

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 554 of 1996

(Against the judgment and order of conviction and sentence dated 02.08.1996 (sentence passed on 03.08.1996) by Sri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 40 of 94/56/95)

Kardra Hari @ Kedar Hari.

... Appellant

Versus

The State of Bihar (now Jharkhand)

... Respondent

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellant : Mr. Manoj Kumar Sah, Advocate

For the State : Mr. Md. Azeemuddin, A.P.P.

R. Mukhopadhyay, J. Heard Mr. Manoj Kumar Sah, learned counsel appearing for the appellant and Mr. Md. Azeemuddin, learned A.P.P. for the State.

2. This appeal is directed against the judgement and order of conviction and sentence dated 2.8.1996 (sentence passed on 3.8.1996) by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 40 of 1994/56/95 whereby and whereunder the appellant has been convicted for the offence punishable under section 395 IPC and has been sentenced to undergo rigorous imprisonment for life.

3. The prosecution story in brief arises out of the Fardbeyan of Md. Zunaid Ahmad recorded on 1.9.1993 wherein it has been stated that the informant had gone to Kahalgaon along with his cousin brother Md. Gafoor Alam for the treatment of his nephew Md. Irfan Alam. After the treatment was done, all three started for village-Dighi on foot along with their bicycles when at around 7 P.M. near Bhutaha Bahiar, five persons came out from the Rahar field and surrounded them. The miscreants were armed with pistols while one had a bicycle chain. Miscreants thereafter looted whatever was in the possession of the informant and others and thereafter disappeared. The

informant had identified all the five accused persons involved in the commission of the dacoity.

Based on the aforesaid allegations, Mahagama P.S. Case No. 77/1993 was instituted against the appellant and four others under section 395 IPC. On completion of investigation, chargesheet was submitted against the accused persons after which cognizance was taken and the case was committed to the Court of Sessions where it was registered as Sessions Case No. 40/94. Charge was framed under section 395 IPC which was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as twelve witnesses in support of its case.

P.W-1-Md. Zunaid Ahmad is the informant who has stated that on 31.8.1993 in the morning he had gone to Kahalgaon for the treatment of his nephew. He was returning from the said place at 3 P.M. and along with him was his cousin brother Gafoor Alam and both had bicycles with them. At about 6 P.M, they reached Dighi where his nephew also got down from a bus. He has stated that thereafter all of them started for their village at Simpur on foot as the road was in a bad shape. When they reached at the midpoint between village-Dighi and Mohani, five persons came running towards them and all had country made pistol with them while one had a bicycle chain. All the five miscreants started assaulting him and others and demanded to handover all the belongings to them. The miscreants took away cash of Rs.12, 1 HMT Chetan Watch, one Avon cycle and an umbrella from him; Rs.155/- cash and a Hero Jet Cycle from Md. Gafoor and Rs.7/- in cash and a Watch from Irfan. He had identified the dacoits as Ravindra Bhagat, Kadra Hari (appellant), Phudua @ Ajay Yadav, Ijaj Ansari and Faid Ansari. He had identified four of the accused in dock including the present appellant. After looting them, the miscreants had tied them and had fled away towards the north. He and the others somehow untied themselves and informed the villagers after which a search was conducted in the 'rahar' field but the miscreants could not be found. The incident was informed to the Chowkidar of the village who in turn informed the police station after which his Fardbeyan was recorded. He has proved the Fardbeyan which has been marked as Ext-1.

In cross-examination on behalf of Ravindra Bhagat he has deposed that at the time of the incident there was slight darkness. He had disclosed to the police that he had identified the miscreants by face as well as by recognizing their voice. The miscreants had assaulted them with chain for which they did not receive any treatment. He has deposed that the accused Ravindra Bhagat, Kadar Hari and Futua Yadav are residents of village-Dighi.

In cross-examination on behalf of Ajay Yadav, he has deposed that some of the miscreants had hid their faces.

P.W-2-Md. Irfan has stated that about 9-10 months back, his father and uncle had taken him for treatment to Kahalgaon and after treatment he was put on a bus and he got down at Dighi and from Dighi, all were returning home when five persons came out from the 'rahar' field and threatened to shoot them if they did not handover their belongings. They were assaulted with a chain and tied up with the help of rope after which all the miscreants fled away with the looted articles. At the time of the incident, he had identified Ravindra, Kedar Hari, Futu Yadav, Izaz Ahmed and Md. Farid. He had failed to identify Kedar Mehta in the dock.

In cross-examination, he has deposed that he had been able to identify only Ravindra and Futua.

P.W-3-Md. Gafoor Alam has stated that when he was returning to his house along with his son Irfan and cousin brother Junaid they were intercepted by five persons who started assaulting them with chain and threatened to shoot them if they did not handover their belongings to them. After looting them, the miscreants had tied them up and had fled away. He could not recognize any of the miscreants. This witness was declared hostile by the prosecution.

P.W-4-Nayeem Ansari has shown his ignorance about the incident.

P.W-5-Md. Jamil Ansari has stated that he has no knowledge about the incident.

P.W-6-Md. Shakil Ahmad has also stated that he does not have any knowledge about the incident.

