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JAWAHAR LAL SINGH
v.
NARESH SINGH & ORS.

FEBRUARY 10, 1987

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[G.L. OZA AND M.M. DUTT, JJ.]

Criminal Procedure Code, 1973: s.378(1) & (3)—Petition by State for leave to appeal against acquittal of accused charged under s.396 IPC dismissed in limine by High Court without a reasoned order—Case remitted to High Court for disposal in accordance with law.

C

A number of persons were tried on the allegation of committing a decoity with murder and charged for offence under s.396 of the Indian Penal Code. Eye witnesses claimed to have identified the accused persons in the light of a lantern. The evidence also attributed different parts to different accused persons. The trial court after considering the

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evidence discarded it and acquitted all the accused persons of the charge.

The High Court dismissed the petition for leave to appeal against acquittal filed by the State Government under s.378(1) and (3) of the Code of Criminal Procedure *in limine* with the words "Prayer for leave to appeal is refused. Appeal is dismissed." Without examining the reasons on the basis of which the trial court had discarded the evidence. The appellants appealed to this Court.

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Allowing the appeal,

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HELD: The High Court should have considered the matter and passed a reasoned order. The incident was such where a number of persons were involved. There were a number of witnesses examined in the case. A perusal of the record shows that all the reasons on the basis of which the whole of the prosecution evidence had been discarded by the trial court were not so simple or so good that they did not require examination. [222B-C]

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The appeal alongwith the petition filed by the State for leave to appeal is restored to the file of the High Court, and directed to be disposed of after hearing the parties, giving reasons for conclusions. [222E-F]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
No. 150 of 1986.

From the Judgment and Order dated 14.7.83 of the Patna High Court in Govt. Appeal No. 29/83.

S.N. Misra, M.M.P. Sinha and P.C. Kapur for the Petitioner.

S.C. Misra and, Mrs. Gian Sudha Misra for the Respondents.

The Judgment of the Court was delivered by

OZA, J. This appeal has been filed in this Court against the dismissal in limine of a petition filed by the State of Bihar in the High Court of Judicature at Patna wherein learned Judges of the High Court rejected a petition for leave to appeal against acquittal filed by the State Government under Sec.378(1) and (3) of the Code of Criminal Procedure in limine by ony saying "Prayer for leave to appeal is refused. Appeal is dismissed."

Before the trial Court 25 accused persons were tried on the allegation that they committed dacoity and in the commission of the said dacoity murder of one Ajab Lal Singh was committed. Consequently all of them were charged for offence under Section 396 of the Indian Penal Code. It is alleged that in the night intervening between 5th and 6th day of June, 1980 at Village Nandlal Patti situated within P.S. Amarpur in the District of Bhagalpur, occurrence took place in the house of one Jawahar Lal Singh P.W. 21 who lodged the First Information Report, his house is situated in Nandlal Patti and in the course of dacoity his brother Ajab Lal Singh was killed. The incident is said to have taken place at 12 O'clock at midnight, and the information was lodged on 6th of June 1980 at 8.45 A.M., at Bhagalpur Medical College Hospital as the informant was lying injured in the surgical ward of the Hospital. At the trial there were number of eye witnesses examined who claimed to have identified the accused persons in the light of a lantern burning at that time. The evidence also attributed different parts to different accused persons. The learned Sessions Judge after considering the evidence discarded the evidence and acquitted all the accused persons from the charge levelled against them and unfortunately Hon'ble the High Court without examining the reasons on the basis on which the learned Sessions Judge discarded evidence dismissed the leave petition and appeal as mentioned above and therefore we are at a disadvantage as we have not before us the examinaton of the reasons by the High Court on the basis of which the learned trial Court discarded the testimony and acquitted all the accused persons. Although learned counsel for the respondent refer-

A red to portions of the evidence to justify the order of acquittal but also contended that in case this Court feels that the High Court should have considered the matter and pass a reasoned order it would be proper that we may not refer to any part of the evidence on merits nor express any opinion.

B Learned counsel for both the sides did not dispute that the incident was such wherein number of persons were involved. They also frankly accepted that there are number of witnesses examined in the case. A perusal of the judgment of the learned trial Court also shows that all the reasons on the basis of which the whole of the prosecution evidence has been discarded is not so simple or reasons so good that they do not require examination. Under these circumstances therefore without going into the merits we feel that it would be better that the matter be examined by the learned Judges of the High Court so that we may have the advantage of considering the considered opinion of the High Court on the reasons which weighed with the learned trial Court in discarding the prosecution evidence and acquitting the respondents.

D In view of the facts of the case and the circumstances indicated above we feel that it would be better if the High Court considers the matter and dispose it of after giving reasons and in view of this we think it proper not to express any opinion on any of the matters that may deserve consideration. The appeal is therefore allowed. The order passed by the High Court on 14th July 1983 is set aside and the appeal alongwith petition for leave filed by the State of Bihar is restored to the file of the High Court and it is directed that Hon'ble the High Court after hearing the parties shall dispose of the matter giving reasons for the conclusions in accordance with law.

F P.S.S.

Appeal allowed.