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MAHMOOD AND ORS.

v.

THE STATE OF BIHAR

FEBRUARY 16, 2000

B

[G.T. NANAVATI AND Y.K. SABHARWAL, JJ.]

C

*Indian Penal Code, 1860—Sections 396 and 412—9 Persons accused for committing dacoity—Trial Court acquitted 4 accused as testimony of eye witnesses found unreliable and untrustworthy—Upheld by the High Court—On appeal by 3 of the 5 convicted persons Held, Trial Court rightly noticed possibility of false implication—Testimony not convincing and trustworthy—Benefit of doubt given and conviction set aside.*

D

A dacoity was committed in the house of the informant, P.W. 4 who escaped and was the occurrence from the house of P.W. 3 in the neighbourhood. P.W. 1 and P.W. 2 are his brothers who also witnessed the incident along with P.W. 5 and other villagers.

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9 persons were charged with offences under Sections 396 and 412 IPC and 4 were acquitted by the Trial Court and the High Court as they were neither identified nor named in the statements made by the eye witnesses, although they were residents of the same village 3 persons appealed before this Court challenging their conviction.

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The appellants contended that they cannot be convicted on the evidence of P.W. 1 to P.W. 4 particularly in the absence of any other independent and corroborating evidence.

Allowing the appeal, this Court

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**HELD :** 1. All the 9 accused were involved in one incident and were charged which the offence of dacoity and murder. The Trial Court noticed that possibility of false implication of the accused cannot be ruled out. The testimony of P.W. 1 to P.W. 4 in respect of the acquitted accused has been rightly held to be not convincing and trustworthy in the absence of any other independent and corroborating evidence. [901-G-H]

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2. P.W. 1, P.W. 2 and P.W. 4 are brothers, P.W. 3 is the person from whose house P.W. 4, the informant, saw the occurrence but he could name

only one accused and P.W. 5 stated what was told to him by P.W. 4. It is not safe to base the conviction of the appellants on the testimony of P.Ws. 1 to 5. It is not possible to uphold the conviction and the appellants are given the benefit of doubt. [902-B-C; E]

*Prem Singh v. State of Punjab*, [1976] 1 SCC 805, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 659 of 1993.

From the Judgment and Order dated 22.5.92 of the Patna High Court in CrI.A.79 of 1987.

R.S. Sharma, Ranjan Dwivedi and Firoze Ahmed for the Appellants.

B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

**SABHARWAL, J.** Nine accused were charged for offence under Section 396 IPC. Three of them, namely, Jamil, Mokid Alam and Mahmood were further charged for offence under Section 412 IPC as well. Briefly the case of the prosecution is :

A dacoity was committed in the House of informant Bhupendra Mohan Singh, situated in Phulwari village, on 9th June, 1985 at about 7 : 15 p.m. 10 to 15 dacoits raided his house. This dacoits took away his licensed gun from the house besides other articles. They ransacked the house of his brother also which is situated in the same 'Angan' and also assaulted the wife of his brother. The informant somehow slipped out of his house and concealed himself in the house of his neighbour, Dinesh Chandra Singh and from there he saw the entire occurrence. On learning about the dacoity, the villagers rushed at the place of occurrence and some of them set fire to a heap of straw. There was Chowkidar Morchand who also came armed with bow and arrow. Some of the dacoits fired on the villagers. Morchand Lal was also shot at and died at the spot. Another villager Sabo Lal was also injured by the firing. In the light of the lantern as well as torchlights flashed by the dacoits themselves, the informant identified Mohd. Dara, Mokid Alam, Mahmood, Post Card, Salim, Mokimuddin and Alim among the dacoits. They also took away Rs. 12,000 besides ornaments, transistors, clothes, etc. S.C. Yadav Assistant Sub-In-

A spector, rushed to the place of occurrence and recorded the statement of Bhupendra Mohan Singh at about 8 : 15 p.m. on the basis of which case was registered against seven named accused and their unidentified associates.

B The prosecution examined 12 witnesses. The informant Bhupendra Mohan Singh is PW 4. PW 1 and PW 2 are his brothers. PW 3 is Dinesh Chandra Singh, the neighbour from whose house PW 4 claims to have seen the entire occurrence. All four of the claim that they had witnessed the occurrence. PW 5, Manoranjan Singh, is also resident of the village and said to have reached the place of occurrence soon after the dacoits had left. PW 10 is the investigating officer. The other witnesses are formal.

C The Court of Sessions convicted 5 accused, namely, Jamil, Mahmood, Mokid Alam, Salim and Post Card @ Jagdish Mehto for offence under Section 396 IPC and sentenced them for rigorous imprisonment for life. Accused Jamil, Mahmood and Mokid Alam were also convicted for offence under Section 412 IPC as well and were further sentenced to undergo rigorous imprisonment for seven years for the said offence. The remaining four accused, namely, Mehruddin, Mohd. Dara, Mokimuddin and Alim were acquitted. The conviction of the five accused has been upheld by the High Court. Three of them, namely, Mahmood, Mokid Alam and Post Card @ Jagdish are appellants before us.

