

SUPREME COURT OF INDIA

Amar Nath Jha

Vs.

Nand Kishore Singh

Crl.A.No.94-97 of 2013

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

03.08.2018

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. The judgment and order dated 11.1.2008 passed by the High Court of Judicature at Patna in Death Reference No.7 /2005 along with Criminal Appeal No. 622/2005 and Criminal Appeal No. 643/2005, whereby the High Court answered the death reference in the negative and set aside the judgment of the Sessions Court convicting the accused-Nand Kishore Singh and Maheshwar Singh for the offences under Section 396 IPC is called in question in these appeals. By the very judgment, the High Court also set aside the conviction of Maheshwar Singh under Section 412 of IPC and Criminal Appeal No.763/2005 filed by Mintu Kumar @ Mintu Singh was remanded for consideration by Juvenile Justice Board constituted to deal with juveniles under the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000. These appeals are not only relating to acquittal of Nand Kishore Singh and Maheshwar Singh but also relate to the finding arrived at by the High Court that Mintu Kumar @ Mintu Singh was a juvenile at the time of commission of offence in question.

2. The case of the prosecution in brief is that in the intervening night between 21st-22nd April, 1999 at about 12.00, about 30-40 unknown persons committed dacoity in the house of informant (PW9) and also in the adjoining house of his uncle-Madhukant Jha (deceased). The dacoits looted away gold chains, gold ring, bicycle and other household articles and cash from the two houses. In the course of dacoity, the dacoits fired gun shot towards Madhukant Jha aged about 75 years who died immediately thereafter due to gun shot injuries sustained. The dacoits were young and of different complexion; they fled away from the scene after committing the dacoity and murder. The first informant (PW9) was the eye-witness of the incident. Immediately, after the accused fled away from the scene, the informant came to know about the dacoity in the house of his uncle Madhukant Jha (deceased) and that he died due to shots fired at him; he came to the house of Madhukant Jha and saw his uncle lying dead. Ishwar Nath Jha (PW8) and Gena Ram (PW 7) also had sustained injuries because of the assault by the dacoits using stick and bamboos. One of the dacoit was armed with gun

and other dacoits were armed with lathis, bamboo, country made pistol and stick in their hands. While fleeing, the dacoits had exploded the bomb consequent upon which Gena Ram (PW 7) was injured. The first information did not specify any of the names of the dacoits. The informant claimed that himself and the family members of his uncle (deceased) could identify the dacoits who looted the articles. The first information was lodged at 3.15 am on 22.4.1999 at the place of incidence, i.e., Bhau Chapra after due consultation with all family members of deceased and others. The police official of P.S. Meenapur (district Muzaffarpur) recorded the first information.

3. After the investigation, police laid the charge-sheet against only four persons for the offences punishable under Section 396 and 412 of IPC. For the very offences, four accused including the respondents were tried. The Trial Court on evaluation of the material on record convicted the three accused namely, Nand Kishore Singh, Mintu Singh and Maheshwar Singh for the offences punishable under Section 396 IPC, the accused-Maheshwar Singh was also convicted under Section 412 IPC; whereas the another accused, i.e., Ramesh Singh, was acquitted with respect to both offences. The Sessions Court sentenced the accused-Nand Kishore Singh to death punishment and sentenced the other two convicted accused for imprisonment for life under Section 396 IPC. No separate sentence was awarded against the accused-Maheshwar Singh for the offence under Section 412 IPC.

4. The convicted accused filed appeals questioning the judgment and order of conviction and the same came to be allowed by the impugned judgment in so far as two accused-Nand Kishore Singh and Maheshwar Singh were concerned. Consequently, the judgment and order of conviction and sentence imposed upon them was set aside. So far as Mintu Kumar @ Mintu Singh is concerned, the High Court confirmed the judgment of conviction passed by the Trial Court; however, since it was found that Mintu Kumar @ Mintu Singh was juvenile on the date of the offence and he was given benefit of Section 7A of Juvenile Justice Act (Care & Protection of Children) Act, 2000, as amended in 2006, his case was forwarded to the Board constituted to deal with the Juvenile Justice (Care & Protection of Children) Act, 2000, with the direction to pass appropriate orders in respect of Mintu Kumar @ Mintu Singh.

