

Siya Ram Rai

Vs

The State of Bihar

Criminal Appeal No. 228 of 1969

(J. M. Shelat, S. N. Dwivedi, Y. V. Chandrachud JJ)

26.09.1972

JUDGMENT

SHELAT, J. –

1. This appeal, by special leave, is directed against the judgment of the High Court of Patna by which the appellant's appeal against the judgment and order of conviction and sentence passed by the District Sessions Judge, Monghyr under Section 395 of the Penal Code was dismissed.
2. On March 31, 1962, at about 1 a.m., certain persons forced their way into the house of Sitaram Singh (P.W. 7) in village Pipraul, about 12 miles away from Teghra Police Station, District Monghyr, assaulted him and his family members with lathis, causing each of them injuries, and took away therefrom cash, ornaments and other properties. Immediately thereafter, Sitaram disclosed the names of five of the miscreants, including that of the appellant to two village chaukidars (P.Ws. 1 and 2) and the Dafadar (P.W. 3) of the village. The two chaukidars went in search of the miscreants and found the appellant and accused Kirandeo fleeing at some distance from the village. A scuffle took place between the chaukidars and the appellant and accused Kirandeo, and probably, as a result of that scuffle the appellant received two minor injuries. The chaukidars arrested the appellant and Kirandeo, brought them back to the village and kept them in detention at the house of Sitaram. Sitaram had by then already left for the Barauni Police Station and given his report Ex. 1 about the incident to the Police Officer, in consequence of which that Police Officer came to Sitaram's house and took into his custody the appellant and the said Kirandeo. He thereafter inspected Sitaram's house and found, apart from the injuries on the persons of the inmates of the house, ample evidence in the shape of a broken door, boxes forced open etc. to satisfy him that a dacoity had been committed in the house and property taken away. Those who had received injuries during the incident were Sitaram (P.W. 7), his mother Ram Sundari Devi (P.W. 8), his brother Moti Singh (P.W. 4) and Sahoo Singh (P.W. 5) a next door neighbour and a cousin of Sitaram, who had gone there on hearing the cries of the inmates of the house. P.W. 13 Ramshila, the daughter of Sitaram, who also was in the house at the time, identified some of the miscreants, but not the appellant.
3. Accused Ramnandan and Ram Asrey (accused Nos. 2 and 5 in the trial court) are the brothers-in-law of the appellant; accused Kirandeo (accused No. 4 in the trial Court) is the uncle-in-law of the appellant's brother and Laxmi Sahao is the brother of the appellant's servant. There was ample evidence of enmity between the appellant on the one hand and Sitaram (P.W. 7) on the other, although they were living almost opposite each other in the village. The enmity had arisen principally from the recent election to the office of the village Mukhiya, wherein the appellant had succeeded against Sitaram. Sitaram had first challenged the validity of the nomination paper of the appellant, which challenge was dismissed and later on had filed, after the election, an election

petition against the appellant which was pending at the time of the incident. There was also enmity between the appellant and one Jagat Babu, an Advocate in the village in connection with a murder case wherein the appellant had figured as a prosecution witness. Jagat Babu was the person who was said to be instrumental in having the appellant falsely implicated in the present case.

4. The prosecution relied chiefly on the evidence of the inmates of the House, Sitaram, his mother, his daughter, his brother Moti Singh and his cousin (P.W. 5), who as aforesaid had rushed to the house on hearing the alarm. All these persons except the daughter had received injuries. The daughter (P.W. 13), it was said, did not receive any injury as she concealed herself behind a pillar, from where, however, she could witness the happenings which were taking place in that part of the house, viz., the courtyard.

5. There was not and could not be any doubt about the fact that the house was raided and property therein was looted that night. There could also be no dispute as to the fact of the appellant and the said Kirandeo having been detained by the two chaukidars and the Dafadar soon after the incident, for, when the Investigating Officer on receiving Ex. 1 from Sitaram, rushed to his house, he found the two of them in the custody of the chaukidars. The only question, therefore, was as to the identity of the miscreants.

