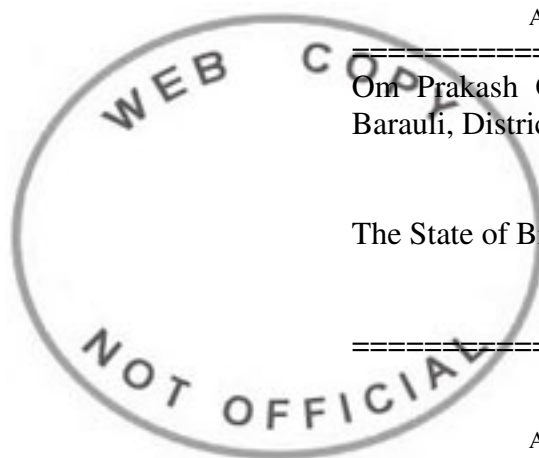




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.740 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Om Prakash Gupta son of Mahendra Sah, resident of village-Chainpur, P.S. Barauli, District-Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 583 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Bhola Prasad S/O Surya Prasad Kushwaha R/O Vill.- Barauli Bazar, P.S.- Barauli, Distt.- Gopalganj

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 610 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Ahsan Alam son of Late Mohammad Hanif, resident of village-Sandali, P.S. Barauli, District-Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 667 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Surendra Bhagat S/O Asarfi Bhagat R/O Vill- Chainpur, P.S- Barauli Distt- Gopalganj.

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 674 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Nand Kishore Noniya Sudama Prasad Vill-Kalyanpur Madhubani, P.S-Sidhwalia,
District-Gopalganj

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 686 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Sanjay Soni @ Sanjay Kumar Soni S/O Thakur Prasad Vill. &P.S.-Barauli , Distt.-
Gopalganj

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 705 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Upendra Yadav son of Raja Yadav, resident of village-Buchiya P.S. Sidhwalia,
District-Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 802 of 2010

Arising Out of P.S.Case No.40 Year- 2007 Thana Sidhwalia District- GOPALGANJ

Sarvesh Kumar Srivastava son of late Nagendra Prasad Srivastava, resident of
village-sailempur Mathiya, P.S. Sidhwalia, District-Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellants : Shri Asoka Jang Bahadur,
Shri Javed Aslam &
Shri Shafiur Rahman, Advocates
For the Respondents : Shri Ajay Mishra, APP.

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 28-07-2015

Truck No. HR38K 3551 laden with grocery had left Gaziabad, Uttar Pradesh for Guwahati. It was being driven by Sanjay Kumar Pandey, the informant of the case, who was examined as P.W.-6 in the trial. As per his fardbeyan, the owner of the truck Chandrabir Singh (not examined) was also sitting in the cabin of the truck. On 24.10.2007 at about 08:00 P.M., the truck had crossed the township of Gopalganj and when it had travelled about 25-30 Kms., further from Gopalganj, a Commander vehicle bearing U.P. registration number overtook it and the same was followed by the vehicle of the same make but bearing Delhi registration number. The two commander vehicles were again followed by a Hero Honda Motorcycle and all the three vehicles, i.e., two commander jeeps and a Hero Honda motorcycle stopped in front of the truck. 5-6 persons from the Commander jeep bearing U.P. registration came out of the vehicle and rushed towards the truck driven by the informant. Three out of the six who had rushed towards the truck, brandished country-made guns and dragged out the informant of the case and the proprietor of the truck and both of them were taken by the two criminals riding the Hero Honda motorcycle into another jeep and were made to sit therein. While being taken into the vehicle, the



informant saw that there were eleven persons sitting in the Commander jeep bearing Delhi registration number, one out of whom, came from the vehicle with a single barrel gun. The informant and the proprietor of the vehicle, namely, Chandrabir Singh were blind folded by the criminals and they were driven into the vehicle for half an hour towards Motihari. When the vehicle carrying the informant and the proprietor of the truck had reached the bridge situated over river Gandak, the proprietor of the vehicle was first thrown into the river water followed by the informant. The informant stated that he accidentally happened to hold the pillar of the bridge and he started shouting so as to attract villagers for saving him. The informant didn't know swimming. It was stated that the villagers and the Police reached there and rescued the informant and his employer.

2. The police registered the case by recording the fardbeyan of the informant P.W.-6 Sanjay Kumar Pandey. It was P.W.-1 Ramagya Rai who had recorded the fardbeyan upon which the investigation of the case was taken up by P.W.-7 Uday Shankar who was Sub Inspector of Police on the date of occurrence in Gopalganj Police Station.

3. The evidence of the Investigating Officer indicates that the truck was seized and the seizure memo was prepared, but the police did not take any pains to remove the tarpaulin by which the truck had been covered so as to finding out as to what was indeed



laden over it. It also appears that it raided various places and arrested four persons initially whose confessions led to the further arrest of six persons from an orchard from where the two Commander vehicles were also recovered but the curious aspect of the whole evidence was that neither in respect of the search of the truck which is the subject matter of being taken away by the criminals after throwing the informant Sanjay Kumar Pandey and his employer into river water, no independent and respected person of the locality was associated with the search and seizure. Likewise, while arresting six persons so as to recovering two vehicles as appears stated by P.W.-7 Uday Shankar in paragraph no. 9 of his evidence, again no witnesses of search and seizure was either associated with it or produced during course of trial.

4. It appears admitted from the evidence of P.W.-6 Sanjay Kumar Pandey, the informant of the case, that the accused persons were rounded up from a particular village or the orchard, were brought to Sidhwalia Police Station in Gopalganj and as may appear from the evidence of P.W.-6 Sanjay Kumar Pandey in paragraph No. 7 each of the suspects were brought out and were shown to the informant and this exercise continued for the whole night on the 28th October, 2007. Thus, there is no dispute in it that no test identification parade was held for the identification of the arrested accused persons either by calling the informant or his employer Chandrabir Singh to

attend it.

