

PETITIONER:
MUNNI SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT 21/04/1992

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1992 SCR (2) 605 1993 SCC Supl. (1) 395
JT 1992 (2) 586 1992 SCALE (1) 831

ACT:

Penal Code, 1860-Section 396-Dacoity- Conviction-
Appreciation of evidence-Four sets of prosecution witnesses-
Evidence of three sets not reliable-Reliability of the fourth
set-Conviction basing on the evidence of P. Ws. 2 and 11-
Legality of-Identity of accused not established-Effect of.

HEADNOTE:

The appellants, the victims of the dacoity and other prosecution witnesses were residents of the village, where the crime took place in the house of P.W. 11.

The accused were closely related. P.W. 11's cousin and uncle were P.W. 3 and the deceased, respectively, and P.W. 2 was also a close relative of P.W. 11.

There was a simmering discontent between the family of P.W. 11 and the family of the accused, Sukhari Singh. The accused Sukhari Singh claimed that a pond was bestowed of him by the erstwhile Zamindar before the coming into force of the Zamindari Abolition Act. As the tank was under the control of the accused, he prevented the cattle of the villagers from drinking water from it.

3/4 days prior to the occurrence of dacoity, the Panchayat of the village suggested to the accused-Sukhari Singh to surrender the tank in the name of a Shiva temple. The accused suggested to the Panchayat the place constructed and occupied by the complainant party, (the deceased and his relatives) for tying their cattle on the unsettled lands at the bank of the pond also should be likewise given to the Shiva temple. The Panchayat was not agreeable to the counter suggestion of the accused.

It was the case of the prosecution that the dacoity was masterminded and made at the house of the complainant with a sole purpose to avenge.

On the night intervening 5th-6th April, 1970 the P.W. 11, the first informant and his cousin, P.W. 3 and his uncle, the deceased were sleeping

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on the cots lay spread in the outer courtyard of their house. P.W. 11 was awoken by some noise as if some persons were coming. He stood up and switched on his five-cell torch and saw 20-25 dacoits armed with lathis, bhallas, garasas, and guns coming towards his house. On his focussing the

torch they stopped. Then the dacoits also switched on their torches. P.W.11 recognised in the torch light the accused inclusive of 5 appellants. Accused-sukhari Singh shouted, "kill-kill." Accused-Munni Singh fired with his gun at P. W. 11 but the gun fire did not hit him. While P.W. 11 was running, one of the dacoits hit him with a stick with an iron ring. There was some oozing of blood but it was not profuse. He ran for about 30 steps to get to his wheat field, which was about 2 to 3 feet below the level of his courtyard. From there he saw the remaining part of the occurrence.

P.W. 11's uncle was shot by the accused Munni Singh and he fell down. Other dacoits who were near him started hitting him with spears.

One of the dacoits held a ladder in his hand, through which he climbed up to the roof of the inner house, from where he jumped into the female apartment and opened the outer door. Then the dacoits entered the house and started looting and plundering. Two dacoits scolded his cousin P.W. 3 to keep lying down on his cot. In the occurrence, P.W.3 received no injury. The dacoits were active for about 15 to 20 minutes. On hearing the noise and commotion of the villagers, the dacoits decamped with the looted goods. Some of the villagers followed them to some distance but the dacoits kept firing on them. With the result that some of them were injured.

P.W. 11's uncle and other injured persons were removed to be taken to the hospital, but P.W.'s uncle died on the way. Then P.W.11 proceeded to the Police Station, taking the dead body of his uncle with him, and lodged F.I.R.

P.W.12 went to the spot and saw the evidence of dacoity in the form of things lying scattered and some of the articles left behind by the dacoits. He had the injured persons examined medically. He arrested the accused persons. Finally investigation was completed by another officer and the accused persons were put up for trial.

The matter went to trial under the old Code of Criminal Procedure before the First Additional Sessions Judge against the 6 named persons and one other. There were commitment proceedings before a Magistrate

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in which evidence was recorded. At the commitment stage, 10 persons were put to face the enquiry, out of which three accused died. There remained 6 of the original accused named in the F.I.R. and one more, not so named to face trial.

