

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.604 of 2010

Arising out of PS.Case No.61 Year-2008 Thana-Buxar (M) District-BUXAR

Manoj Rai, Son of Late Ram Darshan Rai, Resident of Village Thora, P.S. Buxar(M), District Buxar.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 605 of 2010

Arising out of PS.Case No.61 Year-2008 Thana-Buxar (M) District-BUXAR

Pappu Giri, Son of Satya Narayan Giri, Resident of Village Basouli, P.S. Udwantnagar, District Bhojpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 604 of 2010)

For the Appellant : Shri Rama Kant Sharma, Sr. Advocate
Shri Laxmi Kant Sharma, Advocate
Shri Prem Shankar Kumar, Advocate

For the State : Shri Dilip Kumar Sinha, APP

(In CR. APP (DB) No. 605 of 2010)

For the Appellant : Shri Akhileshwar Prasad Singh, Sr. Advocate
Shri Prabhat Kumar Singh, Advocate
Shri Binod Kumar Pandey, Advocate
Shri Abhishek Anand, Advocate
Shri Surya Swetabh, Advocate

For the State : Susri Shashi Bala Verma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 21-08-2015

Jai Prakash (PW18) was the Assistant, Accounts &

Cash, State Bank of India, Branch-Chousa in the district of Buxar.

He was working on the cash counter of the bank and was badly



engaged in transaction of bank business on 09.05.2008 from about 09.30 A.M. He was was both remitting cash to the customers and at the same time was receiving deposits. It was the pick banking hours at about 01.30 P.M. when a criminal pointing his pistol at PW18 Jai Prakash asked him to open the door of the cash counter. The other criminal was also pointing his pistol at him and was standing by the side of his companion. The informant PW18 opened the door and a criminal having a pistol, came inside and pushed PW18 and asked him to open the cash box and by giving a slinging bag of black colour asked him to stuff the same with currency notes. The informant stated that he readily did what he was asked to do after picking up the cash from cash box as also from the drawer. The criminal asked him to chain the bag but that could not be done because of the full stuffing of the bag with currency notes. The criminal snatched the bag from the hand of PW18 and in that course a bundle of currency notes fell on the ground which PW18 was asked to hand over to the criminal and on being given the bundle of notes, the criminal put it into his pocket and some of the currency bundles was stuffed by him into his shirt and pant pocket.

2. The criminal thereafter put the pistol on PW18 and asked him to go out with him. When PW18 and the criminal had

come at the door of the cash room, the criminal picked up the Samsung silver mobile phone set from the pocket of PW18 carrying SIM Card No. 9835658800 and by asking the informant to face the wall, he himself opened the door and came out of it.

3. While the criminal was exiting, a shot was heard fired at the main entry of the bank and there was a huge commotion there. Subsequently another shot was fired and the informant ran out of the bank by raising alarms which attracted the Branch Manager of the bank, namely, Ajit Kumar Poddar (PW3) and other employees of the bank who came out and they were all told by PW18 that the bank had been looted by criminals and PW18 also saw that the bank guard Nand Kumar Singh was moaning there and was bleeding from his chest. He had put his hand over his chest from where he was bleeding. People standing there pointed out to PW18 that the criminal had shot and injured the bank guard Nand Kumar Singh. The Manager along with the employees of the bank told the mob of people about the incident who started chasing the criminals. At the same time, the Branch Manager Ajit Kumar Poddar (PW3) put the injured bank guard on a jeep to take him to Buxar hospital where he died subsequently.

4. During the chase by the general people, six criminals were lynched out of which four died on the spot and two



were arrested in injured condition who were these two appellants of the two appeals, namely, Manoj Rai and Pappu Giri. While being chased, the criminals had started throwing currency notes on the road so as to alluring the mob away from them who were chasing them. But, in spite of that the people had succeeded in catching the dacoits. Currency notes which were thrown on the road were collected and seized by preparing seizure memo. At the same time, the two appellants were also found on search of their respective persons, carrying a pistol made in Italy with cartridges which was seized from appellant Manoj Rai while appellant Pappu Giri was carrying a country made pistol with cartridges.

It was initially stated in the written report (Ext.4) that the total looted amount from the bank was Rs. 3,17,100/- as per description given in it.

