

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.477 of 2015

Arising Out of PS.Case No. -4 Year- 2010 Thana -AKBARNAGAR District- BHAGALPUR

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Bipin Mandal @ Bipin Kumar Mandal, son of Shree Lal Mandal, R/o village-
Gobadda, P.S. Haweli Kharagpur, Distt. – Munger.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

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Criminal Appeal (SJ) No. 532 of 2015

Arising Out of PS.Case No. -4 Year- 2010 Thana -AKBARNAGAR District- BHAGALPUR

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Pawan Kumar Yadav @ Babu Lal Yadav, son of Kishun Yadav, resident of
village- Ghoghladih, Police Station- Haweli Kharagpur, District- Munger.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

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Criminal Appeal (SJ) No. 538 of 2015

Arising Out of PS.Case No. -4 Year- 2010 Thana -AKBARNAGAR District- BHAGALPUR

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Bambam Yadav, son of Late Subak Lal Yadav, resident of village-Bhudarni,
Police Station- Haweli Kharagpur, District- Munger.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :
(In CR. APP (SJ) No.477 of 2015)
For the Appellant/s : Mr. Kumar Kamal Nayan-Advocate
For the Respondent/s : Mr. Z. Hoda-A.P.P.
(In CR. APP (SJ) No.532 of 2015)
For the Appellant/s : Mr. Md. Najmul Hodda-Advocate
For the Respondent/s : Mr. Abhay Kumar-A.P.P.
(In CR. APP (SJ) No.538 of 2015)



For the Appellant/s : Mr. Md. Abdul Manan Khan-Advocate
For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 09-04-2018

Cr. Appeal (S.J.) No.477 of 2015 wherein Bipin Mandal @ Bipin Kumar Mandal is the appellant, Cr. Appeal (S.J.) No.532 of 2015 wherein Pawan Kumar Yadav @ Babu Lal Yadav is the appellant and Cr. Appeal (S.J.) No.538 of 2015 wherein Bambam Yadav is the appellant have been heard together and are being disposed of by a common judgment as all the three appeals arise out from the common judgment of conviction dated 30.06.2015 and order of sentence dated 07.07.2015 passed by the 5th Additional Sessions Judge, Bhagalpur in Sessions Trial No.1117 of 2010, whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 397 of the I.P.C. and sentenced to undergo R.I. for ten years, under Section 353 of the I.P.C. and sentenced to undergo R.I. for two years, under Section 395 of the I.P.C. for which, no separate sentence has been inflicted with a further direction to run the sentences concurrently.

2. PW-6 Goverdhan Jha, Hawaldar gave his fard-bayan on 10.01.2010 at about 6.15 p.m. alleging inter alia that there happens to be police picket under Akbarnagar Police Station at Chanan wherein Dindayal Bhagat, Amrendra Kumar Singh, Ujjwal Kumar,



Nitish Kumar, Vishram Kuzur, Viswa Mohan Prasad were the Constables so deputed while he was Hawildar. On 10.01.2010 in between 4.00 p.m. to 6.00 p.m. Constable No.514 Vishram Kuzur was on Santry duty. At that very moment, two passengers vehicle coming from two different sides stopped in front of police picket and then, the occupant thereof, raided the police picket by way of making indiscriminate firing as well as shouting 'Lal Salam'. Vishram Kuzur got severely injured. All the police personnel, who were inside the police picket, were overpowered by the members of the miscreant on the point of firearms and then, they brutally assaulted, some of them also sustained firearm injuries. During course thereof, they looted away 04 S.L.R. Rifle, two 9mm stain gun, 04 grenade, 480 rounds of cartridges relating to S.L.R., 140 rounds of cartridges relating to 9mm, wrist watch etc. Their commander blown whistle, whereupon the extremists left the scene along with the looted firearms, ammunitions and other articles. Constable No.46 Amrendra Kumar Singh succeeded in concealing his S.L.R., which was taken out after leaving of the extremists and then, Constable No.148 Ujjawal Kumar fired 12 rounds there from. Higher Police officials were also informed. After whose arrival, injured were taken to Bhagalpur for treatment. Then had described the physical feature of the extremists and further, claimed to identify them. It has also been disclosed that they have



raised alarm for help, but the local inhabitants did not respond properly.