The trial court convicted all the 7 accused under Section 396, IPC and imposed on them a sentence of life imprisonment.

On appeal, the High Court acquitted two of them, namely Ram Narain Singh, the one unnamed in the F.I.R. and one Charittar Ahir, one of the so named and maintained the convictions of other accused.

This appeal by special leave was by the other accused challenging the judgment of the High Court,

Allowing the appeal of the accused, this Court,

HELD : 1. 01. The prosecution had four sets of witnesses which could establish identity of the dacoity. Three sets became redundant and only on the basis of one set was identity of the appellants established. The first set consisted of three injured persons who were not examined at the trial by the prosecution. This set did not help the prosecution at all. The second set consisted of the evidence of P.W. 3, P.W.4 and P.W.9. The names of P.Ws.4 and 9 were not mentioned in the F.I.R. and their evidence was left out of consideration by the Courts below. Statement of P.W. 3

was left aside by the High Court. In the third set was the evidence of P.W.I P.W.5 and P.W.8, who did not identify any of the dacoits. None of these witnesses was declared hostile. Thus their evidence rather goes adverse to the prosecution. The fourth set consisted of evidence of P.W.2 and P.W.11 whose evidence has been relied upon by the High Court to identify the 5 appellants and on the basis of the very same evidence two co-accused, were acquitted because P.W.2 named one and excluded the other and P.W.11 named the other one and excluded the former giving rise to a doubt about the complicity of those two. [611-612D]

1.02. Seeing the formidable force of the dacoits and their number, the two P.Ws.2 and 11 would have been so non-pulsed that they would not have dared to betray their presence by switching on and off their torches especially when they were unarmed and were no match to the might of the dacoits. These two witnesses do not claim that they could identify the

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dacoits by means other than their torches. This part of the story of the prosecution obviously does not inspire confidence. It is also worthy of notice that P.W.11 was injured on the head before he ran for safety. That was enough to shake and frighten him. But before the receipt of such injury he claims to have switched on his torch first and to have seen in the first glimpse the appellants and others. But his flash of the torch was met instantaneously with numerous torch flashes by the dacoits and its was like day light as said by P.W.1. [613 F-H]

1.03. It is difficult in the situation to believe P.W.11 that he could in a split second have such a perception so as to identify all the five appellants and some others. It is obvious and natural that behind a lit torch darkness prevails hiding the identity of the torch bearer and persons situated close. So identity of the dacoits was not possible by P.W.11.

[613 H614 A]

1.04. In the facts and circumstances of the case, there is a grave doubt about the participation of the appellants in the crime because of the failure of the prosecution to lead convincing evidence about the identity of the appellants as dacoits. There is even no corroboration worth the name in the form of recovery of fire arms and other weapons, or of the looted articles from the appellants, so as to lend some assurance to the participation of the appellants in the crime. It may well be that the motive asserted by the prosecution relating to the dispute about the pond may have given cause to P.W.11 to assume that the appellants were responsible for the dacoity committed in his house and for P.W.2, to entertain that belief in a sweep. [614 C-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 572 of 1981.

From the Judgment and Order dated 26.8.1980 of the Patna High Court in Criminal Appeal No. 15 of 1976.

Ranjit Kumar for the Appellants.

D. Goburdhan for the Respondent.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal by special leave is against the judgment

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and order of the High Court at Patna dated August 26, 1980

passed in Criminal Appeal No 15 of 1976.