5. PW26 S.I. Amarnath Jha who was the Officer-in-Charge of Buxar Muffasil police station had arrived at the bank with officers and Constables Jagdish Singh (PW34), Dilip Kumar Singh (PW35), Binod Kumar Singh (PW36), Arvind Kumar Manjhi (PW37) and Radha Mohan Tatwa (PW39).

6. They had, firstly, arrived at the bank and after learning about the dacoity they had also started chasing the criminals with the general public of Buxar. PW26 along with

PWs. 34 to 37 and 39 gave evidence on the chase and arrest of the six persons out of whom four died while being taken to hospital and the two appellants survived.

7. PW26 recorded the *fardbeyan* of PW18 and himself took up the investigation which ultimately culminated into submission of charge sheet for the trial of the two appellants who were ultimately convicted under Section 396 of the Indian Penal Code.

8. The defence of the appellants was that they had wrongly been roped in on account of wrong and mistaken identification and they were innocent.

9. Thirty nine witnesses were examined by the prosecution out of whom Sanjay Kumar (PW2), Sumeshwar Yadav (PW9), Barmeshwar Rai (PW10), Gangadhari Yadav (PW11), Mahendra Chaudhary (PW12), Surendra Thakur (PW13), Rajendra Chaudhary (PW14) a witness to the seizure of mobile phone belonging to PW18 along with Amrendra Shukla (PW15) both of whom had signed the seizure memo as also Mangal Prasad Chaudhary (PW21) and Surya Narain Thakur (PW23) had been declared hostile. So far as the other witnesses were concerned, the informant of the case PW18 along with the Branch Manager PW3 Ajit Kumar Poddar had supported the prosecution story with other



witnesses, like, Ram Niwas Chaudhary (PW33) whose shop was opposite the bank but none of them did identify any of the criminals. Gorakh Nath Gupta (PW1) yet another shopkeeper had also supported the dacoity in the bank and had been a witness to seizure of currency notes which had been thrown on the road by the criminals and also the seizure of the black slinging bag which was stuffed by PW18 with currency notes after being asked to do so by the criminals. PW1 was also a witness to the seizure of one of the motorcycles which was left behind by the criminals on account of the vehicle having skidded and fallen on the road in a haste to run away from the site of occurrence. Bahadur Ram (PW4) was the messenger in the bank and he had also supported the commission of dacoity and killing of the guard. But did not identify any of the criminals. Markanday Chaudhary (PW5) was a canteen boy in the bank and he also supported the dacoity which was committed by criminals and he had stated that the general public in thousands had chased the criminals and also that the bank guard who was injured was shifted to the hospital. He was a witness to the seizure of the cartridge case which was lying there and had identified his signature over the seizure memo prepared in that behalf. Hareram Tiwary (PW6) was an Accountant in the bank and he also supported the occurrence as an eye witness by



stating that he had seen two-three persons standing in the bank and one had put his pistol on the bank Manager and that the bank guard had been shot and killed. PW6 stated that an amount of Rs. 4,40,600/- was taken away by the criminals as per the statement of the Accountant-cum-Cashier PW18. He also did not identify any of the criminal. Dharamdeo Ram (PW7) a cash coolie in the bank also spoke about the dacoity being committed and the guard of the bank being injured by the criminals who died subsequently in the hospital. This witness did not identify the criminals. Similar was the evidence of Yogendra Ram (PW8) who was the sweeper in the bank and he also did not identify any one. Sumeshwar Yadav (PW9) who was declared hostile had supported the dacoity in the bank and also the chase by general public. Gangadhari Yadav (PW11) was a farmer and he also spoke about the dacoity in the bank and killing of the guard by the criminals and further that people of his village, which was at the outskirts of Buxar, had chased the criminals. Mahendra Chaudhary (PW12) did not support the dacoity though he stated that sound of gun shot was heard by him coming from the bank and he pulled the shutters of his shop down and went away. Surendra Thakur (PW13) was not an eye witness to the occurrence and he was a hearsay witness. He was also declared hostile with Rajendra Chaudhary (PW14) and



