

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.314 of 1994

(Against the judgment of conviction and order of sentence dated 31.05.1994 passed by Shri Vikas Kumar Sharma, learned 2nd Additional Sessions Judge, Saharsa in Sessions Trial No. 60 of 1984 / 36 of 1988)

- =====
1. Sihari Mandal, son of Harilal Mandal, resident of Village- Raniganj, P.s.- Birpur, District- Saharsa, Supaul.
 2. Srilal Mandal, son of Lakshmi Mandal, resident of village- Gopalgarh, P.S.- Bhaptiyahi, District- Saharsa, Supaul.
 3. Hareram Jha, son of Mahabir Jha, resident of village- Hulash, P.s.- Raghapur, District- Saharsa, Supaul.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Mahendra Pathak, Advocate

For the Respondent/s : Ms. S. B. Verma, APP

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 14-12-2017

The instant Cr. Appeal has been filed by appellants against the judgment of conviction and order of sentence dated 31.05.1994 passed by learned 2nd Additional Sessions Judge, Saharsa in Sessions Trial No. 60 of 1984 / 36 of 1988, whereby the appellants have been convicted under Sections 396 of the Indian Penal Code and sentenced to undergo R.I. for life.

2. The prosecution case in brief, as made out in the fardbeyan of Dhirendra Prasad Singh is that on 01.12.1983, at about



6.15 P.M., the informant Dhirendra Prasad Singh (P.W.5) was sitting in his shop situated near his Darwaja and was reading a book in the light of DHIBRI, while his father Muneshwar Prasad Singh was sitting near CHURA, burning near the BAITHAKA that one Sachidanand Pathak was tutoring the children in the light of a lantern at that BAITHAKA. The informant's elder brother Narendra Kumar Singh and younger cousin Rabindra Kumar Singh were in the courtyard of the house. It has been alleged that at about 6.15 P.M., two unknown dacoits came at the doors from western direction, while other 5-6 dacoits trespassed into the informant's house. The two dacoits, who had come at the door, while hurling abuses rushed to assault the informant and his father, but the informant managed to flee away towards southern direction and started raising alarm. Some time thereafter the informant returned to his door and went inside the house then saw 5-6 dacoits inside the northern room while 1 dacoit being armed with a lathi standing in the courtyard. It has further been alleged that deceased Narendra Kumar Singh and Rabindra Kumar Singh resisted, but were silenced by the criminals by firing 3 shots on them. The deceased after sustaining serious gun shot injuries, fell down on the ground and their bodies were smeared with blood. It has further been alleged that the culprits, besides one double barrel regular gun of the deceased Narendra Kumar Singh, a Philips Phileta rado,



one cotton wrapper of tutor Sachidanand Pathak were looted besides the house hold articles worth about Rs.4,000/-. It has further been alleged that the informant, his family members, tutor Sachidanand Pathak and other villagers arriving on halla identified the culprits by face in the light of Dhibri, lantern and torch. The culprits while retreating had left some of their general belongings, such as, one plastic bag, Dhoti, a Towel and a cotton wrapper. Soon thereafter both the injured were taken to Simrahi hospital, but they succumbed to the injuries in the way itself.

3. On the basis of the fardbeyan of the informant First Information Report has been registered for the offence under Section 396 against unknown.

4. The police after investigation submitted charge-sheet against 11 accused persons, who were identified by the prosecution witnesses in the Test Identification Parade, out of which Pramod Choudhary, Sihari Mandal, Indramohan Jha, Srilal Mandal, Hareram Jha, Laxmi Choudhary, Rama Kamat and Jalim Singh were shown as in custody and Binda Yadav and Bahadur Yadav were shown as absconder. By way of supplementary charge-sheet Upendra Paswan was also included as accused. The S.D.J.M., Birpur at Supaul vide order dated 25.02.1984 and 05.03.1984 split the trial of absconding accused Binda Yadav and Bahadur Yadav and cognizance



was taken against 9 accused persons. Out of 9 accused persons, the two absconded and as such the trial commenced only against 7 accused persons.

5. Thereafter the case was committed to the Court of Sessions and on framing of charge under Section 396 of the Indian Penal, the accused persons have pleaded total innocence and as such they were put on trial.

6. The prosecution examined altogether 7 witnesses, out of which P.W.7 Gopal Krishna Das is a formal witness, who proved the case diary. P.W.6 is Dr. Ramdas Jha, who has conducted the autopsy. P.W.2 Mandal Kisku is the Judicial Magistrate, who is witness on the post of T.I. Parade. P.W.1 Ramanand Singh, P.W.3 Bhupendra Singh and P.W.4 Nagendra Prasad Singh are the witnesses on the point of alleged occurrence. P.W.5 Dhirendra Prasad Singh is the informant of this case.