The facts giving rise to this appeal are that a dacoity took place at about midnight on the night intervening 5th-6th April, 1970 in the house of Dhaniram Singh, P.W.11, in village Awadhiya. According to the prosecution 25 to 30 persons armed with guns, lathis, bhalas and gharasa etc. committed the dacoity and apart from looting away belongings of Dhaniram Singh, his uncle Khobari Singh was shot dead and as many as 8 persons including Dhaniram Singh P.W.11 received injuries. The First Information Report was lodged by Dhaniram Singh, P.W.11, at 6.30 a.m. on April 6, 1970 at police station, Bhabhua at a distance of about 7 miles from the place of the occurrence. In it he could name 7 persons specifically as being members of the gang of dacoits. The remaining dacoits were left unnamed. The investigating agency when set into motion took steps as necessary. But at this stage, it would be sufficient to mention that neither could the investigation recover the looted property valued by the concerned P.Ws. at about Rs. 8,000 nor could it get the particulars of a large number of other participants in the dacoity. When the matter went to trial before the First Additional Sessions Judge, Arrah, against the 6 named persons and one other, the old Criminal Procedure of 1898 governed the trial and before-hand there were commitment proceedings before a Magistrate in which evidence was recorded. At the commitment stage, 10 persons were put to face the enquiry. One accused named Kanhaiya Singh in the meantime died. Two other accused Sukhari Singh and Gulab Gosain also died. There remained 6 of the original accused named in the F.I.R. and one more, Ram Naresh Singh, not so named to face trial and bear the conviction. The Learned Additional Sessions Judge convicted all the 7 accused under Section 396 I.P.C. and imposed on them a sentence of life imprisonment. On appeal to the High Court two of them namely Ram Naresh Singh the one unnamed in the F.I.R. and Charittar Ahir, one of the so named, were acquitted but the convictions of Munni Singh, Fekoo Singh, Behari Singh, Dadan Singh and Guput Singh, the appellants herein, were maintained.

The appellants are residents of village Awadhiya where the occurrence took place. The victims of the crime and other prosecution witnesses are also from Awadhiya. The village appears to be a small one consisting only of 26-27 houses comprising of various castes like Brahmins, Rajputs,

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Kahars, Ahirs and Kurmis. This is what Hira Singh, P.W.2 has deposed at the trial. The first informant suggested that there was a simmering discontent between his family and the family of Sukhari Singh accused. Munni Singh, appellant is the son of Sukhari Singh, Fekoo Singh and Behari Singh, appellants are the nephews of Sukhari Singh and Guput Singh, appellants, is the brother of Sukhari Singh. Thus they are closely related. There was a pond measuring about 3 acres in the village, which Sukhari Singh claimed, had been bestowed on him by the erstwhile Zamindar before the coming into force of the Zamindari Abolition Act. He had taken control of the Tank but some time before the occurrence had sown "singhara" in it and had prevented people to let their cattle come there to drink water from it. The Panchayat of the village when approached had taken note of it and had 3/4 days prior to the occurrence suggested to Sukhari Singh that he should rather surrender the Tank in the name of the Shiva Temple. But, he had correspondingly suggested to the Panchayat that the place constructed and occupied by the complainant party Khobari Singh and others for tying their cattle at the bank of the pond, which was part of unsettled

lands, should also be likewise given to the shiva Temple. The Panchayat was not agreeable to the counter suggestion because the possession and usage of that land by Khobari Singh was very old. With such grudge in mind, it is the case of the prosecution, that the assault was masterminded and made at the house of the complainant with the sole purpose to avenge and to commit dacoity.

The details of the occurrence are provided by Dhaniram Singh, P.W.11, the first informant. He stated that on the day of the occurrence he was in his village having come on a month's leave from his posting as a Weapon Senior Engineer in District Kanpur. On the night of the incident, three cots lay spread in the outer courtyard of their house. He was sleeping on one of them, and on the remaining two individually were his cousin Baliram Singh, P.W.3, and his uncle Khobari Singh (deceased). He was awoken by some noise as if some persons were coming. He stood up and switched on his five-cell torch and saw 20-25 dacoits armed with lathis, bhallas, Garasas, and guns coming towards his house. On his focussing the torch they stopped. Then the dacoits also switched on their torches. Dhaniram Singh then claims that he recognised in the torch light the accused inclusive of 5 appellants. Munni Singh and Fekoo, appellants had guns and the remaining 5 had some other arms. Sukhari Singh shouted kill-kill. Munni Singh then fired with his gun towards Dhaniram Singh but

