Wakil Singh and Others

Vs

State of Bihar

Criminal Appeal No. 268 of 1976

(Syed M. Fazal Ali, A. Varadarajan JJ)

31.03.1981

JUDGMENT

FAZAL ALI, J. –

1. This appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act and also under Section 379 of the Code of Criminal Procedure is directed against the judgment of the Patna High Court dated April 13, 1976, by which the High Court reversed the order of the Sessions Judge acquitting the appellants and convicted them under Section 396 of the Indian Penal Code and sentenced them to imprisonment for life. The narration of the prosecution case is given in the judgment of the High Court and it is not necessary to repeat the same here. The case arose out of a dacoity said to have been committed in the house of the complainant, PW Darbari Sao on the night of May 24, 1965 at about 8.45 p.m. According to the prosecution some unknown persons including the appellants entered the house, assaulted inmates, killed one of them and looted away properties worth thousands of rupees. There is no clear evidence to show that the deceased Kameshwer Sao was actually killed by one of the dacoits in the course of the dacoity. Although his dead body was found but the prosecution has not been able to establish any nexus between his death and the commission of the dacoity or even his injuries. In these circumstances it is obvious that charge under Section 396 must fail. In the instant case, however this will make no difference because after going through the judgment of the courts below and hearing the counsel for the parties, we are clearly of the opinion that the appellants are entitled to an acquittal. The four appellants were arrested between August 26 to September 2, 1965 and the first T. I. parade was held on September 4, 1965 and two other parades were held on September 8, 1965. So far as Wakil Singh is concerned, he had been identified by PWs 2,9 and 13. So far as PW 13 is concerned as he had not identified this appellant before the T. I. parade, he was disbelieved both by the trial Court and the High Court. The trial Court refused to act on the evidence of PW 2 also because this appellant was identified only before the committing court and not before the Sessions Court. Thus the only evidence Wakil Singh consisted of PW 9.

2. In the instant case we may mention that none of the witnesses in their earlier statements or in oral evidence gave any description of the dacoits whom they have alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz., stature of the accused or whether they were fat or thin of a fair colour or of black colour. In absence of any such description, it will be impossible for us to convict any accused on the basis of a single identification, in which case the reasonable possibility of mistake in identification cannot be excluded. For these reasons, therefore, the trial Court was right in not relying on the evidence of witnesses and not convicting the accused who are identified by only one witness, apart from the reasons that were given by the trial Court. The High Court, however has chosen to rely on the evidence of a single witness, completely

overlooking the facts and circumstances mentioned above. The High Court also ignored the fact that the identification was made at the T. I. parade about 3 1/2 months after the dacoity and in view of such a long lapse of time it is not possible for any human being to remember, the features of the accused and he is, therefore, very likely to commit mistakes. In these circumstances unless the evidence is absolutely clear, it would be unsafe to convict an accused for such a serious offence on the testimony of a single witness.

3. Lastly, since the High Court was reversing an order of acquittal, it failed to take into consideration the fact that having regard to there being only witness who identified the accused concerned, the view taken by the trial Court could not (sic) be said to be reasonably possible. For these reasons, therefore, we are clearly of the opinion that the appellant who had been identified by only one witness must be acquitted. Thus, Wakil Singh, to start with, has been identified by PW 9 and for the reasons that we have stated above, it would be wholly unsafe to maintain his conviction on the basis of the evidence of PW 9 alone. Another circumstance against the prosecution, with respect to this appellant, is that although PW 9 was present on September 4, 1965 when a T. I. parade was held, he was not asked to identify the appellant, but the witness identified the accused 4 days later i.e. to say on September 8, 1965. These circumstances also throw some doubt on the complicity of this appellant.

4. Similarly appellant Krishnandan Singh has been identified only by PW 15 and for identical reasons which we have given in the case of Wakil Singh, it will not be possible for us to uphold the conviction of this appellant also, as his conviction is based on a single identification, particularly when he was acquitted by the trial Court.

5. As regards the other two appellants viz., Sheobalak Singh and Kuppi Singh, the High Court seems to have committed a serious error of law in convicting these appellants. It has been established that so far as Kuppi Singh is concerned he undoubtedly had smallpox marks and was identified by as many as 6 witnesses - PWs 2, 3, 5, 12, 13 and 15. The T. I. parade chart does not show that any person having smallpox marks was mixed up with this accused at the time of the parade, nor does the T. I. chart show that any precaution for concealing the pox marks was taken. The trial Court rightly pointed out that in view of the pox marks, the mistake in identification could not have been excluded. The High Court did not agree with the reasoning of the trial Court because it construed the T. I. parade in a most technical fashion. It is well known that all T. I. parade contain a cyclostyled or printed certificate that necessary precautions have been taken, and the magistrate merely signs on the dotted lines. But that by itself, would not show for the purpose of proving a criminal charge that this precaution was actually taken, unless the magistrate himself appears as a witness and says what precautions were taken. Apart from endorsing the certificates, the magistrate who held the T. I. parade in this case does not state that he had taken any precaution to conceal the smallpox marks appearing on the face of Kuppi Singh by mixing other persons who had some smallpox marks. Furthermore, the very fact that even under the stress and strain of such a serious incident as the present one, as many as 6 witnesses identified Kuppi Singh without at all giving any kind of description of this accused, clearly shows that the witnesses identified him merely because of the pox marks. At any rate, here also the possibility of mistake in identification because of the pox marks cannot be reasonably excluded. For these reasons, therefore, we are unable to support the reasons given by the High Court for reversing the acquittal of Kuppi Singh also.

6. So far as Sheobalak Singh is concerned here also, it is admitted that he had a visible cut mark on the cheek and no precaution as in the case of Kuppi Singh was taken by the magistrate either to put some person having similar marks or to conceal this cut mark at the time of identification.

Furthermore, this accused has also been identified by 4 witnesses 2, 5, 9 and 16 and the possibility that he was identified because of this particular cut mark cannot be excluded.

7. We are fully satisfied that this was not a case which called for the interference of the High Court against the order of the acquittal passed by the Sessions Judge. The appeal is accordingly, allowed and the appellants acquitted of the charges framed against them. Krishnandan Singh who was on bail will now be discharged from his bail bonds and other appellants are directed to be set at liberty forthwith.

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