

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.539 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Ram Krit Bind, son of Late Lakhan Bind, resident of village-Machohalpur, P.S.
Sonhan, District Kaimur (Bhabua). Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant : M/s Jitendra Kumar Pandey, Satyendra Pandey
& Ranjit Kumar Srivastava, Advocates.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 28-08-2017

This appeal has been filed against the judgment and order of conviction and sentence dated 09.09.2002 passed by the Additional Sessions Judge-cum-F.T.C.-II, Kaimur at Bhabua in Sessions Trial No.417/61 of 1993/2002, arising out of Bhabua (Sonhan) P.S. Case No.38/93, whereby the learned trial Court has acquitted Praduman Pandey and Bashistha Dubey and convicted the accused Ram Krit Bind under Section 395 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

2. The factual matrix of the case is that Bhabua (Sonhan) P.S. Case No.38/93 was instituted against 10/12



unknown accused persons under Section 395 and 397 of the Indian Penal Code, on the basis of fardbeyan of Lalita Dubey-son of Late Basdeo Dubey, resident of village Jagdishpur, P.S. Sonhan, District Kaimur at Bhabua recorded by A.S.I. Raghubir Prasad on 02.03.1993 at 6 AM in Sadar Hospital, Bhabua, with the allegation in succinct that in the night of 01.03.1993 at about 12:30 PM while he along with his family members were sleeping in their house, he heard sound of knocking the door, his wife woke him up then he rushed to the door and pressed it from inside but in the meantime, the accused persons broke open the door. Thereafter, after entering into his room, six accused persons demanded money from him and took out three boxes, one briefcase and two plastic bags containing attire, ornaments and other articles worth Rs. 7000/- - Rs. 8000/- of his family members. They also assaulted him, his wife and daughter, namely, Rambha Kumari. During the occurrence, two accused persons, who had covered their faces, were taking out boxes etc. from the room. Two accused persons were also standing on the door of his house near 'Baithaka'. Miscreants stayed in the house for 15 to 20 minutes and they were flashing torches and in its light he, his wife and daughter clearly witnessed the miscreants and can identify them.



3. The aforesaid case was registered by the police and on conclusion of investigation, the Investigating Officer submitted the chargesheet under Sections 395/397 of the Indian Penal Code against Praduman Pandey, Basistha Dubey, Nagendra Prasad Srivastava and Ram Krit Bind.

4. On perusing the case diary and chargesheet, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. After transfer, finally the case came to the seisin of learned Additional Sessions Judge-cum-F.T.C.-II, Kaimur at Bhabua for trial.

5. During pendency of the case, the accused Nagendra Prasad Srivastava absconded, hence he was declared absconder by the Court and his case was spilt-up. Thus, only three accused persons faced the trial. The charge under Section 395/397 of the Indian Penal Code was framed against the accused persons, namely, Praduman Pandey, Basistha Dubey and Ram Krit Bind. The charges were read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

6. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses, Rambha Devi as PW-1, Urmila Devi as PW-2, Ram



Bachan Dubey as PW-3, Lalita Dubey (informant) as PW-4, Narshing Mishra as PW-5, Madhusudan Tiwari, the then learned Judicial Magistrate, Bhabua, who conducted the test identification parade as PW-6 and P.W.7-Gupteshwar Mishra. However, P.W.7 happens to be the formal witness who has proved the injury report marked as Exts.4 & 4/1.

7. The statements of accused persons were recorded under Section 313 Cr.P.C. The case of defence is complete denial of the occurrence. Accused persons did neither adduce any ocular nor documentary evidence in support of their case.

8. After hearing the parties and perusing the record, the learned trial Court acquitted the accused persons, namely, Praduman Pandey and Basistha Dubey for the charges levelled against them, while convicted the accused-Ram Krit Bind under Section 395 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

9. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict-Ram Krit Bind has filed this appeal.

10. It has been submitted by learned counsel for the appellant that out of six material witnesses examined by the



prosecution, P.W.4 happens to be informant himself. P.W.1 is the daughter of the informant, P.W.2 is wife of the informant and P.W.3 is the brother of the informant. All the aforesaid witnesses happen to be interested and partisan witnesses of the case. It is further submitted by learned counsel for the appellant that only informant has identified the appellant as accused in test identification parade while other family members of the informant i.e. P.Ws.1, 2 & 3 who were present in the house at the time of occurrence and in whose presence the occurrence took place have not joined test identification parade. The said witnesses and P.W.5 have also not identified the appellant in dock. Thus, there happens to be single identification of the appellant and due to non-identification of the appellant in dock by the said witnesses, the case of the prosecution becomes doubtful. It is further submitted on behalf of the appellant that the appellant happens to be resident of adjoining village and 'Sadhu' of the appellant, namely, Suresh Bind is co-villager of the informant. The appellant regularly visit to his 'Sadhu' and, became acquainted to the informant but in spite of pre-acquaintance the informant did not name the appellant in the F.I.R., which creates serious doubt about the prosecution case. The I.O. of the case has also not been examined by the



prosecution causing great prejudice to the defence. Hence the impugned judgment and order of conviction and sentence passed by the learned trial Court is suffering from gross illegality and infirmity and is liable to be set aside.

