

Pramod Kumar Verma Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-01-2015

Appellant : Pramod Kumar Verma

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal No. 627 of 2002 Against the judgment and order of conviction dated 24.09.2002 and sentence dated 25.09.2002 respectively passed by Sri.Arun Kumar Roy Additional Sessions Judge Dhanbad in Session Trial No. 304 of 1998. ----- Pramod Kumar Verma S/O Krishna Prasad Verma resident of Jeetpur,P.S Jsors Pokhar Dist.Dhanbad. Appellant Versus The State of Jharkhand Respondent For the Appellant :- Mr. B.K.Jha Advocate For the State :- Mr. Rakesh Kumar A.P.P PRESENT HON'BLE MR. JUSTICE Ratnaker Bhengra C.A.V On 03.07.2015 Delivered on 1-10-2015 Ratnaker Bhengra,J.

This Criminal appeal is directed against the judgment of conviction dated 24.9.2002 and order of sentence dated 25.9.2002 in S.T. No. 304 of 1998 passed by the learned Additional Sessions Judge, Dhanbad whereby the above named appellant has been found guilty and convicted under section 395 of the Indian Penal Code, though he is acquitted under section 412 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for five years .

2. The prosecution case in brief is, as per Fardbayan lodged by one Balram Mahto before Jora Pokhar Police Station, who is the informant in this case, recorded

under sections 392 of the of the Indian Penal Code by the Officer In-charge of Jorapokhar P.S.Case No. 219 of 1997 dated 02.12.1997 that on 02.12.1997 the informant along with his Bhabhi and niece were going in a scooter towards the house of his Mama and when they reached near Jeetpur ground, the informant saw through head light of the scooter four persons standing there and they stopped the scooter forcibly and demanded money and materials and when the informant denied to give the same, they threatened to kill the informant by showing the knife. It is further alleged in the 2 fardbeyan that some unknown persons have tried to kill them and out of fear the informant had handed over one H.M.T watch, one sweater and Rs. 60/- to them and thereafter they snatched one golden ear ring and silver chain from the Bhabhi of the informant and thereafter the miscreants fled away snatching the scooter of the informant and thereafter the informant went to the house without any hulla. It is further alleged that the informant claimed that when he saw the miscreants, he was able to identify the miscreants and on the basis of the fardbeyan, FIR was registered being Jora Pokhar P.S Case No. 219 of 1997 and police took up investigation of this case.

3. The prosecution has examined altogether 12 witnesses i.e. P.W1 Akshaywar Singh, P.W2 Bindeshwar Mahto, P.W3Mahabir Mahto, P.W4 Chinta Devi,P.W5Balram Mahta(Informant) P.W6Bashistha Pandey, P.W7Md. Kinder, P.W8Akbar Ali, P.W9Doman Ram, P.W10Rameshwar Mandal, P.W11Amril Lal Yadav, P.W12Rajendra Pratap Singh.

4. From the side of the prosecution P.W1Akshayar Singh has given evidence that at the time of incident he was going to market and he saw that 2 to 4 persons were roaming about. He has further said that he had participated in the T.I.Parade in Dhanbad Jail and that he had recognized two of the accused persons namely Munna Rawani and Numan Mian who had surrounded the scooter.This witness has not recognized the accused in the court (Dock of the court). The prosecution has declared P.W1as hostile. In his cross examination he has said about the accused in court that he does not recognize them by face.

5. P.W.2 Bindeshwar Mahto is the witness to the seizure of the scooter.He has said that on the evening of 02.12.1997 he was on duty. When he was returning

from there and when reached near the house of Rajendra Singh on Jeetpur Road, then Sakeldeo Ram Daroga stopped Mahavir Mahato and him and asked them to identify one scooter. He said that the police had seized one Priya Scooter bearing number as BIR5388 It was parked on the road. This witness did not tell that from where the said scooter was 3 seized. He has given his signature on the seizure list and said that the Darogaji had seized the scooter in his presence.

6. P.W.4 is Chinta Devi. She has supported the prosecution case and given evidence that the accused had looted their belongings money and scooter. She has also informed that she had identified the stolen jewelery in the police station. This witness has given a long deposition, but said nothing in her deposition that cannot be believed.