5. The arrest of first batch of four accused persons, as we have noted was the point of implication as regards the six persons subsequently arrested. The police claimed that the four persons who had been arrested first from a village had confessed before it and had pointed out that the accused and the truck could be available in the orchard and, accordingly, it had gone to arrest six persons and to recover the two Commander vehicles.

6. Legally speaking the police was thus creating the evidence of discovery of a fact which could be admissible under Section 27 of the Evidence Act, but we have already pointed out that it is unimpeachable evidence of the prosecution itself which came from none-else than the very informant of the case in paragraphs-7,19,20,21 and 25 that the accused persons had been arrested and they had been shown to him by bringing them out of the police-station-lock up one by one. The informant had stated initially in paragraph-19 that the questioning of each and every accused persons had been made by the police in the very police station itself and as appears from that paragraph-19 it does not appear that a batch of four accused persons had been questioned by the police rather the reading of paragraphs-19, 20 and 21 give an impression as if 10-11 persons were simultaneously questioned at the police station and this leads us to believe that the confession which was claimed by the police voluntarily made by the

accused persons was a procured or got up confession on duress and threat by them and that did not have the merit of admissibility as per Section 27 of the Evidence Act.

7. Undisputedly no independent and respectable person of the locality was associated either with the seizure of the truck bearing registration no.HR-38K-3551 nor with the seizure of the two Commander vehicles allegedly from the orchard. The evidence lacks that any independent and respectable person of the locality was asked or requested to associate himself with the search and seizure for the recovery of any article or vehicle and, as such, the police was compelled to prepare the seizure list in presence of its own officer or constable who had been made witness to search and seizure proceedings. In absence of the evidence of this class, we do not find any other option than to believe that the mandatory provision of Section 100 of the Cr.P.C. has been violated, making the search and seizure evidence not only inadmissible but a suspect evidence which was probably created in support of the police action.

8. The learned trial Judge has accepted the confessions of four accused persons as admissible evidence as in his opinion those documents and statements led the police to the discovery of the vehicle which had been used in commission of the crime. We are of the view that it was improper on the part of the learned trial Judge to use inadmissible evidence in order to convicting

the present set of appellants.

9. It was submitted by Shri Asoka Jang Bahadur, the learned counsel appearing on behalf of the appellants that as per the fardbeyan itself as also as per the evidence of P.W.6 the informant Sanjay Kumar Pandey, the villagers had come to the bridge after being attracted with the shouts of the informant who had clung to the pillar of the bridge in order to saving himself and as may appear from his evidence as also from the fardbeyan, the local Chaukidar had also appeared. Shri Bahadur was rightly pointing out that the police had of course claimed that it had also reached simultaneously at the bridge so as to rescuing the informant P.W.6 where it recorded the fardbeyan, the admitted position of villagers and Chaukidar being present there at that time who had rescued the informant made it mandatory that they should have been examined. We find from the record that none of the villagers neither the Chaukidar who had come to the bridge for rescuing the informant had been produced by the prosecution during the trial and the fact that they had been thrown into the water from the bridge or that they had been divested of the truck by the criminal, as such, was not satisfactorily established.

10. In addition to the above circumstances which we have culled out of the evidence after the same was pointed out to us. by Shri Bhadur, the learned counsel appearing on behalf of the appellants, we find that it was desirable for the prosecution to at least



produce the evidence of identification of the accused persons by P.W.6 Sanjay Kumar Pandey and his employer Chandrabir Singh, the proprietor of the truck. We have already pointed out by referring to paragraphs-12, 19,20,21 and 25 of the evidence of P.W.6 that no test identification parade was organized by the police so as to calling P.W.6 or his employer Chandrabir Singh to identify suspected accused persons. But, the police was short-circuiting the whole matter by holding test identification parade in the police station by bringing each and every one of ten-eleven persons who had been rounded up by it, out of the police lock up and had shown him to P.W.6 who had remained there at the police station for a month as appears admitted by him in paragraph-26 of his evidence in which he stated that he had stayed in Gopalganj police station for a month with his vehicle. P.W.7 had very categorically admitted that he never knew about the arrest of the accused persons and that, as we have already noted, he was shown time and again each and every of the arrested accused persons.

11. In our opinion, it was a case of virtually no evidence. The learned trial Judge who passed the judgment of conviction and order of sentence was reading materials which could be part of the police case diary and thus, appears passing a judgment of conviction and order of sentence by considering materials collected by the investigating officer.

12. In view of the evidence and nature thereof, which

we have just considered, we find the eight appeals filed by as many appellants meritorious. The appeals, as such, are allowed by setting aside the judgment of conviction and order of sentence passed upon eight appellants. Appellants Om Prakash Gupta (Cr.Appeal (DB) No. 740 of 2010) and Sarvesh Kumar Srivastava (Cr.Appeal (DB) No.802 of 2010) are in custody. Let them be released forthwith, if not wanted in any other case. The remaining six appellants, namely, Upendra Yadav (Cr.Appeal (DB) No.705 of 2010), Sanjay Soni @ Sanjay Kumar Soni (Cr.Appeal (DB) No.686 of 2010), Nand Kishore Noniya (Cr.Appeal (DB) No.674 of 2010), Surendra Bhagat (Cr.Appeal (DB) No.667 of 2010), Ahsan Alam (Cr.Appeal (DB) No.610 of 2010) and Bholu Prasad (Cr.Appeal (DB) No.583 of 2010) are on bail. They shall stand discharged from the liabilities of their respective bail bonds.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Saif/-Brajesh Kumar

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