

Barka Rajwar and ors. Vs. the State

Barka Rajwar and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/880940

Court : Kolkata

Decided On : Jul-07-1983

Reported in : 1983CriLJ1851

Judge : B.C. Chakrabarti and ; Jitendra Nath Chaudhuri, JJ.

Appellant : Barka Rajwar and ors.

Respondent : The State

Judgement :

B.C. Chakrabarti, J.

1. This re-visional application is directed against an appellate order affirming an order of conviction of the petitioners on a charge under Section 395 of the Indian Penal Code and sentencing them to suffer R. I. for six years.
2. On the information given by the informant P. W. 1 Ranjit Kumar Chatterjee that a dacoity was committed in his quarters on 29-12-1978 at night a case being Purulia P. S. Case No. 16 of the same date was started.
3. The informant Ranjit Kumar Chatterjee is the head-master of a school at Hutumura within Purulia P. S. He was allotted, a quarter for his residence adjacent to the school. At the time of the occurrence some relatives of the informant having come to visit the place with a view to stay with him the informant slept in a room of

the school with his wife while the visitors were sleeping in the quarter. At about midnight he woke up on hearing an alarm raised by the inmates and came out of his room with a torchlight to the verandah of his quarters. There he found a number of miscreants. of whom he recognised the 4 petitioners whom he knew from before by name as also by face. He found that various articles from inside the house were looted. A bleeding injury was sustained by one of the inmates, viz., Rupa Mukherjee. The informant thereupon in the company of P. W. 8, the night guard of the school, came to the local post office to send information to Purulia P. S. about the incident. The officer on duty at the Purulia P. S. on receipt of the telephonic message recorded an entry in the general diary book and proceeded to the spot. Thereafter on completion of investigation the police submitted charge-sheet against the petitioners who were eventually committed to the Court of Session for trial. At the trial 10 witnesses were examined for the prosecution. The defence did not adduce any evidence. The defence pleaded that they have been falsely implicated out of political rivalry.

4. The learned Assistant Sessions Judge found upon the evidence that there was in fact a dacoity committed in the quarters of P. W. 1 on the night of 29-12-1978. He also found relying upon the testimony of P. W. 1 principally that the petitioners participated in the act of dacoity. The allegation of false implication out of the political rivalry was disbelieved and there was no evidence adduced that the petitioners did in fact belong to any political party. Relying on the testimony of P. W. 1 the learned Assistant Sessions Judge found the petitioners guilty under Section 395 I.P.C. and sentenced them to suffer R. I. for six years.

5. On an appeal being taken by the petitioners the learned Sessions Judge having agreed with the findings of the trial court dismissed the appeal. Being aggrieved the petitioners have moved the present revisional application,

6. Mr. Basu appearing on behalf of the petitioners contended before us that there was no evidence as to how the headmaster, viz. P. W. 1 could really come over to the verandah of his quarters where he claimed to have seen and identified the petitioners. He then contended that the allegation that Rupa Mukherjee one of the inmates of the house sustained a bleeding injury was not proved by any medical

evidence. He also complained that the evidence of seizure of the articles by the police is of no significance insofar as the articles seized were not labelled at the time of seizure so that they might be connected with the present case. Finally it was contended that the courts below fell into an error in convicting the petitioners relying upon the testimony of P. W. 1 alone and in support of this contention reliance was placed in the case of *Wakil Singh v. State of Bihar* : 1981 CriLJ1014 .