3. After registration of Akbarnagar P. S. Case No.04 of 2010, investigation commenced, concluded by way of submission of chargesheet against the appellants including others whose presence are still to be procured facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular nor documentary evidence has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether 20 PWs, who are PW-1, Ujjwal Kumar, PW-2, Nitish Kumar, PW-3, Vishwa Mohan Prasad, PW-4, Dindayal Jha, PW-5, Bishram Kuzur, PW-6, Goverdhan Jha, PW-7, Amrendra Kumar Singh, PW-8, Mantosh, PW-9, Shambhu Mahto, PW-10, Shankar Mahto, PW-11, Meghi Mahto, PW-12, Ramesh Kumar Singh, PW-13, Sitaram Pandit, PW-14, Ashok Kumar, PW-15, Rajesh Kumar, PW-16, Arun Kumar Mandal, PW-17, Manoranjan Bharti, PW-18, Arvind Kumar, PW-19, Chandeshwari Prasad Yadav and PW-20, Dr. Manoj Kumar Chaudhary. Side by side, had also



exhibited the fard-bayan as Exhibit-1, formal F.I.R. as Exhibit-2, production-cum-seizure list as Exhibit-3, call details Exhibit-4 to 4/29, inculpatory extra-judicial confessional statement of accused Babu Lal @ Pawan Kumar Yadav as Exhibit-5, injury report relating to respective injured Exhibit-6 to 6/3. As stated hereinabove, neither ocular nor documentary evidence has been adduced on behalf of defence.

6. All the learned counsels representing respective appellant more or less raised the same issue while assailing the finding recorded by the learned lower Court. It has been submitted on behalf of learned counsels that F.I.R. has been registered against unknown. So, it was incumbent upon the Investigating Officer to have the appellants put up on T. I. Parade during course of investigation to search out whether these appellants were culprits or not. Highlighting the issue, it has been submitted that T.I. Parade is permissible under the guise of Section 9 of the Evidence Act and its methodological has been prescribed under the police manual. T. I. Parade are being conducted during course of investigation in order to suggest that the investigation proceeding in right direction as well as accused, whoever been apprehended, if identified, to be the person prosecuted and if not, to be discharged, in case, no other connecting evidences have been collected. These exercises happen to be must and the



Investigating Officer is under obligation to discharge in each and every case where F.I.R. happens to be against unknown in order to secure fair trial.

7. So far present case is concerned, admittedly case has been registered against unknown and so, the mode of the investigation being carried out at the end of the Investigating Officer should have been stamped by way of conduction of T. I. Parade, which the I.O. ignored. That means to say, during course of investigation, the I.O. failed to collect relevant legal evidence against the appellants. However, during course of evidence as it appears, appellants have been identified in court for the first time after long interval and so, lost its credibility, as such identification has got no relevancy in the eye of law. Moreover, it has also been submitted that had there been proper identification, the witnesses would have disclosed the specific part having been played by the appellants during course of commission of the crime. Absence at the end of the witnesses on that very score is indicative of the fact that the identification in Court has purposely been introduced and so, the same happens to be fit to be rejected in the background of the fact that there was every possibility of mistaken identification.

8. It has also been submitted that nothing has been



recovered from the possession of any of the appellants. There happens to be no criminal antecedent. None came forward to say that these appellants happen to be member of the extremist group. So, no legal evidence subsist against the appellants and on account thereof, the judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

9. On the other hand, learned Additional Public Prosecutor while supporting the finding having recorded by the learned lower Court has submitted that from the evidences available on the record, which the learned lower Court had minutely dealt with while inferring the finding of guilt did not require interference. So, these appeals are fit to be dismissed.

10. Section 9 of the Evidence Act deals with the relevant issue and for better appreciation the same is quoted below:-

Section 9 of the Indian Evidence Act, 1872

*Facts necessary to explain or introduce relevant facts. —
Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation*



of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.”