7. P.W.5 Balram Mahto is the informant. He has informed about four accused persons and that they had stopped his scooter and looted his belonging, watch, money, sweater and scooter. He has also giving witness that the accused had taken his Bhabhi's ear ring and Rs.100/- from her. That later on in the T.I Parade, he had recognized his looted belonging.He has also informed about taking part in the test indentification parade in the Jail and that he was able to recognize one of the accused persons,Pramod Kumar Verma there. This witness has not recognized any accused persons in the court. This witness has also given a long cross examination deposition,but has said nothing that is doubtful and unbelievable.

8. P.Ws 6,7 and 8 are the witnesses of the seizure list and they have been declared hostile by the prosecution.

9. P.W9 Doman Ram has given evidence that on 6.12.1997 the Thana Prabhari had come and shown him the things. He has signed on the seizure list. He has given evidence that from the house of Promod Verma one watch, one old seater and one knife was seized, the paper of which was prepared by Darogaji and he had signed on it. He has said that the seizure list was made in front of his house and he has signed on it.

10. P.W.11 Amrit Lal Yadav and P.W. 12 Rajendra Pratap Singh are Judicial Magistrate who conducted the Test Identification Parade of the accused on the order of the Chief Judicial Magistrate. That they had presented the accused in the Parade P.W.11 has said that he had conducted the test identification parade of Pramod Kumar Verma and that Balram Mahto had recognized him P.W.12 has said that Akshaywar Singh had 4 identified Md. Loman and Munna Rawani. Both P.W11 and P.W12 have given their deposition but have said nothing that is doubtful and unbelievable.

11. Counsel for the appellant has advanced the following points:- (a) That the fardbeyan or FIR was against unknown person, since they are no named accused, the accusation against the present appellant is conjecture. (b) Counsel for the appellant has further submitted that none of the witnesses have said that Pramod Verma had a specific or particular role, therefore, he cannot be a suspect. (c) That moreover, as submitted by the learned counsel for the appellant, all the witnesses have turned hostile, even the informant himself and his Bhabhi(sister-in-law), who are said to be the witnesses, hence no case can be made out. (d) That he was identified by one Balaram Mahto, P.W.5 in the presence of P.W.11 Amrit LalYadav. However, in court P.W5 has failed to recognize Promod Verma, the accused, hence he has not conclusively been identified by any one.

12. The learned counsel for the appellant has said that even the seizure list witness for Exhibit 2/5, Doman Ram has said that for the items of HMT Watch, full sweater and one Nepali Khukri, it was not read over to him, as to what was written. Hence he had signed on it, he did not know what was written and hence this witness is unreliable and he cannot be used to convict Promod Kumar Verma.

13. The learned counsel for the State has argued for sustaining the conviction by asserting the evidence of P.W.1 Akshaywar Singh, P.W.4 Chinta Devi and P.W5 Balaram Mahto, even though it is asserted by the counsel for the appellant that all the witnesses have turned hostile. Learned A.P.P even says that identification was made by T.I Parade and the TIPs were not delayed and hence believable.

14. I think that in the light of the arguments of the counsels, it would be pertinent to look at the role of the witnesses and the test identification parades. 5 15.

Regarding P.W.1, Akshaywar Singh, he had identified two other accused persons and not the present appellant during the TIP but failed to recognize the two accused persons again in court though they were present there. However, he had briefly described how he was present when the incident took place, though he quickly fled away. So the occurrence of the crime is not denied and since the TIP had taken place soon thereafter, his recognition of the two other accused persons would still be of much value.

16. Regarding P.W.4 Chinta Devi, as per her deposition, she had identified the stolen Jewellery at the police station. This would also indicate the occurrence of the crime and corroboration of the fardeban.

