

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.530 of 1993

Arising Out of PS.Case No. 48 Year- 1989 Thana –Vidyapati Nagar District- SAMASTIPUR

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1. Karamchari Sahni son of Jhagru Sahni
2. Sita Ram Sahni son of Buttan Sahni
Both the appellants are residents of Village Maniarpur, PS Ghato, Dist.
Samastipur

..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellants : Shri Neeraj Kumar @ Sanidh, Advocate

For the Respondent : Sushri Shashi Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 19-08-2015

The present appeal is directed against the judgment of conviction and order of sentence dated 4.10.1993 passed by the learned 4th Additional Sessions Judge, Samastipur, in Sessions Trial No. 9 of 1991/157 of 1991, by which the appellants have been held guilty of committing the offence under Section 396 Indian Penal Code and were directed to suffer rigorous imprisonment for life.

2. It appears that in the night intervening 2nd and 3rd September, 1989, dacoits 25-30 in number, plundered the houses of different persons, like, PW 2 Gopal Prasad Singh and his brother PW 3 Praduman Thakur, PW 7 Satya Narain Thakur, PW 8 Narsing



Singh, PW 9 Baiju Singh, PW 10 Basudeo Thakur and others. They had, in that course, committed the murder of Surendra Singh, who happened to be the cousin of PW 2 Gopal Prasad Singh and Ashok Singh, who happened to be the full brother of PW 2. Besides, the dacoits also inflicted injuries upon PW 10 Basudeo Thakur and PW 13 Ram Sewak Singh. The Sarpunch of the village Harihar Prasad Singh, who was not examined during the trial, had given the fardbeyan on 3.9.1989 at 7.15 AM detailing the story as to how the dacoity had been committed in his own house as also in the houses of others in the village and how he had roamed around the village during that course to assess the degree of loot and plunder as also the deaths which had been caused by the dacoits. The informant did not name anyone in spite of lodging the report after seven hours of the incident.

3. It appears that subsequently the police suspected the two appellants, arrested them and sent them up for trial which ultimately ended in the impugned judgment and order of sentence passed against them.

4. A total number of nineteen witnesses were examined by the police, out of whom PW 2 Gopal Prasad Singh, PW 3 Praduman Thakur, PW 7 Satya Narain Thakur, PW 8 Narsing



Singh, PW 9 Baiju Singh, and PW 10 Basudeo Thakur had given eye witness account to the occurrence. PW 13 Ram Sewak Singh who was injured, was tendered for cross-examination. Other witnesses who were not material witnesses or they had not supported the prosecution case or had been associated with search and seizure of different articles. PW 12 Dr. V.B.Udai Singh had held post mortem examination on the two dead bodies and had issued the postmortem examination reports.

5. The defence of the appellants was that they had wrongly and falsely been implicated by the police in the case.

6. We were taken through the evidence of the witnesses by Shri Neeraj Kumar @ Sanidh, learned counsel appearing on behalf of the appellants, and we find that PW 2 Gopal Prasad Singh who had claimed giving his statement on 03.9.1989 had in fact not named the appellants in his statement before the police, in spite of having claimed to have identified them during the course of dacoity in his house. The curious aspect of the identification was that even as per PW 2, out of 25-30 dacoits two had put on *Gaalmochha* on their faces and those were the two appellants, namely, Karamchari Sahni and Sita Ram Sahni. PW 2 further stated that appellant Karamchari Sahni had fired and killed his brother Ashok Singh by stating that he was acting



as a *rangdaar*. He was extensively cross-examined and was suggested that he had not identified nor had named the two appellants. As regards PW 3 Praduman Thakur, he had also claimed that he had identified the two appellants in the light of *Gobargas* lamp which was burning at the *Darwaza* of PW 10 Basudeo Thakur. But he had admitted in paragraph-9 of his evidence that he had not stated to the police that he had identified the two appellants and had rather given a statement that after seeing the dacoits, he had run away towards the field in the west out of fear and thus was contradicting his statement. By his previous statement, during the course of investigation, not only that the witness had admitted that he was examined by the police after 8-9 days of the occurrence, when he had given his statement. So far as the evidence of PW 7 Satya Narain Thakur is concerned, he stated that as soon as he saw the dacoits coming towards his house, he had run away towards his orchard and the dacoits were seen coming by flashing torch lights and in spite of that, and the distance between him and the dacoits, PW 7 claimed to have identified the two appellants. PW 7 admitted in paragraph-13 of his evidence that he had seen the dacoits for the first time from a distance of about 20 steps, i.e., 60 feet, who were coming flashing torch lights. PW 8 Narsing Singh had claimed identification of the two appellants in his evidence in