Amrendra Shukla (PW15). Bachcha Lal Nishad (PW16) was a businessman and he had been a witness to the seizure of a DBBL gun by preparing the seizure memo. Rajdeo Ram (PW17) was the *malkhana* In-charge of Buxar Muffasil police station and he produced the seized articles, like, the cartridge case along with the country made pistol and the pistol made in Italy which were recovered from the possession of the appellants. The cartridges and other articles, like, the blood stained earth, shoes and cash in the sum of Rs. 47,200/- which were recovered from the appellants and from the road with other articles as per his evidence. Jai Prakash (PW18) was the informant of the case as pointed out earlier and he had supported the prosecution story but had not identified any accused persons. Bharat Rai (PW19), Amar Paswan (PW20) and Lalji Paswan (PW22) were the three *Chowkidars* who had been deputed for security reasons in the bank and they had supported the prosecution story that a dacoity was committed in the bank. The evidence of Bharat Rai (PW19) and Amar Paswan (PW20) was more elaborate. PW19 stated that it was the banking hour at about 01.30 P.M. on 09.05.2008 and huge number of customers were also there. PW19 was sitting with the guard on a bench on his left side and he left him to go to the urinal when he heard the sound of firing a shot and he came out and learnt that

dacoity had been committed in the bank. He came further ahead towards the bank and found that the guard of the bank was lying there and he was carrying a gun. He picked up the gun and put it into the office of the bank. The guard was taken to the hospital where he subsequently died. PW19 did not identify any one.

10. Amar Paswan (PW20) stated that while he was sitting with the guard, two persons were standing by the side of the guard and he identified them. PW20 identified both the appellants as persons who were standing there on 09.05.2008 by the side of the guard and further stated that the guard of the bank stated that the two appeared like criminals. The two criminals fired shots at the guard and ran away from there when the Cashier of the bank came out raising the alarm of '*daku-daku*'. The dacoits had run away by carrying a bag full of currency notes. PW20 stated that the injured guard was put on a jeep and was taken to the hospital and further that people of the locality chased the criminals and arrested the two appellants at the tri-junction of the road. The people were assisted by the police. During cross-examination, PW20 fairly stated that the two appellants were not inside the bank and had never been arrested while committing dacoity. He further stated that he had never seen the two prior to the commission of the dacoity and he had again seen them on the day he was deposing

in court.

11. Mangal Prasad Chaudhary (PW21) was declared hostile as noted above. Lalji Paswan (PW22) yet another *Choukidar* had supported the factum of dacoity, chase and arrest of criminals, but had not identified any one. Surya Narain Thakur (PW23) did not support the prosecution case as noted earlier whereas Ajay Singh (PW24) was a witness to the seizure of a shoe which was lying in front of the bank. Ramanuj Sharma (PW25) was the Sergeant Major and he had given evidence on the working condition of some arms and ammunitions seized in connection with present case. Amarnath Jha (PW26), we have already noted, was the Investigating Officer of the case.

12. The most important evidence of the case came from PWs. 34 to 37 and 39. These witnesses were Constables who had accompanied PW26 Amarnath Jha who had rushed to the scene of occurrence after having heard the sound of gun shot and after learning about the dacoity in the bank. These Constables, i.e., PWs. 34 to 37 and 39 gave evidence that when they came to the bank, they found that the dacoity had been committed and the injured guard had been taken to the hospital and further learnt that the mob of general public was chasing the criminals who were running away. They also joined by the police jeep with PW26 the



chase of the criminals. During such chase six persons were caught by the public four of whom were lynched to death while the two appellants were arrested. From each of the appellants a bundle of cash amounting to Rs. 10,000/- was recovered besides appellant Manoj Rai was found in possession of a pistol which was made in Italy and as may appear from the evidence of PW26 the Investigating Officer, the cartridge which was found by him at the site where the deceased bank guard was killed appeared fired from the same pistol which was recovered from Manoj Rai. Similarly the other appellant Pappu Giri was also found in possession of a country made pistol and some cartridges as also a bundle of currency notes amounting to Rs. 10,000/-. The evidence of these six Constables who have been examined as PWs. 34 to 37 and also as PW39 is very clinching.

13. It was contended by Shri Rama Kant Sharma and Shri Akhileshwar Prasad Singh, the learned senior counsel for the appellants that the two appellants were not put on test identification parade and there was virtually no evidence on record in support of the commission of the offence by the two appellants. This had been the thrust of argument of the two learned senior counsel.