E Mohd. Dara and Mokimuddin have been named in the statement of the informant (PW 4) which was recorded within about an hour of the occurrence. PW 4 claims to have identified Mohd. Dara in the course of the dacoity and thus named him in the statement. No other witness stated that Mohd. Dara participated in the dacoity. Even PW 4 did not support his version in the evidence recorded in court. Mohd. Dara was, therefore, acquitted for want of legal evidence to connect him with the crime. The other acquitted accused, Mokimuddin was, in fact, a resident of the same village. Except PW 4, no one else identified him. The sessions court held that the claim of the identification of this accused by PW 4 was doubtful and this fact was further aggravated since PW 1 to PW 3 did not state anything about the participation of this accused in this dacoity.

G Like Mokimuddin, Mehruddin was also the resident of the same village. In fact, his house is said to be situated at a distance of only about H 100 yards from the place of occurrence. He was not named in the statement

of PWs 4, PW 1 and 2 who are also to be the victims of the dacoity, named him in their statements given to the investigating officer which were recorded a day after the date of occurrence. Before giving his statement, PW 4 had talked to his brothers PW 1 and PW 2. In fact, they are all residing in one house. The claim was that all the four had seen occurrence. The Court of Sessions thus concluded that if PW 1 and PW 2 had identified this accused at the time of dacoity, then they would have definitely reported about it to their brother PW 4 and in that eventuality, his name should have been mentioned in the statement of PW 4. The absence of the name of this accused in the statement of PW 4, according to the learned Additional Sessions Judge, raises strong suspicion of the accused being falsely implicated. The defence also disclosed a motive for the false implication of Mehruddin inasmuch as there was a dispute between the accused and the family of the informant over a plot which was purchased on 15th April, 1985 in the name of the wife of the informant, which is claimed to have been earlier acquired by the accused who was not ready to give up his possession. The testimony of PW 1 and PW 2 involving Mehruddin was held not to be reliable and trustworthy.

The fourth acquitted accused Alim is also a resident of the same village. He was also named in the statement of PW 4. Except PW 4, none else had identified him. The claim of PW 4 regarding the identification of this accused has been held to be doubtful by learned Additional Sessions Judge. The solitary evidence of PW 4, the learned Additional Sessions Judge held, does not inspire confidence to prove the guilt against this accused and thus he was also acquitted.

Learned counsel for the appellants contends that in view of the aforesaid findings and conclusions of learned Additional Sessions Judge regarding the credibility of PW 4 and his two brothers and PW 3, the appellants cannot be convicted on the evidence of only PW 1 to PW 4 particularly in absence of any other independent and corroborating evidence. It is a case of one incident in which all the 9 accused were said to be involved. They were all charged of dacoity and murder. The learned Additional Sessions Judge has noticed that the possibility of the false implication of the above mentioned accused as noticed herein before, cannot be ruled out. The testimony of PW 1 to PW 4 in respect of the acquitted accused has been rightly held to be not convincing and trustworthy. The findings and conclusions of the sessions court in regard to the

- A acquitted accused have not been dealt by the High Court. The said findings have also not been questioned before us. A faint attempt was, however, made on behalf of the State that even if the testimony of PW 1, PW 2 and PW 4 is ignored, there is other independent evidence in the form of statements of PW 3 and PW 5. As already noticed, PW 3 is the person from whose house PW 4, the informant, is said to have seen the occurrence.
- B PW 3 is also the witness of occurrence. He is neighbour of PW 4. However, PW 3 could only name one accused, i.e., Jamil. The other witness PW 5 only states what was told to him by PW 4. He did not witness the occurrence. On the facts of the case in our view it is not safe to base the conviction of the appellants only on the testimony of PWs 1 to 5. There is
- C no other evidence to sustain their conviction.

Examined in the context of aforesaid facts, the doubt the source of light also assumes importance. There is also serious doubt about the manner of identification of the sarees said to have been recovered from the houses of the accused.

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In *Prem Singh v. State of Punjab*, [1976] 1 SCC 805, the conviction of the appellant which was founded solely on the evidence of the two witnesses whose testimony in regard to the other accused was held by the trial court and the High Court to be unreliable and disbelieved in regard to the participation of the said. This Court held that it is difficult to base conviction solely on the evidence of such witnesses. In these circumstances, it is not possible to uphold the conviction of the appellants. Therefore, we give them benefit of doubt.

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- F The appeal is accordingly allowed, the conviction and sentence of the appellants is set aside and they are acquitted of the offence charged. They shall be set at liberty forthwith if not required in any other case.

A.Q.

Appeal allowed.