

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 477 of 1993

Against the judgment of conviction, dated 08.09.1993, and order of sentence, dated 09.09.1993, passed by Shri Nirmalendu Kumar Kanth Niraj, Additional District and Sessions Judge, I, Jamui, in Sessions Case No. 461 of 1989, Trial No. 372 of 1991 arising out of Sikandra P.S. Case No. 207 of 1988

Md. Najeeb, son of Late Sarfuddin, resident of village Arha, P.S. Chanderdeep (Sikandra), district Jamui

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Sri F.R. Mallick, Adv.

For the Respondent : Sushri Shashi Bala Verma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 20-08-2015

The solitary appellant was charged under Section 396 of the Indian Penal Code by the learned Additional District and Sessions Judge, I, Jamui, for being put on trial in Sessions Case No. 461 of 1989 and by judgment dated 08.09.1993 was held guilty of committing the said offence. The learned trial Judge heard the appellant on sentence and passed the order of sentence on 09.09.1993. He directed the appellant to suffer rigorous imprisonment for life. The appellant has preferred the present appeal on being aggrieved by and dissatisfied with the findings as regards his guilt and the appropriateness of the sentence passed against him.

2. P.W. 5 Md. Irshad gave his *fardbeyan* to the police on 16.11.1988 at 02.30 A.M. at his house alleging that 25-30 dacoits had broken into his house and had assaulted his mother in order to extorting the keys of the rooms so as to plundering it. There was a lantern burning in the outer *verandah* of the house and he found that the dacoits had

surrounded his sister and mother (Jahana Khatoon P.W. 4) and were assaulting both of them. Ultimately, the dacoits succeeded in obtaining the keys of the house and they opened the room to pick up a box containing three pairs of valuable *sarees*, *blouse*, a wrapper and Rs.15,000/- in cash. As soon as the dacoits had brought out that box from the room, it was alleged that the deceased Samina Khatoon caught the box in order to resisting the taking away of the same. In that process this appellant is said to have been identified by her and she stated to the present appellant as to how was it that he had indulged into such a nefarious act. Hearing the words of the deceased, it is alleged, this appellant fired a shot by his pistol which hit on her chest and she slumped on the ground just at the door of the room.

3. It was stated by the informant that the dacoits had put on *galmochha* and they had put on shorts and *banians* and they had been seen in the light of the lantern which was burning there in the *verandah*.

4. P.W. 9 Sub Inspector of Police Ram Suresh Prasad who was the Officer-in-Charge of Chandradeep Police Station arrived at the house of the informant to record the fardbeyan (Exhibit 7) and on that basis the first information report of the case (Exhibit 8) was drawn up. P.W. 9 took up the investigation himself. He inspected the place of occurrence and as may appear from his evidence he did not find any sign of disturbance in the orderly storage of the house which were plundered or looted away. He did not also find any particular sign at the place from where the box was allegedly lifted and taken away by the dacoit. Not only that he did not find the dead body lying in the house of the informant rather it is the categorical evidence of P.W. 9 that he was told that the dead body was lying in Arha Hospital and he had to leave the place of occurrence to go to that hospital for holding inquest upon it and preparing the inquest report. However, before he had left the place of occurrence, he had inspected the same and again he was stating that he had found

some blood lying just at the door of a room, the floor of which was plastered. He, as such, claimed to have picked up the blood by using a cotton bud and seized the same in presence of witnesses but when he was cross examined in paragraph 48 onwards it appears stated by P.W. 9 that it was not a small cotton bud which people put into the bracket of ears so as to putting some fragrance to their personality rather it was a good amount of cotton created into a bud which was used by P.W. 9 in picking up the blood which had fallen at the door of the room but when he was further pursued by the defence he stated that there was no seizure memo attached to the case diary though there was mention of the seizure in paragraph 5 of it but there was no mention of any names of witnesses in whose presence the seizure had been made.

