

CASE NO.:
Appeal (crl.) 175 of 2000

PETITIONER:
Narayan Prasad & Ors.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 08/11/2005

BENCH:
Arun Kumar & A.K. MATHUR

JUDGMENT:
J U D G M E N T
W I T H :

Criminal Appeal No. 177 of 2000

A.K. MATHUR, J.

Both these appeals are directed against the common judgment dated 27.8.1999 passed by a Division Bench of the Madhya Pradesh High Court at Jabalpur, therefore they are disposed of by this common order.

These appeals are directed against the judgment passed by the learned Division Bench of the Madhya Pradesh High Court at Jabalpur dated 27.8.1999 wherein the learned Division Bench has reversed the acquittal of the accused persons and accepted the State appeal and convicted the appellant namely Kishan Lal, Mihilal, Labru, Ramswaroop, Mukundi, Phulloo and Mustapha Khan for the offences of dacoity and murder under Section 395 and 396 IPC and sentenced each of them to life imprisonment on both counts with fine of Rs.1000/- each, in default of which they shall undergo further rigorous imprisonment for two years each. However Lalu, one of the accused, died during the pendency of appeal in High Court as such appeal abated against him due to his death. Learned Division Bench also convicted Abbas Khan, Rahim Khan and Narayan Prasad under Section 412 IPC and they were sentenced to rigorous imprisonment for 10 years each and fine of Rs.2000/- each in default they will further suffer rigorous imprisonment for two years each. Aggrieved against the aforesaid order appeals have been filed by the appellants.

We have heard the learned counsel for the parties and perused the record.

The brief facts which are necessary for the disposal of these appeals are that the FIR was lodged by one Ram Kishore, PW-3 at 1.40 p.m. at P.S. Barahi. It is alleged that he was sleeping in the Parchhi of the house while his wife Sushila was sleeping in the inner room of which the doors had been chained from the outside. At about mid night he noticed 3 persons tying his feet. He woke up and sat down. One person was lighting a torch and another was tying his feet. The third was hitting him with a hunter(Koda). Then two persons entered the room after opening the chain. One person ran out of the house and exploded some bomb and again approached him and started hitting him. After sometime this man went to some distance, therefore, he opened his rope and ran to the house of Bare Gond. Along with Bare Gond he went to the Basti of Dhimars and returned along with about 20 persons. He then saw three persons

running towards the village. Many other persons from the village had also come there and they chased the miscreants but returned without catching anybody. On reaching home he noticed his wife tied with rope and was bleeding from her head. The rope had been tied around her neck also and she was unconscious. She ultimately succumbed to injuries. The box was found open and ornaments of gold and silver were found missing. The details of gold ornaments, silver ornaments and other valuable articles were furnished by him. However, no specific name was mentioned in the FIR. After recovering from shock, he gave the further list of the gold and other valuable articles missing from his house. The police took up the investigation and during the course of the investigation they caught hold of the accused and they were got identified by Ram Kishore, complainant. It was alleged that there was one more identifying witness that is Ram Naresh but he was not examined as a witness in court. The various test identification memos Ex.P-5 to P-15 were prepared identifying the articles which were recovered from various places on the disclosure made by the accused persons. Accused Mr. Kishan Lal made a disclosure statement ex.P-23 on 20.10.1982 which led to the recovery of 6 silver lachha and one hunter in his village and further led to the recovery of one pair of silver Bagaliya and one Dhagaliya chikni. These articles were identified by PW- 3 Ram Kishore before Naib Tehsildar PW-6 Nirmal Tigga as well as by PW- 20 Kammobai. Likewise a recovery was made from the Phulloo, Mihilal, Ramswaroop, Abbas Khan, Narayan Prasad, Labru, Mustapha, Rahim Khan, Lalwa @ Makbhool, Mukundi @ Munanuar. All these articles recovered at the instance of these accused persons were duly identified by PW-3 Ram Kishore in identification parade before Naib Tahsildar. Learned Division Bench has detailed all these recoveries as well as identification by Ram Kishore & Kammobai, therefore, no useful purpose will be served by giving out them in detail here.

PW-6 Naib Tehsildar Nirmal Tigga has appeared in witness box and has proved the identification memos. Shri R.N. Tiwari, the Investigation Officer has given out the detail about the information given by the accused persons and the recoveries made thereof. Investigation was made by the investigation officer from 20.10.82 to 25.10.82. The accused denied the information given by them which led to the recovery but they did not claim the ornaments. However, the accused Narayan Prasad asserted that the police took from him 2 pairs of Bagaliya, 2 pairs of Payal, 2 lachhas, patti, Addhi, these belonged to him and he had purchased them from Raghuveer on a receipt. He alleged that Thanedar had asked him for a motorcycle which he declined, so he has been falsely implicated. The important features in this case is that PW-10 Chanderbhan, PW-11 Ramnarayan Gupta, the recovery witnesses who have turned hostile. They did not support the testimony of the prosecution case with regard to recoveries. Learned Division Bench held that though these persons have turned hostile nonetheless the recovery of these ornaments of large quantity cannot be planted by the police and secondly that these ornaments were not claimed by the accused persons except Narayan Prasad. The trial Judge disbelieved the prosecution version & acquitted them but in appeal the High Court had reversed the acquittal of these persons and held that the recoveries of these huge quantity of ornaments which were not claimed by the accused persons (except Narayan Prasad) is self-evident and learned Division Bench after reviewing all the evidence of the recovery as well as the identification, felt persuaded that accused persons are guilty and accordingly convicted as aforesaid. Hence the present appeal.