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he rolled down and by the fall hurt himself on the thigh and the gun fire did not hit him. Then he got up and started running. One of the dacoits hit him with a stick with an iron ring. There was some oozing of blood but it was not profuse. He ran for about 30 steps to get to his wheat field, which was about 2 to 3 feet below the level of his courtyard. From there he claims to have seen the remaining part of the occurrence. He saw that when his uncle Khobari Singh had been awakened Munni Singh appellant fired at him and he fell down. Other dacoits who were near him started hitting him with spears. One of the dacoits held a ladder in his hand, through which he climbed up to the roof of the inner house, from where he jumped into the female apartment and opened the outer door. Then the dacoits entered the house and started looting and plundering. Two dacoits scolded his brother Baliram, P.W.3 to keep lying down on his cot. In the occurrence, however, Baliram Singh, P.W.3, received no injury. The dacoits were active for about 15 to 20 minutes. On hearing the noise and commotion, other villagers then started collecting. The dacoits then decamped with the looted goods. Some of the villagers followed them to some distance but the dacoits kept firing on them. With the result that some of them were injured. Khobari Singh and other injured persons were removed to be taken to the hospital but Khobari Singh died on the way and then Dhaniram Singh proceeded to the Police Station, Bhabua, taking the dead body of his uncle with him where the Office-in-charge, P.W.12 Ram Nagad Tiwari, recorded his statement at 6.30 a.m. on 6.4.1970. Shri Tiwari went to the spot and saw the evidence of dacoity in the form of things lying scattered and some of the articles left behind by the dacoits. He had the injured persons examined medically. He arrested the accused persons. Finally investigation was completed by another officer and the accused persons were put up for trial as mentioned earlier.

Before the High Court, as also here, it is admitted that there was commission of dacoity in the house of the first informant on the day as alleged, in which Khobari

Singh was killed and others were injured. It is also not disputed that the dacoity being a conjoint act all persons participating in the crime would be equally liable for the killing of Khobari Singh. Thus the only exercise before the High Court, as also here, is to determine who were the persons who took part in the commission of the dacoity.

It is note-worthy that prosecution had four sets of witnesses

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which could establish identity of the dacoity. Three sets became redundant and only on the basis of one set was identity of the appellants established. The first set consisted of three injured persons Ramadar Singh, Dinanath Singh and Dhirja Singh who were not examined at the trial by the prosecution. This set did not help the prosecution at all. The second set consisted of the evidence of Baliram Singh, P.W.3 Rambali Singh, P.W.4 and Jhuri Singh P. W. 9. The names of P.Ws 4 and 9 were not mentioned in the F.I.R. and their evidence was left out of consideration by the Trial Judge as well as the High Court. Even the statement of P.W.3 was left aside by the High Court. So this set too did not further the prosecution case. In the third set was the evidence of P.W.1 Bishwanath Chaubey, P.W. 5 Jokhan Bind and P.W. 8 Chirkut Singh who did not identify any of the dacoits. None of these witnesses was declared hostile. Thus their evidence rather goes adverse to the prosecution. The fourth set consisted of evidence of P.W.2 Hira Singh and P.W.11 Dhaniram Singh whose evidence has been relied upon by the High Court to identify the 5 appellants and on the basis of the very same evidence two co-accused, that is, Ram Naresh Singh and Charittar Ahir were acquitted because P.W. 2 named one and excluded the other and P.W.11 named the other one and excluded the former, giving rise to a doubt about the complicity of those two. Thus we are left to see whether the conviction of the appellants can be based on the evidence of these eye-witnesses P.Ws 2 and 11. We have already given a condensed version of Dhaniram Singh, P.W.11. Now according to the Hira Singh P.W.2, his house is 4-5 houses away from the house of the complainant and when he became awake on hearing the noise he went to see the occurrence taking a torch which kept lighting. According to him he hid himself behind a Bahaya tree and from where he could keep watching the activities of the dacoits whose faces he saw. As he says he could identify 8 dacoits. These were Munni Singh, Fekoo Singh Dadan Singh, Guput Singh and Behari Singh appellants as respectively armed. In addition there were Sukhari Singh (since deceased), Ram Naresh Singh and Kanhiya Singh who are no longer in the picture. After the departure of the dacoits he went close to the scene and found Khobari Singh to have been hit by gun shots and that his condition at that time was serious. Then he went in the company of P.W. 11 firstly towards the hospital and then to the police Station. According to this witness though he focussed the torch for 3 or 4 minutes before he went in hiding, the focus did not fall on the faces of the dacoits and after having gone in hiding he

