

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1333 of 2009

RAJU MANJHI

APPELLANT

VERSUS

STATE OF BIHAR

RESPONDENT

JUDGMENT

N.V. RAMANA, J.

1. This appeal is directed against the judgment dated 3rd August, 2005 passed by the High Court of Judicature at Patna in Criminal Appeal (D.B.) No. 447 of 2001, whereby the High Court dismissed the appeal filed by the accused—appellant herein and upheld the order of conviction and sentence passed by the learned Additional District & Sessions Judge, Gaya.
2. Briefly stated, the facts of the case as culled out from the case of prosecution are that in the intervening night of 11th and 12th

January, 1999 a group of assailants consisting 10 to 12 persons including the appellant herein, all aged between 20 to 25 years, barged into the house of one Kamdeo Singh of the village Banbareya, P.S. Moffasil, District Gaya and decamped with golden ornaments, pants and cash. In the protest by the inmates of the house, the assailants caused injuries to Kamdeo Singh, his father-in-law Kameshwar Singh, son Niraj Kumar (PW2), wife Sita Devi and daughter-in-law Reena Devi. The stolen items include golden bangle, golden rings, cash of Rs.5,000/- and altogether the worth of stolen property would be Rs.25,000/-. At about 2 am in the night, Kamdeo Singh lodged a complaint with the Moffasil police, on the basis of which a case under Section 395/412, IPC was registered against unknown persons. Zamil Ashgar (PW10)—Officer in-charge of the Muffasil P.S. took up the investigation and rushed to the place of occurrence. He recorded statement (Ext. 4) of Kamdeo Singh (PW3), prepared injury reports in respect of the inmates of the house and sent them to hospital for treatment. As the injured Kameshwar Singh had succumbed

to the injuries, charged under Section 396, IPC was replaced for the offence under Section 395, IPC against the accused. In the course of further investigation, police arrested some of the accused, recorded their statements, recovered some money from them. Out of the six accused persons charged with the offence, one Rameshwari Manjhi @ Umeshwari Manjhi has been declared as absconder. The accused pleaded not guilty and claimed to have been implicated falsely, therefore, wanted to be tried.

- 3.** At the trial, the prosecution in support of its case examined as many as eleven witnesses. Relying upon the incriminating material as well as depositions and confessional statements of the accused, the trial Court came to the conclusion that the prosecution could prove the guilt of the accused beyond reasonable doubt. Accordingly, the trial Court convicted the accused for the offence punishable under Section 396, IPC and sentenced them to suffer rigorous imprisonment for life and also to pay a fine of Rs.1,000/- each, failing which to

further suffer rigorous imprisonment for a period of six months.

- 4.** All the aggrieved accused persons, including the appellant herein, carried the matter by way of separate appeals before the High Court. By an elaborate judgment which is impugned herein, the High Court dismissed the appeal affirming the conviction and sentence awarded by the trial Court. That is how the accused Raju Manjhi is in appeal before us.
- 5.** At the outset, we would like to record that whenever this appeal came up for hearing before us, learned counsel for the appellant remained absent. Therefore, in the interest of justice, we directed the Supreme Court Legal Services Committee to appoint an advocate to defend the case of appellant. In accordance therewith, Ms. Nidhi, learned counsel appeared and argued on behalf of the appellant.
- 6.** We have heard learned counsel appearing for the parties on either side and carefully perused the material available on record.

7. A specific argument has been put forward on behalf of the appellant that though there was no concrete proof to establish the participation of the appellant in the alleged crime, the trial Court as well as the High Court believed the prosecution story on flimsy grounds and convicted him. Merely on the basis of prosecution story that when the police raided the house of appellant, he was available in the house and an amount of Rs.400/- has been recovered from his possession, the appellant cannot be stamped as an accused and being involved in the crime. As a matter of fact, there was no act of dacoity or burglary took place on the alleged place of occurrence in which the accused—appellant was a participant. Moreover, the appellant was not identified by any witness in the test identification parade and also in the Court. This circumstance itself points at the innocence of the appellant. The case was fastened against the accused out of enmity and it is with the connivance of the informant and I.O. who dragged the accused into the alleged crime. The recovery made by the police, of a petty amount of Rs.400/- from the house of

the appellant could not be an incriminating factor. One cannot claim it to be the looted money connecting him to the crime, more so when there was no claim for such money by the informant or any other prosecution witness. Even the alleged confessional statement of the appellant, cannot be given legal validity as it was not made before a Magistrate. Particularly when the trial Court itself expressed doubt on the genuineness of the confessional statement as the alleged confessional statements of other accused were also under the same handwriting and drawn by the police, they cannot be taken into account.

- 8.** It is further case of the appellant that the prosecution could not prove the motive of the appellant in committing the crime. There was no injury report brought on record in respect of PWs 1, 2 and 3 who were stated to have sustained injuries in the occurrence when the I.O. said to have drawn their injury reports. There were so many latches on the part of prosecution and the appellant herein had no criminal antecedents, yet the Courts below without taking into account the importance of all

these circumstances simply believed the prosecution story and held the appellant guilty of the offence. Therefore, the impugned judgment calls for the interference of this Court and deserves to be set aside.

- 9.** On the other hand, learned counsel appearing for the State of Bihar supported the view taken by the Courts below. He submitted that there was enough material on record which clearly establishes the guilt of the accused beyond reasonable doubt. There was credible evidence available on record to believe that the appellant was a party to the accused group and was guarding at the entrance of the victim's house when the other participants were on the spree of ransacking the households of the victim. The statement of confession recorded at the instance of the accused—appellant not only proves his guilt but also led to the discovery of new facts in the case. It helped the I.O. for the recovery of incriminating material and looted cash from his house. The accused—appellant had by participating in the crime, shared the looted articles and there

is no bar to validate his confessional statement under the provisions of Indian Evidence Act.