5. Before proceeding on merits of the matter, it is pertinent to note that the State has not filed an appeal against the acquittal of the respondents-Nand Kishore Singh and Maheshwar Singh. The original informant-Amar Nath Jha had lodged the special leave petitions. When the matters were posted before the Court on 08.07.2011, the first informant sought permission to withdraw the special leave petitions though by then this Court had granted permission to him to file special leave petitions on 09.01.2009. This Court was pleased to reject the prayer of informant to withdraw the special leave petitions by observing that the proceedings in the criminal case, especially of this nature cannot depend on the whims of the informant. Since the informant was not interested to pursue the appeals, Mr. Himanshu Munshi, advocate, was appointed as an amicus curiae to pursue the appeals. Further, two accused mentioned supra though were served with the notice, remained absent; hence in compliance of the directions of this Court, the Supreme Court Legal Services Committee appointed Ms. Nidhi, Advocate as amicus curiae, and on her behalf Smt. Kiran Suri, Senior

Advocate assisted the court on behalf of the unrepresented accused. Heard the learned advocate appearing on behalf of the State and both amici curiae and perused the records. On going through the material on record and after hearing we find that the Division Bench of the High Court has answered each and every point on which the Trial Court had convicted the accused. The High Court has given detailed reasons to acquit and as to how and why the case of the prosecution as made out before the Court is unbelievable, in so far as the respondents are concerned.

6. Having perused the documents available on record and having heard the contentions of learned advocates appearing on behalf of both parties, we are of the considered opinion that three essential aspects of this case are to be concentrated which may indicate whether the prosecution was able to prove the case beyond reasonable doubts.

7. The first aspect, we need to consider is that the inadequacy of Test Identification Parade [hereinafter referred as 'TIP' for brevity] has been conducted herein. Though it is a case of the prosecution that the dacoits were armed with a gun, the country made pistol, lathis and bamboos etc., but none of these weapons were recovered from the accused persons except a piece of dhoti, blouse and nose stud, other articles alleged to have been stolen by the dacoits were not recovered. It is borne out of the record that the accused-Nand Kishore Singh and Maheshwar Singh were not subjected to T.I.P. The only person who was subjected to T.I.P. was a minor (Mintu Singh). It may be of some relevance to note that aforesaid Mintu Singh who has identified during the T.I.P. was referred to Juvenile Justice Board, as he was found to be a Juvenile. In this context we may note that in cases like present one T.I.P. acquires significance and lack of conduction of the same cannot be ignored. It is well settled that non-conduction of T.I.P. may not itself be fatal to the prosecution case but certainly it must be weighed in by the Court while considering the facts and circumstances of each case. [See: *Kanta Prashad V. Delhi Administration*¹, and *Vaikuntam Chandrappa & Ors. V. State of Andhra Pradesh*²,

8. On a different note we may notice that PW-7 (Gena Ram) who was one of the injured witnesses on account of the bomb thrown by the dacoits, has himself not identified any of the dacoits. It is indeed suspicious to note that the injured witness deposed that he arrived at the place of occurrence only after dacoits managed to run away. PW-9 (the informant) has also failed to identify any of the dacoits. It may not be out of context to note that even PW-10 and PW-12, PW-8 and PW-4 have equivocally have failed to identify or recognize the said dacoits. This factor was considered by the High Court which may be noted from the impugned judgment.

9. The second aspect is the lack of recovery and identification of stolen articles. It is already mentioned above that the recovery of the stolen article was limited to one dhoti, a blouse and a nose stud. These articles were recovered from Maheshwar Singh which have been identified only by PW-10 (Gita Devi), PW-12 (Indu Devi) and PW-4 (Uday Nath Jha). Although, number of witnesses including the family members witnessed the aforesaid dacoity, only three persons could individually identify three different objects separately

which this Court finds suspicious to believe in. This Court in the light of facts and circumstances cannot lend any credibility to the alleged allegations regarding dacoity.