6. As against the prosecution evidence, the defence of the appellant, as disclosed by him in his statement under Section 342 of the Code of Criminal Procedure, was that he was falsely implicated in the case owing to the aforesaid enmity, and that he was not arrested by the chaukidars in the manner and place deposed by them. According to him, the Police Officer after coming to the village called him from his house under the pretext of joining him in the search of the house to ascertain what articles and property were stolen by the miscreants and placed him under arrest as soon as he went to Sitaram's house in response to the officer's request. He thus denied the chaukidars version as to the manner, time and place of his arrest by them and the scuffle that was said to have taken place at that time during which the appellant was said to have received the two minor injuries found on his person. His case in that connection was that after he went to Sitaram's house in response to the Police Officer's call for assistance, he was assaulted by Moti Singh (P.W. 4) with a lathi while the Police Officer was busy inspecting the inner apartments of his house, and that as a result of that attack he was even rendered unconscious.

7. On the question of the identity of the miscreants, the Trial Judge accepted the evidence of Moti Singh (P.W. 4), Sitaram's mother (P.W. 8) and also the evidence of the two chaukidars and the Dafadar (P. Ws. 1 to 3), but refused to accept the evidence of Sitaram (P.W. 7), and his cousin (P.W. 5). Regarding P.W. 5, he pointed out certain answer given by that witness which the court thought rendered his evidence unacceptable. These were his failure to state how many daughters the appellant had, whether one of them was married or not and his failure to state the relationship between the appellant and accused Kirandeo. P.W. 5 was also not able to state with precision whether he had entered Sitaram's house at the time of the dacoity through the south-western or north-western entrance and the exact spot he was at when he received injuries, i.e., whether he was in the courtyard or not at that precise moment. As regards P.W. 7, the Trial Judge emphasised that Sitaram in his report Ex. 1 had mentioned Ram Asrey only as his assailant, while in his evidence he mentioned two more, viz., accused Ramnandan and Laxmi Sahao. Further, he had not mentioned in Ex. 1 that he had identified Kirandeo, Laxmi and Ramnandan at the time of the incident. The Trial Judge thought that in view of the interested and partisan character of these two witnesses, these omissions acquired significance, and therefore, refused to rely on their evidence. However, on the strength of the evidence of the other inmates of the house and the evidence as to the manner of

arrest of the appellant and accused Kirandeo, he convicted the appellant and his four co-accused and sentenced them as aforesaid. The High Court, on the other hand, thought that the omissions relied on by the Trial Judge in connection with the evidence of (P.W. 5) and (P.W. 7) were not substantial and could not come in the way of their evidence being acceptable. The High Court further refused to draw a distinction between (P.W. 5) and (P.W. 7) on the one hand and the other inmates of the house on the other, the former being both interested and partisan and the latter being not so, as the Trial Judge had done. All the witnesses, according to the High Court, were both interested and partisan, for, the enmity between Sitaram and the appellant must also affect his family members, and therefore, the evidence of all of them had to be measured and scrutinised by the same standard of caution and care. The High Court, on such scrutiny, found their evidence reliable since it was corroborated by : (1) the evidence as to dacoity, which was undeniable, (2) the fact of all these witnesses, except Sitaram's daughter, having received injuries during the incident, (3) the arrest of the appellant and accused Kirandeo soon after the incident in the course of their flight from the village, and (4) the injuries which both of them had received as a result of the scuffle which took place when they appear to have resisted their arrest by the chaukidars. The explanation in respect of his injuries given by the appellant was too improbable to be accepted, for, Moti Singh (P.W. 4) could not possibly have assaulted the appellant with a lathi so severely as to render him unconscious while the Police Officer was actually inside the house inspecting the inner apartments. Further, such a case never put to Moti Singh and was obviously contrary to the evidence of (P. Ws. 1 to 3) acceptable to both the courts. On these grounds the High Court confirmed the conviction and the order of sentence passed by the Trial Judge.

8. There are thus concurrent findings of fact both by the Trial Judge and the High Court on : (1) the fact of dacoity having taken place in the house of Sitaram, (2) injuries caused to Sitaram and his family members, (3) the appellant having been named almost immediately after the incident, and (4) the capture by the two chaukidars of the appellant together with Kirandeo, one of his co-accused while they were fleeing away from the village in suspicious circumstances and at an unusual hour. As against these concurrent findings, three contentions were urged before us in support of this appeal : (1) the improbability of the appellant being one of the miscreants; (2) absence of recovery of any of the properties looted from the house, and (3) the hostility between him and Sitaram which could have induced Sitaram to falsely involve the appellant by taking advantage of the dacoity having taken place in his house.

