

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.72 of 2002

Arising Out of PS. Case No. -63 Year- 1986 Thana –Buxar Town District- BUXAR

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JAGARNATH YADAV SON OF LATE BALI RAM YADAV, RESIDENT OF
VILLAGE-ARI PAHARPUR, P.O.-SITA PATTI, P.S. KARANDA, DISTRICT-
GAZIPUR (U.P.)

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s	:	Mr. Aaruni Singh, Adv. Mrs. Rani Kumari, Adv.
For the State	:	Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 16-01-2017

Sole appellant, Jagarnath Yadav, who has been found guilty for an offence punishable under Section 395 IPC and directed to undergo R.I. for 7 years, under Section 397 IPC and directed to undergo R.I. for 5 years with a further direction to run the sentences concurrently by the learned P.O. FTC, 1st, Buxar in Sessions Trial No.10 of 1988 vide judgment of conviction and sentence dated 17.01.2002 has challenged the same by way of instant appeal.

2. PW.8, Jiwit Prasad, owner of a jewellery shop recorded his fardbeyan on 19.03.1986 at about 07:45 P.M. divulging the fact that there was commission of dacoity in his jewellery shop whereunder the dacoits took away silver ornaments and during course thereof, he was brutally assaulted by them with fist and slap as well as by butt of double barrel gun. Furthermore, they have also hurled bomb whereupon so many persons sustained explosive injuries. As he had



not claimed identification, on account thereof, Buxar Town P.S. Case No.63/1986 was registered against unknown under Sections 395,397 of the IPC followed with an investigation during course of which, as is evident from the lower court record, so many accused persons including the appellant were arrested and in likewise manner booty was recovered. Furthermore, it is also apparent that as the accused persons as well as the seized articles were identified during course of T.I. Parade, consequent thereupon, charge sheet was submitted after concluding the investigation which, ultimately led to trial resulting conviction of the appellant, the subject matter of instant appeal.

3. Defence, as pleaded by the appellant by way of cross-examining the witnesses as well as during course of statement recorded under Section 337 Cr.P.C. is of false implication. However, neither any DW nor any kind of document has been exhibited.

4. During course of trial, it is evident that in order to substantiate its case, prosecution had examined altogether 13 PWs out of whom PW.1 is Amar Nath Verma, PW.2 is Govind Prasad, PW.3 is Ram Nath Ram, PW.4 is Anil Kumar, PW.5 is Ram Das Halawai, PW.6 is Kashi Nath Singh, PW.7 is Rama Shankar Yadav, PW.8 is Jiwit Prasad, PW.9 is Prem Chand Gupta, PW.10 is Ram Bachan Singh, PW.11 is Kamala Prasad Singh, PW.12 is Pyare Mohan Lal, PW.13 is Krishan Prasad Sharma. Side by side, the prosecution had also exhibited Ext.1-Signature of informant over fardbeyan, Ext.2-Fardbeyan, Ext.3-Carboncopy of T.I. Parade, Ext.4



Series-Signature over T.I. chart, Ext.5-Seizure List, Ext.-6-Another T.I. Chart, Ext.7-Statement of Shyam Bihari under Section 464 Cr.P.C., Ext.-8- Formal FIR.

5. Now coming to status of the witnesses, it is evident that with regard to status of the appellant, only the evidence of PW.4-Anil Kumar, PW.8-Jiwit Prasad, PW.9-Prem Chand Gupta and PW.11-Kamla Prasad Singh are relevant because of the fact that PW.4 and PW.8 have claimed identification against the appellant in the T.I. Parade as well as in court, PW.9 is the Magistrate who conducted T.I. Parade and PW.11 Kamla Prasad Singh is the Investigating Officer. As, PW.1, PW.3, PW.6 are the witnesses on the score that they have sustained injuries on account of explosion having made at the end of the dacoits without naming, identifying them either through T.I. Parade or in court while PW.2, PW.5 and PW.6 have been tendered by the prosecution though not assented in the eye of law. PW.10-Ram Bachan Singh is Executive Magistrate before whom Test Identification Parade was conducted relating to ornaments, PW.12 is Pyare Mohan, Judicial Magistrate who conducted Test Identification Parade relating to co-accused Bal Mukund as well as Nihal Nonia (not on trial) while PW.13- Krishan Prasad Sharma is a formal witness.

6. From the judgment impugned paragraph 34 and 35, the learned lower court had dealt with the plea of the appellant as well as materials having adduced on behalf of prosecution against him and



further, after close scrutiny thereof, the learned lower court found the appellant guilty in the background of the fact that appellant has been identified during course of Test Identification Parade at an initial stage coupled with identification in the dock and accordingly held so inflicting the sentence as indicated above.

7. When the evidence of PW.4 as well as PW.8 have been gone through, it is apparent that they have perceived spot of chickenpox over face of appellant Jagarnath Yadav which they have not uttered at an initial stage, was, the peculiar feature having present over the person of appellant is found completely scorched since inspection of the case and the same has also been ignored at the end of the Investigating Officer PW.11 during course of apprehension of appellant as well as PW.9 the Magistrate who conducted Test Identification Parade. Furthermore, there also happens to be complete violation of the requirements having prescribed under Rule-236 of the Police Manual guiding the event of Test Identification Parade. So far present scenario is concerned, it is found governed by sub-rule 6 of Rule-236 which lays down:

“236 (6) – If the physical characteristics of any suspected person are such that on account of these, he can be searched in a group, then as far as possible such persons shall be assembled for mixing up who have similar characteristics or the characteristics shall be covered. The investigator shall see before identification parade begins that the suspected person is available in it.”



8. Sub-rule-7 lays down requirement whereunder the suspect is to be mixed with 8-10 persons and so, there should have been a positive evidence at the end of the prosecution that there was presence of 8-10 persons at the time of Test Identification Parade having similar peculiarity available with whom, Jagarnath Yadav was intermixed and then was put on Test Identification Parade. Because of the fact that prosecution has to substantiate its case beyond all reasonable doubt, on account thereof, every precaution which is found upon the prosecution to adopt has to be followed in order to ward of every kind of possibility of wrong at the end of prosecution either during course of conduction of trial or during course of conduction of investigation.

9. From the judgment impugned, it is evident that learned lower court had ignored/overlooked aforesaid aspect persisting on the record as is found exposed from the evidence of PW.4 as well as PW.8 which is found further supported with the lapses having at the end of the PW.9, the Magistrate and that being so, the cumulative effect nullify the event of Test Identification Parade. Furthermore, brushing aside the aforesaid evidence, the case of the appellant having been identified by the witnesses in court after lapses of so many years is found duly nullified by the learned lower court itself while acquitting co-accused Om Prakash and so, there happens to be no occasion left to differ therefrom. In any view of the matter, the case of the prosecution is found deficient one on account thereof, the



judgment of conviction and sentence recorded by the learned lower court is found completely shattered and is accordingly set aside. Appeal is allowed. Appellant is on bail, hence is directed to be discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