11. The other circumstances so provided therein is not at all relevant for the present purpose, save and except identity of the accused as an accused connected with commission of the crime and so, is found permissible in accordance with Section 9 of the Evidence Act. Section 9 of the Evidence Act never speaks that it should be guided by a T. I. Parade that too, during course of investigation. It happens to be the police manual, which contains a provision under its rule authorizing conduction of T. I. Parade in case, ordinarily where identification of accused is not found duly exposed, but neither it happens to be an obligation on the part of the prosecution nor failure of the prosecution, in each and every case, would cause a jolt to the prosecution case rather it depends upon fact of the case. Its sole purpose happens to be whether investigation going on through right path. In *Ayyub etc. vs. State of U.P. reported in A.I.R. 2002 (S.C.) 1192*, the Hon’ble Apex Court has held as follows:-

“21. The test identification parade as such is not a substantive piece of evidence, but it is done only for the satisfaction of the prosecution that the investigation was moving in the right direction.

12. However, the T. I. Parade is not the substantive piece



of evidence unless and until substantiated in Court in accordance with law. Now, the question arose whether identification for the first time in Court is legally permissible or not. From the plain reading of Section 9 of the Evidence Act, it is apparent that no such barrier has been prescribed nay under any of the provision of the Cr.P.C. either commanding the investigation or the trial. Furthermore, it is the evidence, which is being given before the Court during trial happens to be the legal evidence, admissible in the eye of law and in likewise manner, happens to be over the factum of identification. So, without weighing whether such identification could be accepted or not, but so far admissibility of identification in the Court for the first time is concerned, that happens to be only to perceive whether by such adaptation an accused has been properly identified to be an accused and further, the evidence whatsoever been produced against him, appears to be reliable, creditworthy against them and that happens to be reason behind that the Hon'ble Apex Court did not reject the identification having been in Court for the first time and observed it to be admissible in the eye of law. That means to say, the identification for the first time in Court is admissible in the eye of law, but its impact has to be seen in the background of evidence having so adduced.

13. The *Hon'ble Apex Court in Mukesh and another vs.*



State (NCT of Delhi) and others reported in (2017) 6 SCC 1, it has been held:-

“143. [In Santokh Singh v. Izhar Hussain and another](#)[(1973) 2 SCC 406], it has been observed that the identification can only be used as corroborative of the statement in court.

144. [In Malkhansingh v. State of M.P.](#)[(2003) 5 SCC 746], it has been held thus:

“7. ... The identification parades belong to the stage of investigation, and there is no provision in [the Code](#) of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by [Section 162](#) of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ...”

And again:

“16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the



witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ...”

145. In this context, reference to a passage from [Visveswaran v. State](#) represented by S.D.M.[(2003) 6 SCC 73] would be apt. It is as follows:

“11. ... The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ...”

146. In Sidhartha Vashisht alias [Manu Sharma v. State \(NCT of Delhi\)](#)[(2010) 6 SCC 1], the Court, after referring to [Munshi Singh Gautam v. State of M.P.](#)[(2005) 9 SCC 631], [Harbhajan Singh v. State of J & K](#)[(1975) 4 SCC 480] and [Malkhansingh](#) (supra), came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.”

14. Furthermore, there should be prudent effort at the end



of adversary, if he so desires to discredit the evidence of a witness to cross-examine on the point over which, the witness is to be shaken status in order to give an opportunity to explain. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his



evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

15. In the background of aforesaid settled legal proposition, now the evidences are to be considered whether the same happens to be sufficient in concurrence or not regarding the finding having been recorded by the learned lower Court. After going through the evidence of the PWs, it is evident that four kinds of witnesses have been adduced on behalf of prosecution. PW-1 to PW-7 are witnesses, who were deputed at the Police Out-Post Chanan where the alleged occurrence took place. PW-8 to PW-10 are the witnesses, who to some extent proved the occurrence. PW-11 to PW-15 are the witnesses, who have not supported the case of the prosecution either



way and that being so, they were declared hostile. PW-16 to PW-19 are the police officials engaged during course of investigation and PW-20 is the doctor, who had examined the respective injured.

16. In the aforesaid background of nature of the evidences of the witnesses viz. PW-8, PW-9, PW-10 happen to be of no use to the prosecution, save and except that an occurrence took place while PW-11 to PW-15 found to be burden to the prosecution as failed even to extent of occurrence. So, the prosecution rests its case from PW-1 to PW-7 and PW-16 to PW-20.