- 10.** Having heard learned counsel on either side we have given our intense consideration to the facts and circumstances of the case and taken note of the analysis adopted by the Courts below in reaching to the conclusion. First and foremost, considering the primary contention advanced on behalf of the appellant that there was no instance of alleged dacoity on the time and place of occurrence wherein the accused was a party, we find from the deposition of Reena Devi (PW1), daughter-in-law of the informant that on the intervening night of 11th and 12th January, 1999 on hearing some disturbance, she woke up and found the assailants armed with sticks, looting articles in the house. When she tried to resist, they assaulted her and took away her ornaments including golden bangle and a chain and also tried to snatch her child. A brief case of her husband Neeraj Kumar (PW2) containing clothes and cash of Rs.5,200/- has also been stolen. Altogether the worth of stolen property would be Rs.25,000/-. In that commotion, hearing her hue

and cry her father-in-law—PW3 (informant) and mother-in-law came there who objected the assailants and they too were assaulted by the accused.

- 11.** Corroborating the statement of PW1, PW2—Neeraj Kumar, stated that the accused caused injuries to Kameshwar Singh due to which he fell down on the ground and later on succumbed to the injuries in the hospital. The evidence of PW3—informant also on the same lines as that of PWs 1 and 2. According to Zamil Asghar—the Investigating Officer (PW10), on receiving information about the occurrence of dacoity, the FIR (Ext.5) was registered and thereafter he visited the place of occurrence and recorded the statement of the informant and other inmates of the house and sent the injured to Pilgrim Hospital, Gaya for their treatment. Upon knowing that the alleged assailants were at Mohalla Balapar where they were consuming wine, he proceeded to that place and then rushed to the house of main accused Munna Manjhi and apprehended him at Samitee Bhawan. On his confession about the commission of the offence and disclosure of the

names of other assailants, the I.O. raided the houses of other accused and apprehended them. He categorically stated that the appellant herein has made confessional statement which was prepared by him (Ext. 7/1). He has also visited one orchard belonging to Kamal Jain situated near Jag Jiwan College and from there he recovered two bloodstained wooden pieces (sticks) under Exts. III and III/1 allegedly used in the crime and also seized polythene wine bags under Exts. I to I/V, besides recovering money from the possession of accused in the denomination of Rs.100 x 3 and Rs. 50 x 4. The evidence of other prosecution witnesses and also the confessionals statements of accused assailants and the recoveries made by the police substantiate the act of dacoity took place at the house of the informant and the injuries sustained by the inmates.

- 12.** The other ground urged on behalf of the appellant is that the so called confessional statement of the appellant has no evidentiary value under law for the reason that it was extracted from the accused under duress by the police. It is

true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning to the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act.

27. How much of information received from accused may be proved.—Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

- 13.** In the case on hand, before looking at the confessional statement made by the accused—appellant in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes. From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/Head of

the team of assailants and the crime was executed as per the plan made by him. It is also came into light by his confession that the accused broke the doors of the house of informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act.

- 14.** As regards the claim of appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused—appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only

to help the investigating agency as to whether the investigation into the offence is proceeding in a right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case. It is evident from the confessional statement of the accused that at the time of occurrence he and another accused Rampati Manjhi were guarding outside the informant's house while other accused were committing dacoity inside. We do not think that there is any justification to the argument that as none of the prosecution witnesses could be able to identify the appellant, he cannot be termed as accused. In our view, such non-identification would not be fatal to the prosecution case in the given facts and circumstances.

- 15.** The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to

hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration [See : ***Kanta Prashad v. Delhi Administration***, 1958 CriLJ 698 and ***Vaikuntam Chandrappa and Ors. v. State of Andhra Pradesh***, AIR 1960 SC 1340].

16. Moving on to the other limb of argument advanced on behalf of the appellant that the accused—appellant had no motive and the Courts below have failed to consider the fact that the evidence on record is not sufficient to establish motive of the accused. Undoubtedly, ‘motive’ plays significant role in a case based on circumstantial evidence where the purpose would be to establish this important link in the chain of circumstances in order to connect the accused with the crime. But, for the case on hand, proving motive is not an important factor when abundant direct evidence is available on record. The confessional statement of the appellant itself depicts the

motive of the team of accused in pursuit of which they committed the robbery at the house of informant and the appellant being part of it.

- 17.** It is also clear from the statement of the accused—appellant that the inmates of the house suffered injuries at the hands of the accused party as they had beaten them with the pieces of wood (sticks) and created terror among them. The recovery of bloodstained sticks from the orchard of Kamal Jain and the FSL report (Ext.X) proves the circumstance with no manner of doubt. Another facet of the case as portrayed by the appellant in his defense is that the informant implicated the appellant in the crime with the connivance of I.O. due to old enmity. However, we do not find any evidence or material on record in support of such claim made by the appellant. On the other hand, not only by the recovery of Rs.400/- from the house of appellant his participation stands proved, with the other incriminating evidence available on record.

18. In view of the foregoing discussion and having regard to the facts and circumstances of the case we have no hesitation to conclude that the prosecution has proved the case against the accused—appellant beyond all reasonable doubts. We, therefore, find no infirmity or illegality in the impugned judgment passed by the High Court. Consequently, the appeal preferred by the accused being bereft of any substance, the same stands dismissed.

.....**J.**
(N.V. RAMANA)

.....**J.**
(S. ABDUL NAZEER)

NEW DELHI,
August 02, 2018.