Supreme Court of India
Rajendra Mahton vs State Of Bihar Thr. ... on 9 December, 1997
Author: Srinivasan
Bench: M.M. Punchhi, M. Srinivasan

PETITIONER:
RAJENDRA MAHTON

Vs.

RESPONDENT:
STATE OF BIHAR THR. LEGALREMEMBRANCER GOVT. OF BIHAR, PATNA

DATE OF JUDGMENT: 09/12/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Srinivasan, J.

The appellant was prosecuted under Section 302 I.P.C. The case of the prosecution was briefly as follows: On April 21, 1981 at about 7.00 P.M. the appellant went to the shop belonging to the deceased Arjun Sao near his residence and demanded a packet of cigarette from PW 4 the daughter of the deceased. At that time PW 6, the wife of the deceased, PW 7. the wife of the brother of PW.6 PW 5, the son of the deceased and Pw 3, a resident of nearby house were also present. When the appellant demanded a packet of cigarette, PW 4 and PW 6 informed him that there was no cigarette in the shop. The appellant used abusive language and made certain derisive remarks. The deceased protected against the same. Immediately the appellant took our a pistol and shot the deceased who fell down and died at the spot. PW 8, the Investigation Officer came to the village at about 2.00 a.m. in connection with investigation, of another case on a complaint lodged by the grand father of the appellant that there was dacoity in the village by certain persons. At that time he was informed about the killing of the deceased by Pw 7 whose statement was recorded by him. The appellant was not traceable for some time. Later a case was registered against him.

2. The appellant denied the occurrence and claim that he was falsely implicated. According to the appellant there was an attempt by certain persons to commit dacoity in the house of his grand father

and when there was a hue and cry, the dacoits fired shots from there shot hit the deceased and was the cause of his death.

3. The prosecution examined eight witnesses while the appellant examined two witnesses in support of his case. The court of sessions at Nalanda opined that the charge against the appellant was not proved beyond all reasonable doubts and he was therefore entitled to benefit of doubt. Consequently he was acquitted. On appeal by the State, the High Court at Patna reversed the judgment of the sessions court and held that the appellant was guilty of committing an offence under Section 302 I.P.C. The appellant was therefore convicted and sentenced to undergo rigorous imprisonment for life. It is the judgment of the High Court which is under challenge in this appeal.

4. Learned counsel for the appellant contends that the High Court should not have interferred with the order of acquittal passed by the trial court in a much as the view taken by the sessions judge was quite reasonable on the evidence on record. Our attention is drawn to the judgment of this court in Dina Nath Singh v. State of Bihar A.I.R. 1980 S.C. 1199 wherein this court held that where the view taken by the trial court in acquitting the accussed is reasonably possible, even if the High Court could have taken a different view, that is no ground for reversing the order of acquittal.

5. Learned counsel for the appellant has taken us through the depositions of the witnesses and in particular that of PW 1. The said witness claims to the engaged in doctor's profession. According to him, he was called by PW 5, who was accompanied by PW 3 and PW 7 to come and examine the deceased who had received a bullet injury. According to the witness when he saw the deceased, the latter was alive and told him that dacoits had fired at him. The argument of learned counsel for the appellant is that the deceased was alive for quite some time after he was injured by the gun shot and he died on the way to the hospital. It is contended by learned counsel that DW 1 is an independent witness and his version should be accepted. it is also submitted that the member's of the family of the deceased had not made any complaint to the police till 2.00 a.m. when PW 8 came to the village for investigating another case on the basis of the report given by the grand father of the appellant with reference to the dacoity in the village. Learned counsel has also placed reliance on the reasoning of the sessions judge and submitted that there are material discrepencies and inconsistences in the statements of the witnesses which made them totally unreliable.