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had not lit his torch. Yet he claims that he had identified the dacoits in the torch light. He is also certain that no dacoit had muffled his face. The appellants, according to him, had painted their faces but were not in a position to conceal their identity. He admitted that 3 or 4 day prior to the incident, a Panchayat had been convened in which Sukhari Singh was asked to surrender the Tank but he said he would if Khobari Singh demolishes and surrenders the house built

on the bank of the Tank first. And further that when the Panchayat told Sukhari Singh that the house having been there for a long time, could not be demolished and even Khobari Singh was not agreeable to do so, all were angry with the accused persons on account of the Tank.

So far as Dhaniram Singh, P.W.11 is concerned, he too admits about the convening of the Panchayat 3 or 4 days earlier on which account Sukhari Singh had nursed an angry feeling due to the happenings in the Panchayat. With regard to the actual occurrence, P.W. 11 says that when the first shot aimed at him had not hit him, and the second shot had been fired at his uncle, he then ran 25-30 steps and hid himself in the field of the wheat crop and while running he heard the firing of the third shot. At that juncture he claimed to have kept lighting his torch now and then from the place of his hiding to see what was happening. The point which rises for consideration is whether P.Ws2 and 11 could individually, with the aid of their respective torches, identify the dacoits which were 25-30 in number and would the dacoits let them be identified by letting them switch on their torches off and on as claimed? Would these two witnesses not have attracted attention of the dacoits to be taken care of in priority in their place of hiding? It seems to us that seeing the formidable force of the dacoits and their number these two P.Ws. would have been so non-pulsed that they would not have dared to betray their presence by switching on and off their torches especially when they were unarmed and were no match to the might of the dacoits. These two witnesses do not claim that they could identify the dacoits by means other than their torches. This part of the story of the prosecution obviously does not inspire confidence. It is also worthy of notice that P.W.11 was injured on the head before he ran for safety. That was enough to shake and frighten him. But before the receipt of such injury he claims to have switched on his torch first and to have seen in the first glimpse the appellants and others. But his flash of the torch was met instantaneously with numerous torch flashes by the dacoits and it was like day light as said by P.W.1 Bishwanath Chaubey. It is

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difficult in this situation to believe P.W. 11 that he could in a split second have such a perception so as to identify all the five appellants and some others, It is obvious and natural that behind a lit torch darkness prevails hiding the identify of the torch bearer and persons situated close. So identity of the dacoits was not possible by P.W.11 Moreover it is ununder-standable that when the dacoits had chosen dark hours for committing the dacoity, obviously to take advantage of the darkness, and when they were 25-30 in number, most of them unknown persons, where was the need for the appellants to be in the forefront to risk themselves for identification. This view we are entertaining apart from what the High Court has opined that muffling of faces and concealment of identify by dacoits is not universally paractised. Thus in the facts and circumstances of the case, we entertain a grave doubt about the participation of the appellants in the crime because of the failure of the prosecution to lead convincing evidence about the identity of the appellants as dacoits. There is even no corroboration worth the name in the form of recovery of fire arms and other weapons, or of the looted articles from the appellants, so as to lend some assurance to the participation of the appellants in the crime. It may well be that the motive asserted by the prosecution relating to the dispute about the pond may have given cause to Dhaniram Singh, P.W.11 to assume

that the appellants were responsible for the dacoity committed in his house and for Hira Singh P.W. 2, to entertain that belief in a sweep.

For the foregoing reasons, we find it difficult to sustain the conviction of the appellants. Accordingly, they are acquitted of the charge. The appeal is accepted.

V.P.R.

Appeal allowed
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JUDIS