17. PW-20 is the doctor. He had examined the respective injured on 10.01.2010, right from 6.45 p.m. and onward and found the following:-

Vishwa Mohan Prasad

- 1) *Lacerated injury of right side of scalp, size 2" $\frac{1}{2}$ " x $\frac{1}{2}$ " deep with swelling around the lacerated injury about 3" in diameter.*
- 2) *Swelling of left hand on dorsum.*
- 3) *Lacerated injury on dorsum of left hand $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " deep.*
- 4) *Swelling of right hand belated index finger.*

Advised for X-ray skull A/P and lateral views, X-ray left and right hand A/P and Lateral view and C.T. Scan of Brain. Time since injury within six hours.



Vishram Kujur

- i) *Lacerated wound about ½” in diameter in right Hypochondrium.*
- ii) *Lacerated wound in right Hypochondrium in lateral side and posterior side about 1 inch in diameter.*

Time since injury within six hours.

Keeping the nature of injury reserved, Vishwa Mohan Prasad as well as Vishram Kujur were sent to P.M.C.H. for proper treatment, however, the respective injury report, if any, issued by P.M.C.H. is not on the record.

Nitish Kumar

- i) *Abrasion on dorsum of left wrist size 1” x ¼” x ¼”.*
- ii) *Abrasion on dorsum of left wrist 1” x ¼” x ¼”.*

Time since injury within six hours.

Din Dayal Jha

- i) *Lacerated injury on right leg in distal fourth location size 1” long, ¼” wide and ¼” deep.*
- ii) *Swelling of left wrist on dorsum 1” in diameter.*

Time since injury within six hours. Advised for X-ray of left wrist A/P and Lateral view and right leg A/P and lateral views and X-ray skull A/P lateral. All these injuries are simple in nature and caused by hard blunt substance.

He was cross-examined under Paras-5 and 6 on that score. It is also evident that this witness was cross-examined over the date on which, injury report was issued by him other than the date on



which, those injured were examined that means to say, 10.01.2010.

18. Now, coming to a batch of witnesses covering PW-1 to PW-7, first of all evidence of PW-3, one of the injured is to be taken note of, who during his examination-in-chief had substantiated the prosecution case, but as he claimed that soon after sustaining injuries, he became unconscious and on account thereof, he could not identify any of the appellants/ accused in dock. So, he proved the occurrence, but failed to say anything adverse to the appelants.

19. PW-1 had stated that on the alleged date and time of occurrence, he along with other police personnel were at the police picket. Two vehicles came, stopped in front of picket and then, miscreants, who were 50-60 in number rushed towards picket making indiscriminate firing and made them captive on the pretext of firearm. On account of their indiscriminate firing, Vishram Kuzur and Vishwa Mohan Prasad (PW-3) became severely injured. They were also assaulted, they looted away S.L.R. cartridges, carbine, he claimed identification of the accused in dock. During cross-examination on behalf of Bipin Kumar at Para-3, he had stated that the statement was recorded 2-4 days after the occurrence. In Para-4, he had stated that there happens to be no village around the location where picket is established. One temple is there. Police had not conducted T. I. Parade in the jail. Accused persons were not known since before. There were



50-60 accused persons, it was evening time, darkness had fallen. He was sitting at the picket. He was not doing anything. They were shouting and then, extremist pounced upon them making indiscriminate firing. 20-25 extremists came inside picket, rest remained outside. In Para-5, he had stated that extremists had pointed gun towards them also. They became afraid. They were also assaulted, but he did not examine himself by the doctor on behalf of Pawan. He was not at all cross-examined on the score of identification. At the end of Bambam, he had stated at Para-7 that he was not knowing Bambam since before. He was in the camp, when accused persons looted away the arms and ammunitions. After 5-10 minutes of departure of the accused persons, they came out from the picket.

20. PW-2, during his examination-in-chief, had reiterated the version of the PW-1. Then had narrated at Para-2 that he was also assaulted. Then the accused persons looted away S.L.R., carbine, ammunitions, his two A.T.M. Cards, Identity Card. Then thereafter, the miscreants escaped away, claimed identification of the accused, who was present in dock. He had also asserted that he was treated by the doctor. During cross-examination having made on behalf of accused Pawan Kumar Yadav at Para-3, he had stated that neither he disclosed names of accused persons before the police nor he knew names of accused persons. He has identified the accused



seeing their face. There was no T. I. Parade conducted at the Jail. He had seen the accused persons for the first time after the occurrence. Then thereafter, there happens to be cross-examination relating to the occurrence. In Para-4, there happens to be contradiction. On behalf of appellant Bambam Yadav at Para-7, he had stated that he was not knowing the accused persons since before. Then had denied the suggestion that accused persons have not committed the occurrence.

