

State of Bihar

Vs

Anirudh Thakur & Ors.

(G.T.Nanavati, S. S. M. Quadri JJ)

06.02.1998

JUDGMENT

NANAVATI, J.

1. These appeals by the State are directed against the judgment and order of acquittal passed by the Patna High Court in Criminal Appeal Nos.564, 566 and 533 of 1981. The five respondents, along with one Bharat Singh, were tried for committing the offence punishable under Section 396 IPC, in the court of the Additional Sessions Judge, Sitamarhi in Sessions Trial No.53 of 1979/11 of 1990. Accused Bharat Singh was acquitted but respondents Nos.1 to 5 were convicted under Section 396 IPC and sentenced to undergo imprisonment for life.

2. It was alleged against the accused that on 13.8.1978 at about 1.00 P.M. they, along with 15 to 20 other persons, under the leadership of Kailash Mahto, went to the house of Bilat Sah (PW-18) of village Pakaria and committed dacoity. In order to commit dacoity they dragged Bilat Sah (PW-18) and his son Ramchandra Sah (PW-19), pushed them into a room and looked them inside. On hearing their shouts many people rushed to that place and protested against the high handedness of the dacoits as three of them were the residents of the same village and were known to them. Soon after the dacoits left that place, the village people freed Bilat Sah and Ramchandra Sah and then started chasing the dacoits. When Rajdeo Rai, who was heading the chasers, gave a lathi blow to one of the dacoits, accused Ram Kailash Mahto and Negeshwar Suri fired shots as a result of which Rajdeo Rai received injuries on his chest and abdomen and died there and then. In spite of that, the villagers continued the chase and caught one dacoit, who gave out his name as Surendra Singh and stated that he was of village Singharia. The villagers of Pakaria were joined by people of the adjoining villages and they all continued the chase. During the scuffles between the dacoits and the village people as many as ten dacoits lost their lives and some villagers also received injuries. The village people returned to the village with Surendra Singh in the evening. At about 8.00 P.M., Sub-inspector, Ram Nath Yadav (PW-12), who was in-charge of Sonbara Police Station received information that firing had taken place in village Pakaria and that some serious incidents had also taken place. He left for that village and reached there as about 8.30 P.M. He recorded the complaint of Ramchandra Sah (PW-19) and sent it to the police station for registering an offence. During the investigation the six accused could be identified and were arrested. They were then put up for trial.

3. The trial court relying mainly upon the evidence of PWs-1, 6, 11, 13, 18 and 19 and the extra judicial confession made by Surendra Singh (A-1) held that the prosecution has satisfactorily established that A-1 and A-3 to A-6 had taken part in committing the dacoity and, therefore, were guilty under Section 396 IPC. A-2 was given benefit of doubt as the evidence regarding his identification was not satisfactory.

4. The High Court held that the prosecution evidence as regards identification of A-1 was not consistent and it was doubtful that he was really caught by the village people and brought to the village in the evening of 13.8.1978 and that he made an extra judicial confession before the Mukhia of the village (PW-13). It also held that the extra judicial confession (Exh.-5) was not reliable in view of the corrections made therein. The High Court also held that it was doubtful if Ram Kewal Shah (A-3) of village Pakaria was one of the dacoits as he was described in the extra judicial confession as a person from village Singharia. It also held that A-4 and A-5 were probably falsely involved at the instance of Chandreshwar Thakur whose relations with A-4 and A-5 were inimical. It also held that A-6 had no concern with accused Kailash Mahto and in all probability he was also involved falsely at the instance of Chandreshwar Thakur.