7. To take the last point first it may be pointed out that this decision relied on by the learned Advocate for the petitioners has no bearing to the facts of the case. There the conviction was based upon identification of a lone witness in T. I. Parade. It was observed that in the absence of any description of the miscreants in the oral evidence as to any identification marks e.g., stature of the accused or whether they were fat or thin or of a fair colour or of black colour etc. it will be impossible to convict any accused on the basis of a single identification, in which case the reasonable possibility of mistake in identification cannot be excluded. In the present case before us P. W. 1 did not identify the petitioners in T. I. Parade so that the question of P. W. 1 stating in his evidence as to any description of the accused persons might be relevant. In fact, P. W. 1 knew the petitioners from before being local men and had named them before the police in the telephonic message sent by him from the post office. Therefore it is not a case which can be equated with the facts in the case of *Wakil Singh v. State of Bihar* 1981 Cn LJ 1014 (SC). Here the question is whether the evidence of identification as given by P. W. 1 could or could not be believed. There is no dispute that the petitioners are men of the locality. The petitioners themselves alleged that they had been implicated out of political rivalry. Therefore the fact that they were known to each other is patent on the plea itself. In such a situation the question of describing the petitioners otherwise than by name cannot arise. The courts below have believed the evidence of P. W. 1 and we see no reason to disagree with the finding on that point. P. W. 1 gave out the names of the petitioners at the earliest possible opportunity when he sent message over the telephone from the post office. That he had been to the post office is corroborated by P. Ws. 7 to 9 although they did not oblige the prosecution by corroborating P. W. 1 as to what he stated over the phone. But nonetheless their evidence also corroborates the fact that P. W. 1 immediately after the occurrence sent a message about the occurrence and the G.

D. entry recorded pursuant to that message indicates that these petitioners were named therein. Therefore there was hardly anytime for concoction or embellishment.

8. The plea that there is no medical evidence in support of the allegation that Rupa Mukherjee sustained a bleeding injury is absolutely immaterial. May be that the injury was insignificant and no medical assistance was needed. The question is not whether any of the inmates sustained a bleeding injury, for infliction of an injury is not an essential ingredient of the offence.

9. The fact that there was a dacoity in the house practically goes unchallenged. Both the courts have found that the incident was not disputed at the trial. In fact the suggestion put to the witness also indicates as if the witnesses were giving a distorted version of the incident and not that no incident took place at all.

10. The allegation that P. W. 1 could not have come to the verandah so that he might recognise the petitioners again is not supported by evidence. Mr. Basu contended- that the school building in which P. W. 1 was sleeping on that night and his quarters were separate the connecting door between the two being bolted from the other side. Therefore he contended that it was not possible for P. W. 1 to have come to the verandah. We are unable to agree with this contention because it cannot be that the only access to the verandah from the school is through the quarters of the headmaster. The sketch prepared by the I. O. indicates that it is accessible even independently of the quarters. Therefore the possibility of P. W. 1 coming upon the verandah cannot be ruled out on the mere ground that the school portion and the quarters portion were separated by a door which was bolted from the side of the quarters.

11. The other contention of Mr. Basu is with regard to the question whether the informant had any torchlight with him by means of which he could recognise the miscreants. P. W. 1 has stated in his evidence that on hearing the alarm he came out with a torchlight and by focus of the torchlight he recognised the petitioners. It could not be taken with reference to his statements before the I. O. that in saying so he was making out a case which he had not earlier stated. There is no material contradiction in the evidence of P, W. 1 with the statements made by him earlier

before the police.

12. Mr. Basu also complained of the discrepancy in the evidence regarding the seizures made by the police. The police effected two seizures one at the house of the incident at about 3 a.m. in the night and another by the side of a tank locally known as 'Halud Nadir Bundh' between 06.00 and 07.00 hrs. P. Ws. 5 and 6 are the witnesses to the seizure. It was complained that no labels having been put to the articles seized, nothing turns on the identification of those articles by the witnesses during the trial. Assuming that the labels should have been put on the articles seized we do not think that much depends on that because the prosecution case is not that the articles were seized, from the possession of the petitioners or any of them. The seizure only indicates the fact of dacoity and the fact that these articles were looted from the house of the informant. We have already stated that the fact of dacoity being not in dispute the seizure of the articles and any controversy about the identification of the same loses all importance.

13. Having considered all the aspects of the matter, we do not find any error of law or procedure which might justify our interference in exercise of our revisional jurisdiction. The findings are all of facts and we cannot say that the findings are not supported by legal evidence on record. That being the position the revisional application fails and the Rule is discharged.

14. The petitioners who are on bail do surrender to their bail-bonds forthwith and serve out the sentence.

Jitendra Nath Chaudhuri, J.

15. I agree.