11. On the other hand, learned A.P.P. advocating the correctness and validity of the impugned judgment and order of conviction and sentence has submitted that witnesses adduced by the prosecution have supported the prosecution case in toto. Though it is a case of single identification, but the informant in the test identification parade has categorically identified the appellant as the accused involved in the occurrence. The learned trial Court has passed the impugned judgment and order of conviction and sentence after correctly appreciating the facts and evidence on record and the same is correct, legal, valid and is liable to be upheld and this appeal has no substance and is liable to be dismissed.

12. From perusal of the records, it appears that the appellant has been convicted on the basis of single identification by the informant in the test identification parade, barring it there is no other evidence on record indicating his complicity in the occurrence. From perusal of the records, it further appears that occurrence took place in the night of 1st/2nd



March, 1993 and the appellant was arrested on 07.03.1993 but he was put on test identification parade on 23.03.1993. Thus, there was hiatus of about one month and twenty days in holding the test identification parade from the date of occurrence. From perusal of the record, it also appears that no description or mark of identification of the appellant was given by the informant before the Magistrate conducting the test identification parade as evident from the test identification parade chart and evidence of Magistrate examined as P.W.6 in this case. From perusal of the testimony of P.W.4 in paragraph-3 of his examination-in-chief, it appears that he has stated that two dacoits were identified by him in T.I.P. (Nagendra Prasad Srivastava and the appellant) throwing the articles from his room and assaulting the inmates of the house but from perusal of T.I.P. Chart and testimony of P.W.6 in paragraph-1 of his examination-in-chief, it appears that during T.I.P., the informant had divulged to the Magistrate that the appellant was only throwing articles and box from his room. He had not divulged the factum of assaulting the inmate of house by the appellant during the occurrence. Thus, the aforesaid two statements of the informant given in the Court and that given before the Magistrate happens to be in quite contradiction and creates serious doubt about the involvement of



the appellant in the occurrence. From perusal of testimony of P.W.6, it appears that he has stated in paragraphs-3 & 4 of his cross-examination that the Jail Munshi Brij Mohan Pandey had divulged him the name of the appellant and other accused (Nagendra Prasad Srivastava) and he had got them identified before the T.I.P. He had not asked the name and address from Ram Krit Bind during T.I.P. Thus, the T.I.P. conducted by the P.W.6 appears to be doubtful, as the Magistrate appears to have mentioned the name of the appellant in the T.I.P chart on the basis of his name disclosed to him by the Jail Munshi and not by the appellant as the appellant was not asked about his name and address by the Magistrate. Moreover, from the perusal of the record, it appears that P.Ws.1 & 2 who happens to be the daughter and wife respectively of the informant had also seen all the six accused persons committing the occurrence, entering into their room in adequate light of torch flashed by the dacoits but barring the informant none of the aforesaid witnesses have identified the appellant as none of them has claimed to identify the appellant witnessing him before the Court and did not take part in the T.I.P. to identify the appellant. Thus, the aforesaid entire aspects of the case create serious doubt about the identification of the appellant as a miscreant in the occurrence.



13. The Hon'ble Apex Court in the case of **Wakil Singh Vs. The State of Bihar** reported in **1981 B.B.C.J. (SC) 139** has been pleased to observe that none of the witnesses in their earlier statements or in oral evidence had given any description of the dacoits whom they were said to have identified nor the witnesses did give any of their identification marks, hence in absence of any such description it was not possible to convict an accused on the basis of a single identification as in such a case reasonable possibility of mistake of identification could not be excluded. In that case offence was committed on 12.03.1971 but the name of the accused Shiv Shankar came in the statement of one Subhash and the Investigating Police Officer could not immediately trace him out, but could arrest him only on 14.06.1971, whereafter identification parade was held. So there was room of doubt as to whether delay in holding the T.I. Parade was to enable the witnesses to identify him in the police lock up or in jail premises.

14. From perusal of the record, it also appears that no incriminating article has been recovered from the conscious physical possession of the appellant.

15. In view of the aforesaid facts and



circumstances of the case, the prosecution has utterly and miserably failed to substantiate its case beyond all reasonable doubt against the appellant and the appellant is entitled to get the benefit of doubt. Accordingly, this appeal is allowed and the impugned judgment regarding the appellant and order of conviction and sentence of appellant is set aside and the appellant is acquitted from the charges levelled against him. As the appellant is on bail, he is discharged from the liabilities of his bail bond.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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