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SHRISHTI NARAIN JHA

V.

BINDESHWAR JHA AND ORS.

Criminal Appeal Nos. 501-502 of 2003

MAY 5, 2009

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(DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.)

PENAL CODE, 1860:

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s. 396 – Dacoity and murder alleged to have been committed by 14-15 persons – Informant stated to have identified some of them – Conviction by trial court – Acquittal by High court – Held: High Court rightly held that accusation was not established by cogent evidence and there were infirmities in prosecution version - Possibility of false implication due to long standing enmity between parties cannot be ruled out – Judgment of High Court does suffer from any infirmity.

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Respondents 1 to 9 faced trial for commission of offence punishable u/s 396 IPC. The prosecution case was that on the stated night at about 12 O'clock, when the informant (PW.7) and his brothers (PWs. 4 and 6) were asleep, about 14-15 persons entered the house. On hearing the noise made by the miscreants, the complainant woke up and he identified the respondents who were armed with country made pistol, axe, 'garassa' and 'lathis'. One of the accused fired from his pistol, causing injuries to PW.6, while others assaulted PW.4. The informant ran out of the house. When he returned, he saw the miscreants running away and found his father lying dead. His mother is said to have told him that the accused also took away steel boxes containing clothes, jewellery and cash. The trial court convicted the respondents of the offence charged, but the High Court directed acquittal.

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The only contention raised in the appeals filed by the complainant was that the eye witness version should not have been discarded.

Dismissing the appeals, the Court

HELD: 1.1 The High Court has indicated in great detail the infirmities in the prosecution version, and found it highly improbable that the witnesses could identify such a large number of accused persons with the light of a lantern. The investigating officer did not find any lantern or sign of any lantern. PW1 and PW2 who claim to have seen injuries on the deceased, stated that the accused persons assaulted the deceased with 'Garasa' and 'Tengari'. The prosecution case further was that one of the appellant fired at PW4. The High Court, however, noted that the evidence of the doctor indicated that the injuries were not possible by 'Garasa' and 'Tengari', nor did the doctor find any firearm injury. [para 3,4 and 7] [446-G-H; 447-A, C-D; 448-A]

1.2 Though the evidence may suggest the factum of dacoity in the house of informant, but so far as manner of dacoity and participation of the accused in that dacoity is concerned, that appears quite doubtful. The evidence of prosecution witnesses is that besides accused, there were some other dacoits also with them who could not be identified. It is significant to note that the accused are neighbours of the informant with whom his family had long standing dispute. The possibility of false implication of appellants in the case on account of long standing enmity utilizing the incident of dacoity cannot be ruled out. [para 8] [449-E-F]

1.3 Besides, two brothers of one of the accused, aged 13 and 16 years, and an old man of 74 years were also named as participants in the dacoity. It looks very unnatural that the accused would go to commit dacoity in their neighbourhood taking with them such minor and young boys and an old man when they were sufficient in

A number and accompanied by some other persons also.
[para 8] [450-A-B]

1.4 The High Court has rightly concluded that the case of the prosecution is not established by cogent evidence and, therefore, it would not be desirable to place
B reliance on the prosecution evidence. The judgment of acquittal passed by the High Court does not suffer from any infirmity. [para 3 and 9] [447-A; 450-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
C Nos.501-502 of 2003

From the Judgement and Order dated 27.08.2002 of the Hon'ble High Court of Judicature at Patna in Criminal Appeal No. 397 of 1987 and 435 of 1987.

D Shiva Pujan Singh, for the Appellant.

Sushil Kumar, Ashok Kumar Jha, Rajeev Sharma, Rajiv Kumar Jha, Aditya Kumar, Sharmila Upadhyay, Vinay Arora, Manish Kumar, Gopal Singh, with him for the Respondent.

E The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Patna High Court directing acquittal of the respondents 1 to 9 who faced trial for alleged commission of
F offences punishable under Section 396 of the Indian Penal Code, 1860 (in short the 'IPC'). Questioning their acquittal the complainant has filed the appeal.

2. Learned II Additional Sessions Judge, Muzaffarpur, had
G directed conviction of the respondents 1 to 9 and sentenced each to undergo imprisonment for life. On appeal High Court directed acquittal.