5. The learned counsel for the State submitted that the reasons given by the High Court for disbelieving the prosecution witnesses are not sustainable. He submitted that the findings recorded by the High Court are based upon improper appreciation of evidence and that has led to failure of justice. He submitted that A-1 was seen by PW-18 at his house as he was assaulted by A-1 by a stick and had thus received two injuries. The evidence of PW-18 to that effect was disbelieved by the High Court on the ground that in the statement given by him he had not named the person who had given him stick blows. What the High Court failed to appreciate was that A-1 being of a different village was not known to PW-18 and, therefore, when he gave his statement on 13.8.1978 at night he did not know his name and it was only on the morning of the next day when he had seen him in the village then had come to know that he was Surinder Singh. It was, therefore, not proper to discard the evidence of PW-18 on the ground that at the earliest point of time he had not disclosed the name of this accused. A-1 was not only recognized by PW-18 but he was also recognized by PWs-1, 5, 6, 13 and 15 while they were chasing the dacoits. PW-6 had in fact caught him while he was trying to run away. The High Court disbelieved his evidence on the ground that he was contradicted by PW-1. This reason given by the High Court is also wrong. PW-1 in his evidence had stated that A-1 was brought by Chowkidar of Hanumannagar in the morning of the next day. Merely because PW-1 had not seen A-1 in the village on the previous day it was not proper for the High Court to hold that his evidence falsified the evidence of PW-6 and other witnesses who have deposed that he was caught and brought to the village in the evening and was handed over to the Mukhia. The Chowkidar of Hanumannagar (DW-3), who was examined as a defence witness, had stated that the village people had produced A-1 before him. He did not give any specific date in the examination in chief but in the cross-examination at one place he stated that A-1 was produced before him on 13.8.1978 and at another place he stated that he was produced in the morning of 14.8.1978. A-1 himself in his statement under Section 313 Cr. P.C. has stated that he was caught by the village people, who were chasing the dacoits, in the evening of 13.8.1978 and was taken to village Pakaria on suspicion while he was proceeding from village Janakinagar to Hanumannagar. The High Court held that his explanation was to be accepted as a whole or rejected as a whole and since he had stated that he was caught on suspicion the High Court did not think it fit to rely upon that part of his statement whereby he admitted that he was caught by the village people on 13.8.1978. What the High Court failed to appreciate was that the explanation given by A-1 was found to be false in view of the reliable evidence of the prosecution witnesses and, therefore, it was open to the trial court to rely upon the admission made by A-1 that he was caught by the village people on 13.8.1978 and taken to village Pakaria. It was, therefore, not at all proper to discard the evidence of PW-6 and other witnesses who have deposed that while chasing the dacoits PW-6 was able to catch hold of A-1 and he was then brought to village Pakaria by the village people merely because PW-1 did not refer to this fact in his police statement and DW-3 had stated that A-1 was produced before him in the morning of 14.8.1978 and that he had handed over A-1 to the officer-in-

charge of Sonbara Police Station on 14.8.1978. The High Court had also doubted the evidence of PW-6 and other witnesses on the ground that their version was unnatural and improper as no injury was found on the person of A-1 while he was taken in custody by the police. It was also submitted by the learned counsel for the respondents that if really A-1 was caught by the village people they would have either killed him as they had killed the other dacoits or at least injured him seriously. As stated earlier in view of the evidence of PW-6 and other witnesses and also the admission of A-1 himself it was not at all proper to reject the evidence of the prosecution witnesses on the ground that their version in this behalf was unnatural.

6. The High Court rejected the evidence of Mukhia (PW-13) of the village that the village people had produced A-1 before him in the evening of 13.8.1978 on the ground that his evidence stood contradicted by the evidence of PW-1, PW-10 and DW-3. As pointed out earlier PW-1 had not referred to the fact of A-1 being caught and brought to the village and produced before the Mukhia in his police statement. We have already held earlier that it was not good ground for disbelieving that A-1 was caught by the village people and brought to village Pakaria and produced before the Mukhia in the evening of 13.8.1978. What PW-10 has stated in his evidence that no extra judicial confession was recorded by the Mukhia in his presence. It is difficult to appreciate how the evidence of Mukhia (PW-13) could have been rejected because PW-10 who was one of the chasers denied, contrary to his police statement, that he was present at that time. DW-3 was of village Hanumannagar and obviously he was not present in village Pakaria in the evening of 13.8.1978. Therefore, on the basis of his evidence that A-1 was produced before him at village Hanumannagar on 14.8.1978 and that he had taken him to the Sonbara Police Station on that day in the morning was not such as could have raised any doubt regarding the evidence of PW-13, Mukhia, and other witnesses.

7. PW-13 has deposed that half an hour after A-1 was produced before him A-1 had made a confession which he had written down as stated by A-1 and obtained thereon his signature also. The High Court doubted genuineness of this confession firstly on the ground that whether the Mukhia and other witnesses have stated that it was made by A-1 at village Pakaria, the confession itself shows that it was written at village Madhia. It is true that at the bottom of the confession we find an endorsement which reads 'Camp Madhia Men' and the prosecution could not satisfactorily explain when and why that endorsement was made subsequently. What the High Court, however, failed to appreciate was that there was nothing on record to show, not even a suggestion by the defence, that there was any camp of police or any village officer at village Madhia. All the witnesses have said that it was made at village Pakaria. Moreover, A-1 himself had admitted in his statement under Section 313 Cr.P.S.C. that he had confessed before Mahender Prasad Yadav, the Mukhia, and that he had signed it also. The High Court was of the view that it was not open to the trial court to rely upon this admission of the accused as while replying to question Nos. 1 and 5 A-1 had denied that he had taken any part in the dacoity and that he was arrested while running away after committing dacoity. We have already pointed out above that A-1 had admitted that he was caught by the village people near Hanumannagar and that his explanation that he was caught on suspicion was found to be false. Therefore, it was open to the trial court to rely upon the fact that he was arrested by the village people who were chasing the dacoits. It is difficult to appreciate how the general denial by A-1 regarding his participation in the dacoity could have set at naught admission of independent facts that he was caught and that he made a confession of independent facts that he was caught and that he made a confession before the Mukhia. The High Court was, therefore, wrong in holding that the extra judicial confession was not genuine.

