

Lakshman Prasad

Vs

State of Bihar

Criminal Appeal No. 214 of 1976

(Syed M. Fazal Ali, Baharul Islam JJ)

26.03.1981

JUDGMENT

FAZAL ALI, J. –

1. The appellant has been convicted under Section 395 of the Indian Penal Code and sentenced to undergo 10 years' rigorous imprisonment for having committed dacoity along with others in the house of PW 4 Baijnath Prasad.
2. The facts of the case have been detailed in the judgments of the trial Court and the High Court and it is not necessary to repeat the same.
3. The central evidence against the appellant consisted of the testimony of PWs 1 and 2 who were the servants of complainant PW 4 Baijnath Prasad. It appears from the evidence that Baijnath Prasad was a rich businessman of the locality and the accused-appellant Lakshman Prasad was his next door neighbour having a double storey house. Both the courts below have accepted the prosecution case that a dacoity took place in the house of Baijnath Prasad in the course of which cash and other articles were stolen away. In the instant case, counsel for the appellant has not challenged this finding of the courts below. We are also satisfied that a dacoity undoubtedly took place in the house of Baijnath Prasad. The only question that falls for consideration is whether or not the appellant participated in the crime. PWs 1, 2 and 4 have supported the prosecution case that the appellant clearly participated in the dacoity and was, in fact, the leader of the dacoits. After going through their evidence, we do find that there is some amount of consistency in their evidence but mere congruity or consistency are not the sole test of truth. Sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. This appears to be one of those cases. There are many inherent improbabilities in the prosecution case so far as the participation of appellant is concerned. In the first place, admittedly the appellant was a respectable man in the sense that he was possessed of sufficient means and was a well know homeopath doctor and also the neighbour of the complainant. In this view of the matter, it is difficult to believe that he would commit dacoity in the house of his own neighbour and that too in the early hours of the evening, so that he may be caught any moment and take the risk of a conviction under Section 395, Indian Penal Code. Secondly, the evidence of the complainant PW 4 clearly shows that the dacoits had no doubt concealed their identity but they did it in such a way that their faces were visible. Indeed, if the appellant had participated in the dacoity and taken the precaution of concealing his identity, then he would have seen to it that his face was fully covered so that identification by the complainant or the witnesses would become impossible. If he was a dare-devil, then he would not have concealed his identify at all. Thirdly, FIR having been lodged the same evening the police visited the house of the appellant next morning and found him there. If the appellant had really

participated in the dacoity, he would have at least made himself scarce. The house of the accused was also searched and nothing incriminating was at all found. Finally, there was the important circumstance that in view of a dispute between complainant Baijnath Prasad and the appellant, there was a clear possibility of the appellant having been falsely implicated due to enmity. The complainant himself admits that there is a boundary wall around the house of the appellant and there is a road which runs to the east of his house and the mill of the complainant is situated to the west of the house. There is evidence of DW 2 that there has been some dispute between Baijnath Prasad and accused Lakshman Prasad two or three years before the occurrence of dacoity in respect of a passage near the house of accused Lakshman Prasad through which he used to go to his mill. The evidence of DW 2 does support what the complainant has himself admitted. The gravest provocation which the complainant must have felt was the fact that Lakshman Prasad bought a piece of land near his house from Kishori Lall, the nephew of Baijnath Prasad. This is proved by Ex. Kha and the evidence of DW 4. The High Court also observed that the sale deed executed by the nephew of the complainant in favour of the appellant was executed only a month before this occurrence. This therefore furnishes an immediate motive for the false implication of the appellant. Another important circumstance which seems to have been overlooked by the courts below is that PW 4 has clearly admitted in his evidence at page 44 of the paper-book that immediately after the occurrence, a number of people near the mosque assembled, of whom he recognized Suba Raut and Moti Raut, but they never came to his help. The witness also says that when he came from the west, he saw 40 to 50 persons at a little distance, including Ganesh Raut, Achhelal, Mathura Ram and Rameshwar. Obviously, if an occurrence of dacoity had taken place in the early hours of the evening, the near neighbours must have assembled and yet none of these neighbours have been examined to support the complainant's version that the appellant had participated in the occurrence. It seems to us that the reason why these persons did not choose to support the complainant was that perhaps the appellant had been falsely implicated and hence the persons who had assembled may not have relished the idea of supporting the complainant if he had gone to the extent of falsely implicating the appellant in the dacoity. These intrinsic circumstances speak volumes against the prosecution case and raise considerable amount of suspicion in our minds regarding the complicity of the appellant in the dacoity. It is well settled that while witnesses may lie, circumstances do not.

4. For these reasons therefore we allow this appeal, set aside the conviction and sentence of the appellant and acquit him of the charges framed against him. The appellant will now be discharged from his bail bonds and need not surrender.

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