to be trustworthy and believable in such type of case. Their evidence have fully been corroborated as well by the apprehension of the appellants and recovery of the looted articles from them.

19. Thus, it is evident that both the appellants, who were standing outside the house near the gate, had also participated and not only participated in the dacoity, they had also fled away along with other three miscreants in the same way after commission of the dacoity and, therefore, the submission of the learned counsel on this score has got no substance and is liable to be rejected.

20. The learned counsel further contended before me that the appellant Shankar Poddar was juvenile at the time of occurrence as he was below 16 years of age. It is also submitted that the report of the Medical Board also indicate that he was minor at the time of commission of the dacoity and so he is liable to be given benefit of the provision of Probation Offenders Act.

21. The occurrence said to have taken place on 11th March, 1996. The appellant, Shankar Poddar was examined by the Medical Board as per order of the learned Chief Judicial Magistrate, Jamshedpur. As per report dated 17-4-1996 the age of the appellant, Shankar Poddar was found above 18 years on the basis of Clinical and Radiological findings as expressed by the members of the Board. Medical Board was also constituted at Ranchi as per order of this Court dated 30-9-1997 and submitted the report dated 16-2-1999 from which it appears that the appellant Shankar Poddar was found above 16 years and below 18 years i.e. about 17 years. The age of the appellant Shankar Poddar was assessed by the trial Court at the time of trial as being 20 years as indicated in the impugned judgment. All the

appellants, including this appellant, Shankar Poddar were remanded by the lower Court when they were produced at the earliest opportunity of time i.e. on 13-3-1996 and thisannellant Shankar Poddar was assessed to be aged about 19 years at the time of remand.

22. Thus, it is quite clear from the Medical Board which was constituted at the earliest stage of time that his age was found above 18 years as back as on 17-4-1996. Physical appearance was also assessed by the Court below and from which it appears that the appellant, Shankar Poddar is above 16 years. The report dated 16-2-1999 is apparently a belated report which cannot be the basis to hold that this appellant Shankar Poddar was juvenile at the time of occurrence, rather it is apparent from the record and the evidence that this appellant Shankar Poddar was major at the time of commission of dacoity. Thus, I do not find any substance in the contention of the learned counsel on this score as well.

23. It is further submitted that the members of the Mobile Force as well as the Chowkidar have not been examined by the prosecution which makes the whole prosecution case suspicious and doubtful. It is true that the Chowkidar and the members of the Mobile force have not been examined by the prosecution, but all the witnesses including the eye-witnesses who are ladies are very consistent and accurate in their evidence about the commission of dacoity in the manner as alleged as well as all the accused persons including the appellants have been apprehended then and thereon chase along with the looted articles. In the above circumstances, non examination of those witnesses will not demolish the whole prosecution case as alleged.

24. It is also pointed out on behalf of the appellant that a detailed and lengthy Fardbayan has been recorded in the instant case which is not natural and the prosecution case become suspicious as no such lengthy and detailed Fardbayan can be recorded by the Informant, rather the said Fardbayan is tutored Fardbayan and it is reproduced by the police official itself. The Informant is admittedly a literate woman and she claimed to have chased the miscreants along with her husband and others when the police officials were also informed on phone and the miscreants were arrested along with the looted articles. The occurrence of dacoity

took place in her presence and she was quite aware about the whole episode in detail and as such she has given a detailed description in the Fardbayan at the same time, which cannot be doubted and the said Fardbayan will not make the prosecution case suspicious or doubtful and thus the contention of the learned counsel has got no force on this score and is not sustainable.

25. In view of the above facts and circumstances coupled with the discussions made above, it is evident and established that the prosecution has established the charges against all the appellants beyond all reasonable doubts.

26. Thus, I find that the learned trial Court has rightly convicted and sentenced the appellants for the offence charged. In the result, I do not find any, merit in the appeals and all the four appeals are accordingly dismissed. The judgment of conviction and order of sentence is hereby affirmed.

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