17. Regarding P.W.5, Balaram Mahto, the informant, he corroborates his complaint when he says that he recognized his looted watch, sweater and scooter at the TIP. Thus again no doubt that the crime took place. P.W.5 however, fails to recognize anyone in the dock of the court, when he had in fact recognized the present appellant Pramod Verma in the TIP held soon after the crime was committed. It is pertinent, however, to note that the TIP was conducted by PW11, Amrit Lal Yadav, Judicial Magistrate 1st Class, Dhanbad, so it would have much credibility. 18. Regarding P.W.9, Doman Ram, he in his deposition stated that his signature is on the seizure list, exhibit no. 2/5, in which the HMT watch, full sweater and Nepali Khukri or dagger is mentioned. In his deposition he further stated that one watch and one knife were recovered from the house of Pramod Kumar Verma and also adds that the seizure list was made in front of his house which is the distance of 15-20 feet away from the house of the present appellant, Pramod Kumar Verma. However, he stated that when the seizure was made the contents of the list were not read over to him. It must, however, be noted that Doman Ram has signed his name in English in both the seizure list as well as his deposition, so he could have read the documents. 6 19. Regarding P.W.11 Amrit Lal Yadav, Judicial Magistrate 1st class, Dhanbad, he in his deposition has said that Balram Mahto P.W.5 had recognized the present appellant Pramod Kumar Verma in the TIP conducted in his presence on 12.01.1998 that is soon after the incidence of crime.

20. If one is to take into account the aforesaid deposition it is apparent that the crime did take place and that even recovery of items were made. However, crucial witnesses have failed to recognize the appellant in court and have even been declared hostile. P.W.5 had identified the appellant in the TIP, but failed to recognize him in the dock and has been declared hostile. His recognition in the TIP cannot totally be discounted because it was not delayed and moreover, P.W.11, the Judicial Magistrate has said that he had recognized the appellant. His failure to do so in the court can be attributed towards the passage of time, when he then made his deposition.

21. In the case of Ram Babu Versus State of Uttar Pradesh reported in (2010)5 SCC 63 the Apex court observed in paragraph-14 :- As per section 9 of the Evidence Act, facts which establish the identity of an accused are relevant. Identification Parade belongs to investigation stage and if adequate precautions are ensured, the evidence with regard to the test identification parade may be used by the court for the purpose of corroboration. The purpose of test identification parade is to test and strengthen trustworthiness of the substantive evidence of a witness in court. It is for this reason that test identification parade is held under the supervision of a Magistrate to eliminate any suspicion or unfairness and to reduce the chances of testimonial error as the Magistrate is expected to take all possible precautions.

22. Hence in this case P.W.5 also recognized the appellant in the TIP conducted in presence of a Judicial Magistrate. His failure to recognize in court could be related to the passage of time. Then the court has the crucial deposition of Doman Ram. It is seen that Doman Ram has signed both the Exhibit 2/5 and his deposition in English as Doman Ram. Hence probably he is not illiterate. He says that the exhibit or the contents of the exhibit were not read over to him aloud. This does not indicate, he cannot read and he has signed both the documents. Moreover, the assertions of putting his signature to the seizure list, exhibit 2/5 and assertion of recovery of certain items from the house of Pramod Kumar Verma, all taken together seem to implicate the appellant. However, taking into account another case of Section 395 IPC in Ram Sunder Mahto and others Vs. State of Bihar reported in (2009)16 SCC 191 the factors mentioned therein is taken into

consideration while sentencing.

23. Therefore, considering the records of the case, the arguments of the counsels and the facts and circumstances, I find and hold that the appellant is found guilty of the offence under section 395 IPC. However the appellant was a young man aged about 23 years at the time of the crime, that he has already spent more than three years in judicial custody, that he had not harmed any one, nor very substantial items were looted and that he has already undergone the rigour of trial since 1997- 1998. Hence bearing these aforesaid trying circumstances and facts in mind, his sentence is modified to a period of six months of the remaining period. Therefore, he is sentenced to six months imprisonment. As the appellant is on bail as per order dated 10.12.2002 passed by this Hon'ble Court, he is directed to surrender in the concerned court below within two weeks of this order, failing which the said court will begin due process for his arrest. Accordingly, this appeal is dismissed with the modification as indicated above. (Ratnaker Bhengra, J)
Jharkhand High Court, Ranchi Dated 1-10-2015/SD(AFR)

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