3. Background facts in a nutshell as project by the prosecution are as follows:

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The case of the prosecution, as disclosed in the Fardbayan (Exhibit-6) of informant Shrishti Narain Jha (PW.7), in short, is that on night between 5.7.1981 and 6.7.1981, informant was sleeping along with his two brothers in the Baithka of his house. On one bed, he was sleeping alone and on the other bed near his bed, his younger brothers Gopal Narain Jha (PW.4) and Naresh Narain Jha (PW.6) were sleeping. At 12 O'clock about fourteen to fifteen dacoits, came to the house of informant, entered the Baithka and started hurling lathis and when their lathis struck against Tatti of Baithka, the informant woke up on hearing the strikings and he stood on his bed. One of the dacoits ordered him to remain standing otherwise he would be shot dead. Informant, among the dacoits, identified all the appellants and Dahaur Jha (since dead). Accused Navo Nath Mishra was carrying a country made pistol, Bindeshwar Jha was armed with Tengari (axe) and Jeev Nath Mishra was armed with a Garassa. Rest of the accused persons were carrying lathis, ropes and torches. Accused Navo Nath Mishra fired two shot from his country made pistol causing injuries on the thigh and body of Naresh Narain Jha (PW. 6) and when Gopal Narain Jha (PW.4) went running out of the Baithka, dacoits, after surrounding him, assaulted him with lathis. Informant also ran out of the house and went to the Darwaza of one Krishna Kant Jha (not examined) and raised hulla. While leaving Baithka, he had heard the dacoits saying that "Sala ghar mein hoga" and some dacoits entered the house and when on hearing cry of help of informant, nobody from his locality came, he again returned to his house and found that dacoits were running away through the backdoor of his house towards south. Mother of the informant raised hulla from the house that dacoits had killed father of informant and when informant went inside his house, he found his father lying dead beneath a Chowki with injuries on his neck caused by sharp edged weapons. From his mother, the informant came to know that accused Bindeshwar Jha with Tengari and Jeev Nath Mishra with Garasa had inflicted injuries on the neck and body of father of informant when he had tried to hide beneath his Chouki and at that time accused Daya Nath Mishra, Bhai Lal Jhan, Navo

- A Nath Mishra and three to four others had surrounded his mother and had demanded keys from to prevent the dacoits from assaulting her husband, she was also assaulted with lathis by dacoits. The dacoits took away steel boxes carrying clothes, ornaments of silver and gold and a cash amount of rupees seven thousand. The dacoits also snatched an earring and a necklace from the body of mother of informant. About his wife, informant stated that she was also assaulted by dacoits with lathis. The amount of articles, taken away in dacoity, was about rupees forty thousand. The Fardbayan (Exhibit-6) of informant was recorded at his house on 6.7.1981 at about 6.30 a.m. by Sub Inspector Radhika Raman Singh (PW.12).
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On the basis of Fardbayan (Exhibit-6) of informant, formal first information report (Exhibit-4) was drawn against all the appellants and co-accused Dahaur Jha under Section 396, IPC.

- D After investigation, police submitted chargesheet under Sections 147, 148, 149, 302, 323, 324, 380, 452 and 307 IPC against all the accused persons. Taking cognizance, the case was committed to the Court of Sessions where charge under Section 396, IPC was framed against all the appellants and they were put on trial because they denied the charge.
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- After investigation police submitted charge sheet in respect of offences punishable under Sections 147, 148, 149, 392, 323, 324, 380, 452 and 307 IPC. However, the Sessions Court framed charges under Section 396 against the accused persons. The accused persons pleaded innocence, therefore, the trial was held. After trial, all the accused persons were found guilty under Section 396 IPC and were accordingly convicted and sentenced to undergo imprisonment for life.
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- G High Court directed acquittal which is questioned by the informant.

- H The prosecution witnesses stated that they identified the appellants by a lantern. The High Court found it highly improbable that they could identify such a large number of accused persons with the light of a lantern. Though the investigating officer during

investigation did not find any lantern or sign of any lantern. The High Court ultimately concluded that the case of the prosecution is not established by cogent evidence and, therefore, it would not be desirable to place reliance on the prosecution evidence and accordingly directed acquittal.

4. The Trial Court noted that Naresh Narain Jha (PW6) and Gopal Narain Jha (PW4) were injured witnesses. It was the prosecution case that apart from the present appellant, the informant, Amod Devi (PW1), Veena Devi (PW2), Gopal Narain Jha (PW4) and Naresh Narain Jha (PW6) were the eye witnesses. PW1 is the mother of the PW2. PW2 is the wife of informant and two other are his brothers. PW1 and PW2 claim to have seen injuries on the deceased. They stated that the accused persons assaulted with Garasa and accused Bindeshwar Jha assaulted the deceased with Tengari. The High Court noted that the evidence of the doctor (PW8) was that there was a large number of incised wound found on the dead body of the deceased which are caused by sharp edged weapon. It was found that the injuries were not possible by Garasa and Tengari. Though the Trial Court noted that the prosecution version was not acceptable as regards the weapons used, much importance was not attached except statement that no explanation is available in evidence of PWs1 and 2 regarding such injury. There was another aspect which the High Court noted to hold that the prosecution case was not believable. It was the prosecution case that the appellant Shrishti Narain Jha fired at PW4. The doctor did not find any firearm injury.

5. It is to be noted that the State has not questioned the acquittal and the informant has filed the present appeal. The only stand taken by the appellant is that the eye witnesses version should not have been discarded.

6. Learned counsel for respondent, on the other hand, supported the judgment of acquittal submitting that the false case has been foisted because of previous enmity. It is further submitted that the judgment of the High Court does not suffer from any perversity to warrant any interference.