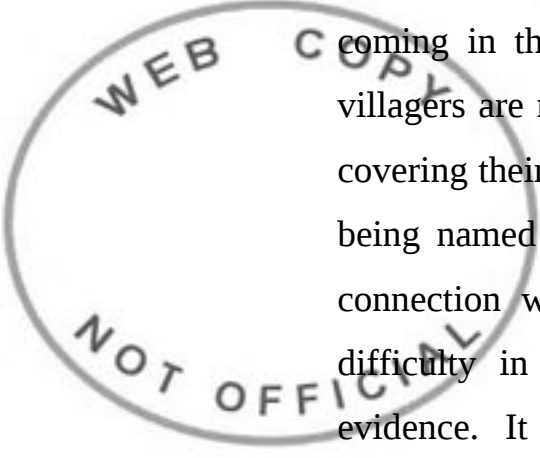
5. P.W. 10 Sub Inspector of Police Ajit Kumar Singh who had received the charge of investigation from P.W. 9 also could not point out to the Court that there was any seizure memo available in the case diary or that the seized blood by using the cotton mass was to be produced before the Court as the same was available in the Malkhana or further that the same had been transmitted to the Forensic Science Laboratory for chemical analysis. It appears further that P.W. 9, the first investigating officer, had not found any mark anywhere inside the room from where the box was picked up indicating indeed that the box had been kept at any particular place in that particular room.

6. On close of the investigation the solitary appellant along with two others were sent up for trial. The two, who were sent up for trial with the present appellant, were suspected to have their hands in the commission of dacoity and they had been put on test identification parade which was supervised by P.W. 1 Shri Diwakar Mishra, Judicial Magistrate, Chapra, but they were acquitted on account of the infirmity in the evidence of identification due to the two acquitted accused being the co-villagers and further they had also put on *galmochha* making the

identification of those two improbable and impossible during the course of dacoity.

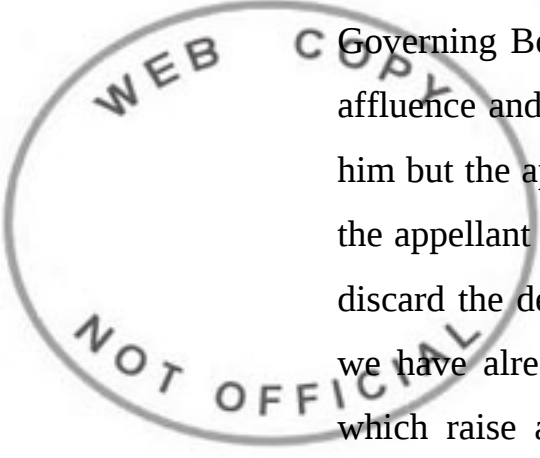
7. We were taken through the evidence of the witnesses. While being taken through the evidence of witnesses, we found that P.W. 2 Sitara Khatoon and P.W. 3 Farzana Khatoon the two other sisters of P.W. 5 along with their mother P.W. 4 Jahana Khatoon with the informant P.W. 5 Md. Irshad had supported the commission of dacoity in their house and in that course the murder of deceased Samina Khatoon by this appellant. We have serious doubt that indeed any dacoity had been committed because there was no disturbance in the orderly storage of properties or things inside the house and the room. There was no sign of plunder or loot inside it. There was no sign either of any violence having been committed with the property or some person. It was true that the prosecution alleged that P.W. 4 Jahana Khatoon, the mother of the informant, had been badly assaulted in order to extort the keys of the house but the curious aspect of that part of the story was that P.W. 4 was never taken to any doctor for being treated for any injury which could have appeared on her person. The solitary box which was taken away, we have already noted did not leave any mark at a place in the room that it had been kept at a particular place, this is the evidence coming on record. If these are the evidences which was produced and found then it left much to be desired as regards the objective evidence on commission of the dacoity in the house of the informant. It was it that we proceed from here to doubt the very story of the prosecution that indeed any dacoity had been committed in the house of P.W. 5 in the night intervening 15-16 November, 1988.