P.W-7-Jay Kant Mishra has stated that had come to know about the incident on the alarm raised by Gafur.

In cross-examination, he has deposed that he does not know whether the night was dark or not.

P.W-8-Md. Sultan Ahmad has stated that he does not have any knowledge about the incident. He had not gone to the jail for participating in the TIP but he was called to identify the watch and a bicycle. He had not identified the watch or bicycle but Gafoor had disclosed that these articles belong to him. He had signed on the document relating to test identification. Abdul Hamid had also signed on the said document. He has proved his signature as well as the signature of Abdul Hamid which has been marked as Ext-1.

In cross-examination, he has deposed that he could not identify the watch or the bicycle.

P.W-9-Sahadat Hussain has stated that in the night the date of which he does not remember, the Officer in charge Mahagama P.S. had brought Ravindra Bhagat, Futo Yadav and Kadra Hari before him and Gafoor and Junaid had disclosed about these persons looting them apart from Farid Ansari and Izaz Ahmed who were also with them. In the next night, police had recovered a watch and bicycle from a pond. He had identified Ravindra Bhagat, Futo Yadav and Kadra Hari in dock.

In cross-examination, he has deposed that he had not witnessed the articles being taken out from the field.

P.W-10-Abdul Hamid has stated that the officer in charge Mahagama P.S. had called him as well as Sultan and Gafoor. He had failed to identify the bicycle.

In cross-examination, he has deposed that the test identification chart was not prepared in his presence.

P.W-11-Munna Mistry does not have any knowledge about the incident. On recall, he had identified his signature, which has been marked as Ext-1/2.

In cross-examination, he has deposed that his signature was taken on a blank paper.

P.W-12-Md. Kasim Ali is a seizure list witness who has stated that he had signed on a blank paper. He has identified his signature, which has been marked as Ext-1/1.

In cross-examination, he has deposed that no article was seized in his presence.

5. The statement of the accused was recorded under section 313 Cr.P.C. in which he has denied the allegations levelled against him.

6. It has been submitted by Mr. Manoj Kumar Sah, learned counsel appearing for the appellant, that the conviction of the appellant under section 395 IPC is based on the solitary evidence of P.W-1. It has been submitted that no recovery had been effected from the conscious possession of the appellant and in view of the evidence of P.W-2 and P.W-3, who were the victims as well as eye witnesses having not identified the appellant, the appellant deserves to be acquitted from the charges levelled against him.

7. Mr. Md. Azeemuddin, learned A.P.P., has submitted that the appellant is named in the F.I.R. as he was identified by the informant at the time of the incident. The informant, who has been examined as P.W-1, has supported the occurrence and has also identified the appellant in the doc.

8. We have heard the learned counsel for the respective parties and have also perused the Lower Court Records.

9. The incident relates to a dacoity committed by the accused persons wherein the informant, his cousin brother and nephew were divested of all their belongings at gun point and were also assaulted with a bicycle chain. The informant had identified all the accused persons including the appellant and the First Information Report was registered against five named accused persons. The informant who has been examined as P.W-1 has supported his version and has also stated about recognizing the accused persons by face as well as by their voice. He has further deposed that there was a slight darkness when the incident had occurred. P.W-2 and P.W-3 were the persons who were accompanying him and were also the victims of loot and P.W-3 did not support the case of the prosecution and he was ultimately declared hostile by the prosecution. P.W-2 though has named the appellant but he failed to identify the appellant in dock and in his cross-examination also, he has stated otherwise. The prosecution case therefore relies upon the solitary eye witness account of P.W-1. It is trite law that a conviction can be based on the evidence of a solitary witness if the same is reliable and trustworthy. There does not seem to be any corroborative evidence which can enhance the quality of evidence of P.W-1 and make it more purposeful

in engaging the appellant as one of the dacoits. Neither has there been any recovery from the possession of the appellant nor there is any incriminating material brought forward by the prosecution save and except the evidence of P.W-1 which would even give a hint of the appellant having participated in the dacoity. Even the evidence of P.W-1 with respect to identification of the accused persons cannot be said to be above suspicion as it was dusk and darkness had descended when the incident occurred. Absence of corroboration from P.W-2 and P.W-3 would further reduce the quality of such evidence. There also does not seem to be any medical evidence though it is stated that all the three victims were subjected to assault with a bicycle chain. Not a single villager has even whispered about taking part in the search operation after the informant and others had freed themselves by untying the ropes and drawing the attention of the villagers. The Investigating Officer has not been examined by the prosecution for the reasons best known to them.

10. In the circumstances, noted above, the evidence of P.W-1 cannot be relied upon as has been done by the learned trial court and therefore the conviction of the appellant is bad in law.

11. Consequently, the impugned judgment and order of conviction and sentence dated 2.8.1996 (Sentence passed on 3.8.1996) by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 56/95 is hereby set aside.

12. This appeal is allowed.

13. Since the appellant is on bail, he is discharged from the liability of his bail bond.

(Rongon Mukhopadhyay,J)

(Deepak Roshan, J)

Jharkhand High Court, Ranchi

Rakesh/NAFR

Dated the 6thMay, 2024.