9. On the first contention, it was urged that being well-known to Sitaram and his family members, it was highly improbable, in the first place, that the appellant would rush into such a foolhardy adventure, and in the second place, face the victims of that adventure without any attempt to conceal his identity. At first sight there would appear to be considerable force in this contention. But as against an argument based purely on conjecture, there is the evidence of Sitaram, his brother, and his mother and to a certain extent of his daughter with regard to the identification by them of the individual miscreants. No doubt, their testimony was interested and even partisan. But it was not as if the Trial Court and the High Court took no note of that aspect and did not keep it prominently before them. Indeed, the Trial Judge went to the extent of declining to rely on the evidence of (P.W. 5 and P.W. 7), giving even exaggerated importance to discrepancies in detail, which ordinarily would be treated as slight and unimportant, only because of the partisan character of their evidence. So far as the High Court was concerned, its judgment is studied at various places with the caution that such evidence demands. But with all that caution and care the High Court accepted the evidence of all the inmates and the trial court accepted the evidence of all but Sitaram and his cousin (P. Ws. 7 and 5 respectively). The principal reason for accepting that evidence was that it was sufficiently corroborated by other unimpeachable evidence viz., as regards the arrest of the appellant and

Kirandeo soon after the incident, their attempt to flee from the village at an unusual hour, their resistance against their arrest, the scuffle consequent upon that, and the injuries sustained therein by the appellant and Kirandeo. The evidence of the two chaukidars was found to be reliable, firstly, because being members of the rural police, they were not under the control or influence of the Investigating Officer, and secondly, because they had arrested the appellant and Kirandeo and brought them to Sitaram's house after Sitaram has left for the Police Station to give the information about the dacoity. Sitaram, therefore, could not have instigated the chaukidars in falsely placing the appellant and his companion under arrest. What is equally significant is that unless Sitaram has immediately named the appellant to the chaukidars, the latter could not have gone in search of the appellant and caught hold of him in the vicinity of the village while he was trying to flee away from the village. There was, thus, hardly any chance for Sitaram to falsely invent a case against the appellant and those who had joined him in the incident. Further, the two chaukidars, as stated earlier, brought the appellant under arrest long after Sitaram had left for the Police Station. He, therefore, could not have known of the appellant's arrest by the chaukidars and yet he had named him as one of the miscreants in Ex. 1. That being the position, however improbable it might appear at first sight for the appellant to have participated in the incident, it is difficult to get over the evidence of his having been identified and named by Sitaram and the other witnesses almost immediately after the incident. The only explanation about the highly desperate act on the part of the appellant is his antipathy towards Sitaram getting the better of him which made him abandon any caution which he would have otherwise taken while participating in such an incident.

10. It is also true that no part of the stolen property was recovered from him when he was arrested. But then, there was plenty of opportunity for him and his companions to send away the stolen property with others. Since his first reaction was to get away from the village, it was highly unlikely that he would hamper his flight by keeping with him the stolen articles. The only alternative against the overwhelming evidence, both direct and circumstantial, before the Trial Judge and the High Court was the explanation given by him in his Section 342 statement. That explanation, as already stated earlier, was obviously impossible to accept. An assault on him by Moti Singh (P.W. 4) with a lathi, so harsh that it rendered him unconscious, besides being highly improbable, remained a bare allegation, having no support, howsoever slight, in the evidence on record. No such case was put to Moti Singh about his having beaten up the appellant, nor was any suggestion made to the Investigating Officer that he had found that the appellant lying unconscious when he returned to the courtyard after inspecting the inner apartments of the house of Sitaram. Apropos the partisan and interested nature of the evidence of Sitaram and the other inmates of the house, the answer was two-fold : (1) that the event having taken place inside the house and at dead of night, it would be futile to expect of the prosecution to produce independent outsiders as witnesses, and (2) that before accepting such evidence both the trial court and the High Court bore the fact of the evidence being interested and partisan in mind and therefore sought corroboration to fortify it. Such corroboration was available from the chaukidars and dafadar of the village, whom both the court's found trustworthy, besides the injuries on the appellant. That being the position, it is impossible to accept counsel's contention that the High Court or the trial court did not maintain an attitude of caution or seek corroboration consequent upon such caution while appraising the evidence on record.

11. We thus find it impossible to interfere with the concurrent findings of the trial court and the High Court on the question, firstly, as to the factum of dacoity, and secondly, as to the appellant being one of the miscreants responsible for that offence, indeed the leader of them. Counsel failed to make out any substantial reason to warrant any interference on our part with such concurrent findings. The result, therefore, is that the appeal fails and is dismissed.

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