paragraph-2 in the same light of *Gobargas* lamp which was burning at the house of PW 10 Basudeo Thakur. But the curious aspect of the evidence of these witnesses is that Basudeo Thakur (PW 10) at whose *Darwaza*, the light was available and in which light everyone was claiming identifying the two appellants, had himself admitted in paragraph-4 that he could not identify any of the dacoits. PW 9 Baiju Singh stated that the dacoits had put on *Galmochha*, and one among the two who had put on *Galmochha*, and was of dark complexion had shot and killed Ashok Singh. This evidence of PW 9 Baiju Singh indicates that the assailant of Ashok Singh had not been identified by him, whereas PW 2 Gopal Prasad Singh had claimed identifying the appellant Karamchari Sahni who had fired the shot and killed the deceased Ashok Singh. Thus, the evidence of PWs 2 and 9 makes it utterly difficult to hold that it could be the appellant Karamchari Sahni who could have killed deceased Ashok Singh.

7. PW 2 has stated in his evidence in paragraphs-15 and 16 that persons in whose houses the dacoity had been committed had come and assembled together by beating the affected persons and they had all narrated to the other about the manner of dacoity which was committed in anybody's house. This appears natural to us that after the incident of chain of dacoities was over, the affected persons



or others of the village should have assembled at a particular place to share the informations and thereby to satisfy their curiosity as regards the manner of committing of dacoity and identification of anyone during that course. PWs 2, 3, 7, 8, 9 and 10 claimed identifying the dacoits and they had very well stated in their individual evidences that it were the two appellants along with one Ratan Sahni, who was not put in trial, who had been identified by them. It could safely be presumed that they had identified as stated by PW 2 in paragraphs-16 and 17 and they must have divulged the names of the dacoits to themselves and there was no reason that the names should not have been divulged to the informant Harihar Prasad Singh. The explanation for the non-appearance of the names of the two appellants along with that of Ratan Sahni which appears in the FIR was that appellant Karamchari Sahni was acting as a personal private guard of the informant Harihar Prasad Singh and, as such, he had omitted his name while giving the statement. This could have been accepted if the names of Ratan Sahni and appellant Sita Ram Sahni could have appeared in the FIR. There is no explanation as to why the names of appellant Sita Ram Sahni and Ratan Sahni had not appeared in the FIR, if they had indeed been identified by the witnesses during the course of dacoity. We have very strong reasons as stated just now to



reject the claim of the witnesses that it was the informant Harihar Prasad Singh who had shielded the appellant Karamchari Sahni by not naming him in his report because, as already pointed out, two other names, like, that of appellant Sita Ram Sahni and Ratan Sahni, also did not appear in the FIR.

8. In our opinion, the informant had by subsequent consultations and deliberations implicated the appellants in the commission of the offence and, as such, they had named them specifically as persons who had committed dacoity in their evidence in Court. The other curious aspect of the evidence of the witnesses is that both the appellants Karamchari Sahni and Sita Ram Sahni were known to the witnesses. The appellant Sita Ram Sahni was the very co-villager of PW 2 Gopal Prasad Singh who was residing at the distance of 100 yards from his house as per the evidence of PW 2 in paragraph-19 and it is almost admitted by all the witnesses that appellant Karamchari Sahni was equally known to them as he was a regular visitor to the village. It was natural for such persons to have concealed their faces by some clothes or other articles and if they had done as appears stated by the witnesses, then it raises another question which goes as unanswered as to how the witnesses could pick up the identifying features of such concealed faces. This further

reinforces our inference that the two appellants had falsely been implicated belatedly for any particular reason which they were not required to place on record.

9. After considering the evidence of the witnesses and analyzing them to reach the conclusions, which we have just recorded, we find that the appeal is meritorious. It is hereby allowed by setting aside the judgment of conviction and the order of sentence. The two appellants are acquitted of the charge they had been held guilty of. The appellants are on bail. They shall stand discharged from the liabilities of their respective bail bonds.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

mrl./-Brajesh kr

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