8. So far as the identification of the accused persons is concerned, we have already referred to the fact that not only the present appellant but the two who had been acquitted by the trial Court were the co-villagers of the informant. It was very much stated in the first



information report itself that the dacoits had put on *galmochhas* in order to conceal their identity. We readily accept this evidence which was coming in the evidence of the witnesses during the trial because co-villagers are not supposed to go to commit dacoity with murder without covering their faces so as to be identified by the inmates of the house and being named in the first information report which might be lodged in connection with the offence. What we found was that finding this difficulty in its case, the prosecution started improvising upon the evidence. It got stated specially by P.W. 5 that while the deceased was struggling to snatch the box from the hands of the dacoit, the *galmochha* of one of the dacoits was undone exposing his identity and it was this appellant who was identified. We could only refer to the evidence of P.W. 9 the investigating officer, in paragraph 61 in which he stated that the informant had never stated that the *galmochha* which was put on by this appellant had been dislodged exposing his identity to the inmates of the house. It was a very serious improvisation made in the evidence of the prosecution and it was purposely done in order to putting before the Court some clinching evidence making it a possibility that the appellant had been identified.

9. The appellant appears to be a man of status. It has been admitted by P.W. 5 in paragraph 66 of the evidence that the mama of the informant, namely, P.W. 7 Mogni Ekram had not been successful in getting the deceased to marry this appellant. As such; he had falsely been implicated in this case. The appellant had filed a full statement in his defence under Section 313(5) of the Criminal Procedure Code which permits the filing of the written statement by the accused as sufficient compliance of that Section as well, which requires the putting of certain questions to the accused at the close of the prosecution case in order to seeking explanation from him on circumstances appearing against him from evidence. The present appellant had pointed out in his statement so



put in before the learned trial Judge under Section 313(5) of the Criminal Procedure Code that he was a respected person being the Member of the Governing Body of a College established at Arha and he was a man of affluence and the lady deceased had fallen for him and wanted to marry him but the appellant was not ready to do so and that was the reason that the appellant had falsely been implicated. We do not have any reason to discard the defence of the appellant in view of the circumstances which we have already noted after considering the evidence of the witnesses which raise a serious doubt about the prosecution claim of a dacoity having taken place in the house of P.W. 5 and in that course the deceased being shot dead. The circumstance which further increased the possibility of false implication of the appellant may be pointed out by referring to the evidence of P.W. 5 that just after the commission of the murder he rushed to the house of P.W. 7 Mogni Ekram who happened to be his mama and came back to his house after having informed him about the incident. There is no evidence of any of the witnesses that by whom and how the deceased was shifted to Hospital, Arha, if P.W. 5 remained present throughout at the house. There is some evidence coming from P.W. 5 that it was P.W. 7 Mogni Ekram who had taken the dead body to the Hospital, but we found that Mogni Ekram was completely silent as regards taking away either the dead or injured Samina Khatoon to Hospital, Arha. We have already referred to the evidence of P.W. 9 the first investigating officer which indicated that he had not found the dead body in the house anywhere. He was told that the same was lying in the hospital and he had to go to that hospital for holding inquest upon it. The evidence which is available to us on the record of the case, does suggest as if there was something fishy in the story of the prosecution and indeed no dacoity had been committed in the house of P.W. 5. Likewise, Samina Khatoon the deceased received injury somewhere else and that is more significant by the fact that the clothes which were found on the dead

body, were not bearing a single spot of blood stain as appears from the record.

10. The story appears suspected and considering that we allow the appeal by acquitting appellant Md. Najeeb after setting aside the judgment of conviction and order of sentence passed against him. The appellant is on bail, he shall stand discharged from the liability of bail bond.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

SA/Kundan

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