Learned counsel for the appellant has informed us that out of appellants, 3 more appellants died during pendency of appeal, viz. Ramswaroop, Phulloo and Mustafa Khan. So far as Lalu was

concerned, he died during the pendency of appeal before the High Court as such appeal qua him stood abated. Accused Ramswaroop, Phulloo & Mustapha Khan died during the pendency of this appeal here, the appeal qua these appellants also stand abated. Hence, the present appeal against remaining accused persons.

Learned counsel for the appellant has strenuously urged before us that the information as well as the recovery which is crucial in this case were not supported by the independent witnesses, therefore the view taken by the learned Division Bench cannot be sustained.

Learned counsel for the appellant has urged before us that in view of the fact that the PW-10 Chanderbhan and PW-11 Ramnarayan both were recovery and identifying witnesses turned hostile, therefore the information and recovery do not stand proved. It is also submitted that identification was done before Naib Tehsildar Nirmal Tigga but the evidence of Naib Tehsildar also does not inspire confidence and his evidence does not disclose that whether the ornaments of similar nature were mixed up or not.

We have considered the testimonies of all these witnesses. We have gone through the evidence of investigation officer Shri R.N. Tiwari (PW-4) as well as Naib Tehsildar Nirmal Tigga PW-6, Gulraj Singh (PW-23) as well as the testimony of Kammobai (PW-20) and Ram Kishore (PW-3). Statement of these witnesses read together, establishes guilty of these accused persons despite recovery witnesses turn hostile. The testimony of Ram Kishore (PW-3) and Kammobai (PW-20) who is worthy of credit and there is no reason to disbelieve them. Since Sushila Bai wife of PW-3 Ram Kishore died because of the assault by dacoit PW-20 Kammobai wife of brother of Ram Kishore has identified the ornaments. Likewise, PW-3 Ram Kishore has identified the accused persons at the time of identification parade therefore the testimony of all these witnesses support the prosecution case. In cases of such dacoity at mid night it takes little time for the prosecution to collect evidence as they have to interrogate many people during the course of the investigation to nab the real culprit. It is also not unlikely that witnesses fear dacoits, they shirk to come out and support the prosecution case. But the fact is that the recovery which has been effected at the instance of the accused persons have not been claimed by accused persons except Narayan Prasad. However, Narayan Prasad has claimed that these were purchased by him under a receipt. We will deal the cases of these three accused persons in the appeal No.175 of 2000 at a later stage. So far as the accused persons in the appeal 177 of 2000 is concerned, they were charged under Sections 395 and 396 and none of these accused has claimed this property which has been recovered at their instance. It is also unlikely that the police will plant these ornaments so as to implicate these accused persons. Some delay in identification parade or identification of property is likely in cases of dacoity at mid night and the recovery of the ornaments. The delay is natural in such cases, it is not fatal as to throw the prosecution case outright. We failed to understand the reasoning given by the learned trial court as it has proceeded purely on mechanical way and threw the prosecution case. The fact that the recovery of these huge quantity of the ornaments have been made at the instance of the accused persons duly identified by PW 10 & PW-20 and there is no possibility of planting the case against the accused persons by the police. Delay in recovery in such cases is not unusual. Therefore, we are of the opinion that the view taken by learned Division Bench has correctly found accused persons guilty and there is no reason to disbelieve the prosecution version.

Now coming to the three accused persons namely, Narayan Prasad, Rahim Khan and Abbas Khan under Section 412 IPC for the receiver of the stolen property pertaining to dacoity and their being sentenced to ten years imprisonment. We are of the opinion that

there is no evidence to show that these accused persons had full knowledge that the ornaments purchased by them were of subject to dacoity. These ornaments were recovered from them and Narayan Prasad has claimed the property as purchased from some person under receipt but that person has not been examined as a defence witness. Therefore all these accused persons can at best be charged under Section 411 IPC for receiver of stolen property. Therefore we convert their offence from 412 IPC to 411 IPC and reduce their sentence and punish them with imprisonment for three years instead of 10 years under Section 412 IPC. Therefore the appeal No.175 of 2000 is partly accepted and accused Narayan Prasad, Rahim Khan and Abbas Khan are convicted and sentenced for a period of three years under Section 411 IPC. They are on bail, their bail bonds should be cancelled and they should immediately be arrested and sent to jail to serve out their remaining sentences.

Now coming to the appeal No.177 of 2000 against accused Kishan Lal, Mihilal, and Mukundi, the conviction and sentence ordered by the learned Division Bench is maintained. The appeal of appellants; Ramswaroop, Phulloo, Mustapha Khan stand abated as they have died during pendency of this appeal. The accused are on bail, their bail bonds are cancelled and they should be sent to jail to serve out their remaining sentences.