SUPREME COURT OF INDIA

Jugal Gope

Vs.

State of Bihar

Crl.A.No.160 of 1974

(S. Murtaza Fazl Ali and A. D. Koshal, JJ.)

20.03.1979

JUDGEMENT

FAZAL ALI, J.:-

1. This appeal under S. 2 (s) of the Supreme Court (Enlargement of Criminal Appellate jurisdiction) Act, 1970, is directed against the judgment of the Patna High Court dated 31-1-74 by which the High Court reversed the order of the Sessions judge acquitting the appellants and convicted them under S. 396 of the I. P. C. and sentenced them to imprisonment for life. The appellants were accused Nos. 1, 2, 5, 7 and 8 before the Sessions judge. A dacoity had taken place in the house of the complainant in village Jalalpur on the night intervening 10th and 11th May, 1965 and a F. 1. R. was lodged in the morning of 11th at Police Station Barh. In the course of the dacoity a number of articles were looted away and Jhapas Gope was killed. The evidence against accused 1 consists of P. Ws. 5, 7, 10, 11 and 12 who identified him at the T. I. parade, as also before the committing court and the trial Court. Evidence against accused 2 consists of identification of P. Ws. 5, 7 and accused 5 was identified by P. Ws. 7, 11, 12 and accused 7 was identified by P. Ws. 7 and 12 and accused 8 was identified by P. Ws. 5, 7 and 12. It appears from the evidence of the prosecution witnesses that the night in question was a moonlit night and the torches were also flashed by the dacoits as also by the members of the complainant party and it was thus, that the witnesses were able to identify the

dacoits.

2. We have perused the judgment of the High Court and that of the Sessions Judge and find that the approach made by the learned Sessions judge was completely wrong and the reasons given by him for acquitting the appellants were totally unsound and legally unsustainable. The High Court while reversing some, of the important reasons given by the learned Sessions judge, observed as follows :-

"The learned Addl. Sessions judge has also acquired respondents Nos. 1 to 10 of the charge under S. 396 of the Indian Penal Code. He has doubted the identification of the respondents on the ground that according to the evidence of the identifying witnesses, the dacoits at the time of identification by these witnesses were moving about, and as such it could not have been possible for any one of the witnesses to identify the accused persons. This reason given by the learned Addl. Sessions judge for acquitting the respondents of the charge under S. 396 of the Indian Penal Code cannot be accepted for a moment. The second ground given rejecting the testimony of the prosecution witnesses is that no mention was made of a Chabutra in front of the house of informant Chandrika Singh (P. W. 10) and of a Koli of one Sheodani Singh in the first information report or in the statements of the witnesses before the police from where some of the witnesses claimed to have seen and identified the different respondents. According to learned Addl. Sessions judge, the story of there being a Koli was a subsequent development in the prosecution case. Yet another reason given by the learned Addl. Sessions judge for rejecting the story of identification of the respondents by the different prosecution witnesses is the presence of injuries upon the persons of some of the respondents, as found by the jail doctor, and of a mole (Til) on the left cheek of respondent No. 1 Jugal Gope."

3. It would appear that a bare perusal of the judgment of the Sessions judge would convince anybody that the reasons given by the Sessions judge are manifestly perverse and could not be valid for rejecting the testimony of the identifying witnesses. For instance, the question whether there was a Chabutra in front of the house or not, is of no consequence and has no nexus with the question of identification. Reliance was placed by the Sessions judge on the ground that there were injuries on the person of some of the respondents. These injuries were obviously superficial and the High Court has rightly said that they may not have been noticed by the identifying witnesses. There is nothing to show that injuries were of such a serious nature so as to be conspicuously noticed by the identifying witnesses. Mr. Sawhney appearing for the appellants submitted that the story of torches appears to be a subsequent embellishment inasmuch as one of the witnesses does not say that there was any torch. The witness concerned omits to mention the existence of any torch but no specific question was put to him regarding the presence of a torch. This sort, of omission is inconsequential and does not show that the torches were non-existent. It was then submitted that so far as accused 1 is concerned, T. I. parade was held long after the occurrence that is to say, about a month after the date of dacoity. But as this accused was himself arrested long after the occurrence, hence no T. I. parade could be held earlier. Indeed the T. I. parade of accused 1was held within three days of his arrest.

4. After hearing counsel for the parties and considering the judgment of the High Court and the trial Court we are of the opinion that the High Court was fully justified in reversing the order of acquittal passed by the Sessions judge. This is not a case where any other view was possible on the evidence, which could be taken by the High Court. But the appreciation of the evidence would disclose that the only view possible in the case was that the appellants have been fully proved to have participated in the dacoity. The result is that there is no force in the appeal and is dismissed.

Appeal dismissed.