7. The trial Court on the basis of the scrutiny of the evidence acquitted four out of seven accused persons and convicted three appellants as stated herein above.

8. Mr. Mahendra Pathak, learned counsel appearing on behalf of the appellants submitted that the instant case was registered against unknown. From the fardbeyan, it appears that 5-6 unknown dacoits committed dacoity and during the course of dacoity



they have committed murder of the brother of the informant. Mr. Pathak submitted that in the instant case, the other accused were acquitted by the trial court on the ground that T.I.P. of known person is a farce and since the accused persons were known from before as such the T.I.P. has no relevance. Mr. Pathak submitted that if the accused persons were known from before then the informant ought to have disclosed the name of the miscreants in the fardbeyan itself. He further submitted that the case of the appellants are identical to the case of other accused, who were acquitted by the trial court on the ground that the accused persons were known to the witnesses, who identified them in T.I. Parade from before.

9. Mr. Pathak, counsel for the appellants submitted that in the case of the appellants also, the trial court has committed error in adopting different yardstick in the matter of acquitting similarly circumstanced other accused and convicting the appellants notwithstanding the fact that the witnesses have admitted in the Court that the accused persons were known to them from before. Mr. Pathak referring to the deposition of witnesses submitted that the informant's side and the accused were resident of the same Panchayat and there are materials to indicate that the accused persons were known to them from before, yet the case was lodged against unknown. He further submitted that if the accused persons were known to the informant's



side from before, there was no reason to register the case against unknown.

10. In addition thereto, he submitted that from the deposition of the witnesses, it is evidently clear that the appellants were known to the witnesses, who identified them during the T.I.P. and as such the identification of known person in T.I.P. is uncalled for and cannot be relied upon for the purpose of conviction of the appellants. The deposition of P.W.5 indicates that this witness has admitted in the court that accused persons were known to him from before including Jalim Singh, Laxmi Choudhary, Indra Mohan Jha, Hareram Jha (appellant no.3), as he was campaigning for a candidate in the Panchayat election, whereas the informant (P.W.5) was campaigning for the other candidate for the post of Mukhiya. Referring to the deposition of the prosecution witnesses, Mr. Pathak submitted that on the basis of the materials available on record, no prudent man can accept the identification of the accused in the commission of the crime and as such he submits that by the same standard the appellants are entitled to be acquitted, like the other co-accused, who were acquitted by the trial court.

11. Ms. S. B. Verma, learned A.P.P. appearing on behalf of the State has admitted the factual position that the witnesses, who identified the accused persons in the T.I.P. were acquainted with



the accused persons from before and as such lodging the case against nine unknown persons and identification of the accused in T.I.P. does not appeal to reason.

12. We have gone through the materials available on record and from the deposition of the witnesses, it is evident that the case was registered against unknown. The accused persons belong to the same Panchayat, within a radius of 1 K.M. from the place of occurrence and there are materials available on record including the deposition of the witnesses to indicate that the accused persons were known to the informant's side from before. In that situation lodging the F.I.R. against unknown is mischievous, if the miscreants were known to them from before. In the instant case, the trial court has acquitted four accused persons extending the benefit of doubt on the ground that their identification by the witnesses does not inspire confidence for the reason that the accused were known from before. By the same analogy, the appellants also deserve the same treatment, as they were also known to the prosecution side from before and as such the identification in T.I. Parade of known person is of no use.

13. In addition thereto, in the instant case, the prosecution has made a pick and choose in the matter of examination of witnesses and there is no explanation for non-examination of the material witness, who was present at the time of occurrence, namely,



Sachidanand Pathak, tutor of the children of the informant.

14. In the totality of the facts situation, the Court is of the considered view that the conviction of the appellants is not above reasonable doubt. The appellants were known to the informant's side from before and as such their identification was farce, since the appellants were intercepted by the police party when seeing the police party they fled away in a suspicious manner. This suspicion howsoever strong cannot be taken as a proof to convict the appellants. The testimony of P.W.5 (informant) and his identification runs contrary to the basic case of the prosecution that the dacoits, who committed the crime were unknown. The T.I. Parade, in which the appellants were identified by the prosecution witnesses, was disbelieved by the trial court while acquitting the other accused and, as such, we see no reason to take a different view in the matter of identification of known person in T.I. Parade including the appellants. In addition thereto, we find that in the instant case the investigating officer was not examined and the seizure list witnesses have not supported the case and even the seized materials were not produced in the trial, particularly, on the point of identification of the dacoits in the night, as no source of light as per the prosecution case was produced in the trial. The cumulative effect of such infirmity creates reasonable doubt about the identification of the appellants in the



commission of crime.

15. In the result, the appeal is allowed. The judgment of conviction and sentence passed by the learned trial court is set aside and the appellants are acquitted from the charge leveled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2017
Transmission Date	21.12.2017