A 7. The High Court has indicated in great detail the infirmities in the prosecution version and has concluded that the prosecution version is not credible and cogent.

B 8. The evidence of Investigating Officer that he found a plank of door broken and fallen on the floor which is also against the evidence of PW.1 who has clearly said that the appellants had made a hole in the plank of door of her room by Tengari and by inserting hand to that hole, opened the latch of the door. This also does not support the case of prosecution regarding the manner in which door of her room was opened. The

C Investigating Officer (PW12) in his evidence has stated that he recorded the statements of PWs.1 and 2 on 7.7.1981 because on 6.7.1981 when he met them, they were not in a position to give their statements because they were engaged in weeping. PW.2 has admitted that the police came on the next day of

D dacoity but on that day, her statement was not recorded because she was weeping on that day and on the next day her statement and statement of her mother-in-law were recorded. This has also created a very strong doubt to accept the evidence of PWs.1 and 2 that they are eye witnesses to the occurrence.

E When PW.1 was in a position to give the details of the occurrence to her son who is informant immediately after the occurrence, there was no reason for her not to give her statement on the next day of occurrence when police had come to her house. PWs. 1 and 2, said to be eyewitnesses to the occurrence,

F in their evidence, have stated that they were also assaulted by dacoits and had received injuries but there is nothing on record that like other injured persons, they were also examined by any doctor. The Investigating Officer (PW12) does not say that on the next day in the morning when he visited the place of occurrence, he found any injury on PWs. 1 and 2. Although he

G has said that he prepared injury certificate but has not made it clear for whom such certificates were prepared by him. He, in his cross-examination, has said that by the time, he reached the place of occurrence, injured Gopal Narain Jha (PW4) and Naresh Narain Jha (PW6) had already been sent to hospital

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and he, after going to hospital, saw injuries on their persons. A
The injuries certificates, prepared by him, may be for these two
injured persons and no definite opinion about the injury
certificate, said to be prepared by him, can be given in absence
of naming the injured by him or in absence or bringing these
injury certificates on record. Amod Devi (PW1) has said that B
later one Bahuran Devi gave her a sum of Rs.320/-saying that
she found the money thrown on the bank of a river and on the
next day, one Ram Master informed that some boxes were lying
in katai area which were brought by Budhan Sahni and others.
None of the persons, named above, were examined. The C
prosecution witnesses have claimed that they identified the
appellants in the light of lantern but the investigating officer, during
investigation, did not find any lantern or sign of lighting the lantern
which usually appear in the surrounding areas. Accused Bharat
Lal Jha was not identified by PWs.1 and 2, accused Binod Jha D
by PW.2 and accused Umesh Jha by PW6. Besides this, PWs.4
and 6 have added names of Ashok Jha, Somendra Jha and
Ram Ballabh Jha who are not among the accused persons. The
medical evidence showing that the death of deceased was E
homicidal and the evidence of investigating officer who found
blood-stains at the place of occurrence and some marks of
violence on a wooden box kept at the place of occurrence may
suggest the factum of dacoity in the house of informant but so
far manner of dacoity and participation of accused in that dacoity
is concerned, that appears quite doubtful. The evidence of F
prosecution witnesses is that besides accused, there were
some other dacoits also with them who could not be identified.
The possibility of false implication of appellants in this case on
account of long standing enmity utilizing the incident of dcoity
cannot be relied out. In this case, accused Vijay Jha and Binod G
Jha were examined under Section 313, Code of Criminal
Procedure on 31.3.1987 and 20.4.1987 respectively when their
ages were estimated by the Court below about nineteen years
and twenty two years respectively. The occurrence is said to
have taken place in the night between 5th and 6th July, 1981. It
means that at the time of occurrence the age of accused Vijay H

- A Jha was about thirteen years, three months and age of appellant Binod Jha was about sixteen years, two months. They both are brothers and accused Bindeshwar Jha is their another brother. It looks very unnatural that the accused would go to commit dacoity in their neighbourhood taking with them such minor and
- B young boys as Vijay Jha and Binod Jha when they were sufficient in number and accompanied by some other persons also. Besides this, age of accused Bhai Lal Jha was estimated by Court on 31.3.1987 when he was examined under Section 313, Code of Criminal Procedure as eighty years. The defence has
- C brought on record a Voters' List (Exhibit-A) showing that in this Voters' List which was received in the year, 1983, age of co-accused Dahaur Jha (since dead) is recorded as seventy two years, since Dahaur Jha dead now so this document does not help the case of any now but then accused Bhai Lal Jha,
- D admittedly at the time of occurrence was aged about seventy four years. So, we find that the accused include an old man aged about seventy four years as well as a boy aged about thirteen years and, as stated above, the accused are neighbours of informant with whom the family of informant had long standing dispute.

- E 9. The judgment of the High Court does not suffer from any infirmity. The appeal fails and is dismissed.

R.P.

Appeals dismissed.