

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 23.08.1996, and order of sentence, dated 24.08.1996, passed by Shri H.B.P. Sinha, learned 1st Additional Sessions Judge, Buxar in Sessions Trial No. 395 1984, arising out of Rajpur P.S. Case No. 68 of 1984)

Criminal Appeal (DB) No.409 of 1996

1. Paras Koiri @ Paras Singh, son of Khatai Koiri
2. Kawalbas Koiri @ Kawalbas Singh, son of Khatai Koiri
..... Appellant/s
Versus
1. The State of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 19 of 1997

Bugari Mushar, son of late Murat Musahar, resident of Village- Sisaradh, P.S.-
Rajpur, District- Buxar.
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :
(In CR. APP (DB) No.409 of 1996)
For the Appellant/s : Mr. Shambhu Sharan Singh, Amicus Curiae
For the Respondent/s : Mrs. Shashi Bala Verma, APP

(In CR. APP (DB) No.19 of 1997)
For the Appellant/s : Mr. Shambhu Sharan Singh, Amicus Curiae
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)
Date: 16-09-2017

On repeated calls, no one appears on behalf of the appellants. Mr. Shambhu Sharan Singh, learned Advocate, who is present in Court, is appointed as Amicus Curiae to assist the Court.



2. Cr. Appeal (DB) No. 409 of 1996 has been filed by the appellants, namely, Paras Koiri @ Paras Singh and Kawalbas Koiri @ Kawalbas Singh, whereas Cr. Appeal (DB) No. 19 of 1997, which is a jail appeal, on behalf of the appellant Bugari Mushar.

3. Both the appeals have been preferred by the appellants assailing the judgment of conviction, dated 23.08.1996, and order of sentence, dated 24.08.1996, passed by learned 1st Additional Sessions Judge, Buxar in Sessions Trial No. 395 of 1984, arising out of Rajpur P.S. Case No. 68 of 1984, by which all the appellants herein, namely, Paras Koiri @ Paras Singh and Kawalbas Koiri @ Kawalbas Singh (Cr. Appeal (DB) No. 409 of 1996), and Bugari Mushar (Cr. Appeal (DB) No. 19 of 1997) have been convicted under Sections 396 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

4. The prosecution case in brief is that in the night of 26/27.06.1984, 8-9 dacoits armed with Katta and gun entered the house of the informant and 8-10 dacoits variously armed surrounded the house and one of the dacoit took wrist watch from the son of the informant and thereafter they looted the house hold articles i.e. utensils, ornaments, clothes etc. and during the loot they assaulted the informant's wife and daughter-in-law and thereafter the dacoits tried to commit dacoity in the house of Bishwanath Choubey, who resisted



the loot and as such he was eliminated by the dacoits. The informant claimed that he saw the dacoits in the torch light and claimed that he can identify them.

5. On the basis of the fardbeyan of the informant, Rajpur P.S. case no. 68 of 1984 was registered against unknown under Section 396 of the Indian Penal Code.

6. The police after investigation submitted charge-sheet and the case was committed to the Court of Sessions. Thereafter charges were framed and the appellants and other accused persons pleaded not guilty and as such the trial commenced against the appellants for offence under Section 396 of the Indian Penal Code.

7. During the course of trial, the prosecution examined 8 witnesses. P.W.1 Sanjeevan Choubey is the informant of the instant case. P.W. 2 Paras Nath Choubey and P.W. 4 Shiv Kumar Choubey are the sons of the deceased Bishwanath Choubey. P.W. 3 is Rama Shankar Choubey, who claimed to have seen the dacoits, who surrounded them. P.W. 5 Taramani Devi is the wife of Sanjeevan Choubey (informant), P.W. 6 Bindu Devi is the wife of Ram Niwas Choubey, P.W.7 Daroga Singh and P.W. 8 is Vijay Narayan Rai.