14. As may appear from the evidence of witnesses,



like, PW19 and others, six persons had come to commit dacoity and only three had entered the bank while the two others were keeping watch on the arm guard who ultimately sensing that dacoity had been committed and the criminals were running away by carrying looted cash of the bank fired a shot. As soon as he had aimed, one of the criminals had pushed the barrel of the gun of the security guard of the bank upwards as a result of which the shot struck the ceiling of the building. PW26 had found the mark of pillets striking the ceiling. The other one fired a shot at the guard and ran away from there. Criminals rode their motorcycles in haste and one of the motorcycles skidded as a result of which they started running away. By that time the crowd had also sensed the rat and had started chasing them who in order to alluring the crowd away from there, had started throwing the looted currency notes on the road and ultimately six persons were caught which included these two appellants. There was no question of holding the test identification parade as the two appellants were caught after chase and, as such, it would have been useless to organize test identification parade because the appellants had already been seen and thus were known to the witnesses and the police officers including the employees of the bank.

15. Then the question as to what was evidence against



the two appellants to connect them with the commission of the crime, the first evidence is that the two appellants had been chased and had been caught by the mob. The second circumstance is that on search they were found carrying the bundle of notes which was bearing the seal of the bank along with the initial signature of PW18 the informant Jai Prakash which were seized. It further appears from the evidence of PW26 and the Sergeant Major (PW25) that the two weapons recovered from each of the two appellants were working and that the one which was seized from the possession of appellant Manoj Rai had been used in firing the cartridge which had killed the deceased bank guard. The cartridge case of the fired cartridge which had killed the deceased was recovered by the Investigating Officer(PW26) from the site of killing. The third circumstance was that PW20 *Choukidar* Amar Paswan had identified the two appellants as the persons who were standing by the side of the deceased guard of the bank and it has been stated by him that they had fired the shot at the deceased to kill him. The appellants were duly identified as such, by PW22 also.

16. The evidence of the Constables who had also participated in the chase of the criminals along with PW26 the Investigating Officer and who were examined as PWs 34 to 37 and



39 had given clinching evidence of all aspects of the chase and capture of the two appellants and had duly named them as persons who were arrested and from whom weapons and bundle of currency notes were recovered. The five Constables had again identified them in court when they had deposed in support of the charges. If these could not be ample evidence indicating the identification of the appellants then, in our opinion, there could be none which could be said to be clinching. The other circumstance was that the trail of chase was found bearing the evidence of the acts of the appellants and his companions who had thrown the looted currency notes on the road which were duly recovered which had been seized as per the evidence of the witnesses. Thus, what we find is that the charges were found proved to the hilt.

17. The learned counsel for appellant Manoj Rai, Shri Rama Kant Sharma cited before us a long line of decisions of the Supreme Court, like, *AIR 1997 SC 2186 Kalika Tiwari v. State of Bihar*, *AIR 2003 SC 3805 Munna v. State (N.C.T. of Delhi)*, *AIR 2003 SC 2669 Malkhansingh v. State of Madhya Pradesh*, *AIR 2002 SC 3325 Dana Yadav v. State of Bihar*, (1969) 3 SCC 727 *Chottan Mahton & Ors. v. The State of Bihar* and lastly *AIR 1998 SC 921 State of Bihar v. Anirudh Thakur*. It may be pertinent to note that every decision lays down some or the other principle on

its special facts and no decision could be universally applicable to all facts. These decisions were cited to buttress the submission that no identification parade was held and as such the conviction of the appellants was bad. We have already rejected the submission noticing the special facts of this case. However, *Malkhansingh* (supra) is one case cited by the learned counsel which directs that conviction can be held even without identification parade being held.

18. In the result, we do not find any good reason to interfere with the judgment of conviction dated 20.03.2010 and the order of sentence dated 27.03.2010 passed by the learned Additional Sessions Judge, Fast Track Court No. V, Buxar in Sessions Trial No. 286 of 2008.

19. The appeals are dismissed.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.): - I agree.

(Ahsanuddin Amanullah, J.)

Sanjay/N.A.F.R.

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