6. Per contra, learned counsel for the respondent has submitted that the judgment of the trial court is based on a palpable illegality in as much as the trial judge has chosen to dis-believe the witnesses entirely on the basis of the contents of the FIR which was recorded on the statement of PW 7 only. He has placed reliance on the judgment of Betal Singh V. State of M.P. (1996) 8 SCC 205. The court has held in that case that evidence of a witness cannot be impeached with reference to the statements of other witnesses recorded under Section 161. It has also been held in that case that the High Court's power in deposing of appeals from conviction or acquittal are essentially the same and the appellate court is free to come to any conclusion as to the credibility of the evidence except when it depends upon the demeanour of the witnesses. It has also been pointed out that if the view taken by the trial court is palpably wrong the order of acquittal can be reversed.

7. Learned counsel for the respondent has pointed out that the sessions judge has chosen to dis-believe all the prosecution witnesses on the only ground that the facts stated by such witnesses were not set out n the Fard-beyan (Ext. 4) of the informant (PW 7). The trial court has also made much of small and immaterial discrepencies relating to the existence of lantern in the shop at the time of occurrence and proceeded to hold that the appellant could not have been identified by the witnesses in the absence of sufficient light. It is submitted that according to the evidence of the witnesses the appellant was standing very near them when he fired the pistol and that the appellant was known to them for quite a long time as he was resident of a nearby house. Learned counsel for the respondent has submitted that there is no error whatever in the judgment of the High Court in accepting the evidence of the five eye witnesses one of them being an independent witness. It is also pointed out by him that DW 1 is a quack in the village and even a perusal of his evidence shows that he is not speaking the truth. it is further pointed out that there is absolutely no material to support the version put forward by the defence regarding the alleged dacoity in the village on the date of occurrence. According to learned counsel the complaint lodged by the grand father of the appellant regarding the alleged decoity was deliberately made in order to create evidence.

8. On a perusal of the entire record we are inclined to accepted the view taken by the High Court. It is quite evident that the version put forward by the defence regarding the alleged dacoity is not proved in any manner by any acceptable evidence. Significantly, the complaint lodged by the grand father of the appellant was registered as CR Case No: 298 of 1981 under section 399 and 402 I.P.C. but the complaint relating to the occurrence in this case is registered as CR Case No. 297 of 1981 though it was lodged later according to PW 8. There is no explanation for the same. The FIR in the CR Case No. 298 of 1981 has not been proved before the court. A perusal of the depositions of DW 1 and DW 2 shows that neither of them is speaking the truth. There is also no other acceptable evidence regarding the alleged dacoity. Both Courts are therefore justified in rejecting the defence version of alleged dacoity.

9. The time of occurrence was about 7.00 P.M. In the second half of April, there would be sufficient light and it will not be so dark as to prevent people from recognizing others who are already well known to them. It is also common knowledge that generally in this country, people will switch on the lights or light lamps in the absence of electric lights. The evidence adduced by the prosecution that there was lantern in the shop of the deceased was quite natural. The absence of reference to the same in the fardbayan of PW 7 does not have any significance. She might not have mentioned it as it is a part of the daily routine and not an unusual feature. The trial court was in error in making much of the omission of reference to burring of lamp in the shop in the FIR and disbelieving the witness who spoke about it. The trial court was certainly not entitled to use the FIR against witnesses who wee not responsible for it.

10. The trial court had also overlooked the fact that the appellant was not a stranger to the witnesses. He was living in practically the next house and the PWs knew him for long. They would have had no difficulty in recognizing him at twilight. As rightly pointed out by learned counsel for the respondent, the trial court had chosen to disbelieve every eye witness on the ground that there was no reference to a burning lamp in the FIR and Investigating Officer did not find a lamp or lantern in the shop. There is no doubt that trial court was palpably wrong.

11. The High Court has discussed in detail the evidence of every witness and appreciated the same in the proper prospective. The High Court is fully justified in reversing the conclusion of the trial court and setting aside the order of acquittal.

12. We find no merit in the appeal. It is dismissed.