8. Second ground on which the High Court doubted genuineness of the confession was that the time

mentioned at the bottom of the confession '11 baje' was subsequently changed to '8 baje'. It was also of the view that the correction was made so as to make it consistent with the FIR. What the High Court failed to notice was that in the body writing of the confession it is clearly stated in words that it was obtained after recording the complaint and the correction was made to show that it was made earlier. A-1 had made the statement at 8 O'clock. Moreover, portion below and touching the part where '11 baje' was mentioned was found cut and therefore it was not clear as to who had written that time and for which purpose. Exh-5 had passed through different hands before it was produced in the Court. It was not even suggested to the Mukhia and the investigating Officer that either of them had written '11 baje' on that confession and, therefore, it was not proper for the High Court to doubt the evidence of Mukhia or the genuineness of the confession on this ground.

9. One more ground given by the High Court for discarding Exh-5 was that in Exh-5 accused Kewal Shah is stated to be a person of village Singharia where as in the copy Exh-5/1, which was produced by the Investigating Officer, he is shown as a person of village Pakaria. In view of this discrepancy between Exh-5 and Exh-5/1 the High Court held that it was not at all safe to rely upon either of them. What the High Court failed to appreciate was that the copy of Exh-5 was not made by the Mukhia but by the Investigating Officer and, therefore, it was quite likely that the Investigating Officer himself committed that mistake while preparing Exh-5/1.

10. The High Court has also observed that if the extra judicial confession was made at about 8.00 P.M. then the complaint which was recorded at about 8.30 P.M. would have referred to Exh.-5 and as the complaint and the FIR do not contain any reference to Exh.-5 it was doubtful if really it was made at 8.00 P.M. as stated in the confession and also by the witnesses. In the complaint and the FIR it is stated that A-1 was arrested, and that he admitted his participation in the dacoity and also disclosed names of some of the dacoits. In the complaint and the FIR it was not specifically stated that an extra judicial confession was made by A-1 before the Mukhia and that the Mukhia had written it down.

11. Thus none of the grounds given by the High Court for doubting the genuineness of Exh.-5 are tenable. We see no reason to doubt the evidence of Mukhia (PW-13) and other witnesses regarding A-1 making the extra judicial confession before him. Exh-5 was received by the Investigating Officer at about 10.00 P.M. and he had made an endorsement on it to that effect. We have, therefore, no doubt whatsoever regarding the prosecution evidence that A-1 had made the extra judicial confession before the Mukhia at 8.00 P.M. In our opinion the trial court was fully justified in relying upon the said confession and the High Court was not right in rejecting the same.

12. Having considered the evidence of the prosecution witnesses we are satisfied that A-1 was one of the dacoits who committed the dacoity at the house of PW-18 and that he had given two stick blows to PW-18 and that he was caught by the village people who had chased the dacoits. Their evidence receive support from the extra judicial confession made by A-1 himself and thus his participation in the dacoity can be said to have been established by the prosecution beyond any reasonable doubt. The High Court, therefore, committed a grave error in acquitting him.

13. As regards participation by A-3, A-4, A-5 and A-6 the learned counsel for the State submitted that they were identified by two or more witnesses and, therefore, their participation in the dacoity ought to have been believed. In spite of their identification by two or more witnesses the High Court did not think it fit to confirm their conviction as it appeared to it that A-4, A-5, and A-6 were probably involved because of enmity or their strained relations with Chandreshwar Thakur of village Pakaria. The High Court has also pointed out that A-4, A-5 and A-6 were not named by A-1

in his extra judicial confession. They were all agriculturists and had no connection with Kailash Mahto. In these circumstances the view taken by the High Court that the prosecution cannot be said to have proved beyond reasonable doubt that A-4, A-5 and A-6 had also participated in the dacoity, is quite reasonable. As regards A-3 the High Court has pointed out that Ram Kewal, who was referred to as one of the dacoits by A-1 in his extra judicial confession, was the person of village Singharia whereas A-3 is of village Pakaria. Subsequent correction made in Exh.-5/1 also creates a doubt regarding Ram Kewal of village Pakaria having participated in the dacoity. As we find that the reasons given by the High Court for acquitting A-3, A-4, A-5 and A-6 are not unreasonable, the order of acquittal passed in their favor does not call for any interference.

14. In the circumstances these appeals are partly allowed. The judgment and order passed by the High Court as regards A-3, A-4, A-5 and A-6 is confirmed but the order of acquittal passed in favor of A-1 is set aside and he is convicted for the offence punishable under Section 396 IPC and is sentenced to suffer imprisonment for life. A-1 is ordered to surrender to custody to serve out the remaining sentence.