10. The third circumstance which we need to concentrate concerns non-reporting of essential facts which were known to the informant in the FIR. The High Court while appreciating the entire materials on record has affirmatively concluded that PW-1, 2, 3, 4, 8, 10 & 12 belong to the same family of the deceased and reside in the same house. It may be of some significance to note that PW-9 (the informant) of this case is the nephew of deceased who lives in an adjacent house to that of the deceased. In the FIR, PW-9 has failed to mention the name of PW-1, is a significant person as per the prosecution as he had allegedly identified the accused-Nand Kishore Singh and Maheshwar Singh, who were the dacoits responsible for the aforesaid crime. It has come out from the cross-examination of PW-9 that he was aware of presence of PW-1 during the incident but he failed to mention his name in the FIR. Such non-mentioning of presence of PW-1, who was a material witness in this case, creates further suspicion on the hypothesis portrayed by the prosecution. The High Court on appreciation of detailed evidence has for the right reasons concluded that the informant (PW-9) was aware of the names of dacoits who had killed the deceased but failed to name them in the FIR. In this context we may note that the incident is alleged to have taken place in the intervening night of 21st-22nd April, 1999, whereas the FIR came to be registered at 3.15 a.m., after a lapse of 3 hours. Despite sufficient time for the informant to gather necessary information, which he did, the names of two accused respondents have conspicuously been missing, which also formed an additional factor for the High Court to acquit accused respondents. Although we accept that FIR need not be an encyclopedia of the crime, but absence of certain essential facts, which were conspicuously missing in the present FIR, point towards suspicion that the crime itself may be staged.

11. Further it is also relevant to note that the names of the respondents were very well known to the family of the first informant as well as the family of the deceased. It has also come on record that there was animosity between these two accused and the family of the deceased in respect to certain matters. In this context, learned amicus curiae may be justified in arguing that there is every likelihood that the accused might have been falsely implicated.

12. The last aspect which we need to concern ourselves is the scope of the appellate jurisdiction in this case when High Court has acquitted the concerned accused respondents. It is well settled that the appellate courts cannot upset an order of acquittal in a casual manner when there are two possibilities of view which can be taken from the evidences on record. On an entire perusal of the testimonies of the witnesses and other evidences on record, we find that the High Court has reasonably taken its view as the prosecution was not able to explain and prove certain missing links in the alleged offence of dacoity. In the light of facts and circumstances of the case it is not appropriate or proper to convert an order of acquittal into conviction, even though the trial court on an erroneous basis had convicted the respondents accused to death penalty.

13. The judgment and order of acquittal does not deserve interference inasmuch as the view taken by the High Court while acquitting the accused can be said to be a possible view under

the facts of the case. On the other hand, having regard to the material on record, we are of the opinion that the High Court has taken the only view which is possible in the facts and circumstances of the case.

14. We also do not find any justification to reverse the finding given by the High Court relating to juvenility of Mintu Kumar @ Mintu Singh. On facts, on re-appreciation of the material on record, the High Court concluded that Mintu Kumar @ Mintu Singh was less than 18 years of age. The record reveals that he was directed to be examined by a Medical Board by the High Court during the course of hearing. The report of the Medical Board discloses that he was 20-22 years of age as on 22.04.2006. This conclusion arrived at by the Medical Board was based on radiological findings. The date of occurrence was 22.04.1999, which means that Mintu Kumar @ Mintu Singh was below 18 years of age as on the date of incident. There is no contrary material on record for taking different view that has been expressed by the Medical Board which is consisted of three doctors including Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur. Hence, the appeal questioning the order holding that Mintu Kumar @ Mintu Singh was a juvenile is also liable to be dismissed and is accordingly dismissed.

15. Since, we find that the High Court has appreciated every aspect of the matter on facts and has considered the entire material on record while acquitting the accused and since we do not have any material to disagree with the reasons assigned and the conclusion arrived at by the High Court, we decline to interfere with the impugned judgment and accordingly the appeals fail and stand dismissed.

Judgment Referred.

¹(1958) CriJ 0698

²AIR 1960 SC 1340