8. Since the case itself was registered unknown



and as per the informant's version, the informant others claimed that they can identify the dacoits, who committed dacoity and murder in the instant case. The Test Identification Parade in the instant case is most crucial. The trial court on the basis of the deposition of the witnesses and the Test Identification Parade of the suspected accused Raghunath Singh, Sagar Mushar, Baijnath Singh and Rajendra Singh held out that they are not guilty and accordingly they have been acquitted. However, the three appellants have been convicted for the offence under Section 396 of the Indian Penal Code and sentenced to undergo life imprisonment.

9. We have heard the learned Amicus Curiae and Mrs. S. B. Verma, learned A.P.P. in both the appeals and perused the record.

10. It appears from the record that the sole basis of conviction of the appellants Paras Singh, Bugari Mushar and Kawalbas Singh is Test Identification Parade. From the record, it appears that the Test Identification Parade was conducted on 26.09.1984 in Sub-Jail, Buxar and Central Jail, Buxar Shri Daroga Singh, Judicial Magistrate has conducted the Test Identification Parade, who was examined in the instant case as P.W.7. From his deposition, it appears that the original Test Identification Parade chart for Test Identification Parade in Sub-Jail Buxar and Central



Jail, Buxar were prepared in carbon process, but on the date of his deposition it was in torn condition and as such he could not depose as to who identified whom. This is how the Test Identification Parade was conducted and based on such Test Identification Parade, the appellants have been convicted in this case. In addition thereto, we find further infirmity in the Test Identification Parade, as the accused Baijnath Singh was known to them from before, as he used to sell vegetable in the village and if a person, who used to sell vegetable in the village itself and known to the witnesses from before Test Identification Parade is only a farce. Similar is the case with the Rajendra Singh, who is also a regular visitor of the village in connection with the cultivation in the neighbourhood of the witnesses.

11. Learned Amicus Curiae has drawn our attention to the infirmity in the conduct of the Test Identification Parade. Referring to para 12 of the judgment, he state that there was only one identification in the instant case of dacoity and as such it is not safe to convict a person on the basis of single identification in dacoity. He has also drawn our attention to the infirmity in the prosecution case that Bugari Mushar was known to the informant of the case, which he had admitted in para 8 of his cross-examination and as such the Test Identification Parade in the case of Bugari



Mushar is only an eye wash.

12. Having heard the learned Amicus Curiae and the Additional Public Prosecutor and considering the entire materials on record, we find grave infirmity in the judgment of the trial court. The case was registered against unknown. The occurrence took place in the dead night. The witnesses claim that they have seen the dacoits and the assailant in the flash of torch light. The Test Identification Parade was not conducted as per law. The Judicial Magistrate, who conducted the TIP in his deposition, has admitted that the Ext. (TIP chart) is torn and as such he is not in a position to state, who identified whom. Moreover, the three appellants in one or the other way known to the witnesses of the case from before and as such they cannot be labeled as unknown to be identified in TIP, since they were known from before in the capacity of regular visitor and cultivating the land in the neighbourhood and in the capacity of vegetable seller or in the capacity of resident of Mushar Tola, in a house adjacent to the school where the informant was a teacher the identification of appellants in TIP is unrealistic and not trustworthy.

13. The totality of the facts situation indicate that the TIP was not conducted as per law and the prosecution has not been able to prove the charges against the appellants beyond all reasonable doubt, in view of the infirmity in conduct of TIP, as



discussed above, and the fact that known person cannot be branded as unknown, we are constrained to hold that the appellants deserve benefit of doubt. Accordingly, we allow both the appeals and set aside the judgment of conviction, dated 23.08.1996, and order of sentence, dated 24.08.1996, passed by the learned trial court.

14. In the result, both the appeals are allowed and the appellants are acquitted from the charges leveled against them. As all the appellants are on bail, they are discharged from the liabilities of their bail bonds.

15. Let the 1st and last page of the judgment be handed over to Mr. Shambhu Sharan Singh, who appears in both the appeals, as Amicus Curiae for needful.

16. The Patna High Court Legal Services Authority is directed to pay the fixed remuneration to Mr. Shambhu Sharan Singh, who is appearing in both the appeals, as Amicus Curiae.

(Rajendra Menon, CJ)

Uday/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2017
Transmission Date	04.10.2017