21. PW-4, during course of his examination-in-chief, reiterated the same version with regard to manner of occurrence. At Para-3, he had stated that injured were lifted by the police officials of the Akbarnagar Police Station to hospital. Then had stated that the accused persons, who are present in dock including others were amongst the extremists. During cross-examination at the end of Pawan Kumar Yadav at Para-4, had stated that neither he was knowing these accused persons since before nor he was knowing their names since before. Police had not conducted T. I. Parade. Then thereafter, remaining part of Paras-4 and 5, there happens to be cross-examination relating to manner of occurrence. At Para-6, he had stated that for the first time, he is seeing the accused persons in Court after the occurrence.

22. PW-5, during course of examination-in-chief, had reiterated the prosecution version and further, after sustaining injuries,



he became unconscious. Later on, he came to know that accused persons looted away weapons. He had further stated that the accused persons, who are in dock were actively involved during course of occurrence. During cross-examination on behalf of Pawan Kumar Yadav, he had stated that he is not knowing these accused persons by name, face since before the occurrence. He had not participated in any T. I. Parade. He was not called upon to participate in T. I. Parade. Then had denied the suggestion that after sustaining injury, he became unconscious and so, was not at all competent enough to identify the miscreants. At Para-8, he had stated that all the accused persons have put towel (Galmochhi) and were concealing their face.

23. PW-6, informant, during course of his evidence had substantiated his earlier version detailing minute to minute event occurred on the fateful day at the P.O. Then had identified the accused in dock and stated that they along with others had participated during course of the occurrence. During cross-examination at Para-5, had stated that occurrence took place in the month of January. It was severely cold. There was fog. He had not called upon to participate in T. I. Parade. He had not requested the I.O. to conduct T. I. Parade. In Para-8, he had stated that he is not knowing wherefrom these accused persons happen to be. He had not seen these accused persons since before the occurrence.



24. PW-7, reiterated the same version. At Para-5 of his examination-in-chief, he had stated that these accused persons along with others have committed the occurrence. During cross-examination at Para-6, he had stated that he is not knowing these accused persons by name, but only by face. He had identified on that very score. No T. I. Parade was conducted. Then thereafter, at Para-10, he had stated that only 15-20 accused persons entered inside the picket. Rest remained outside.

25. PW-16, on the alleged date of occurrence, was Officer-in-Charge of Akbarnagar P. S. within which the police picket near (Chanan Bridge P.O.) lies. Then had exhibited the relevant document (fard-bayan, formal F.I.R.). Then thereafter, they rushed in the direction whereunder accused persons have gone, but could not succeed to apprehend any of them. Took up investigation, recorded further statement of the informant, statement of the witnesses, inspected the P.O., which happens to be the police picket lying at a distance of six kilometer from Akbarnagar Police Station. Also found copious blood at the Santri host. Also found two empty cartridges. One S.L.R. rifle was also produced by the informant and then thereafter, he handed over charge to Officer-in-charge of Shahkunda P. S. as per order of the Superintendent of Police, Bhagalpur. During cross-examination at Para-7, he had admitted that he had not arrested



any of the accused. In Para-9, he had stated that as occurrence happens to be at the evening hour of 10.01.2010, on account thereof, F.I.R. was transmitted to the Chief Judicial Magistrate that on 11.01.2010. Then had admitted that he had not prepared sketch map of the P.O. Then had stated that he had not recorded the statement of the persons of the locality. He had not examined any person of the boundary.

26. PW-17 had stated that he was one of the member of the Special Team, which was constituted on an order of the Superintendent of Police, Bhagalpur to expose the crime and during course thereof, his activity was confined to the extent of locating mobile number having used by the extremists before the commission of the crime as well as after commission of the crime. The I.O. of this case Arvind Kumar had furnished details of SIM Number, whereupon he procured call details, tower location, ID etc. and then after preparing detailed call details, handed over it to the I.O. Then had stated that he had taken out the call details regarding accused Bipin Kumar Mandal Sujit Mandal and Dablu Chaurasiya @ Nityanand Chaurasiya @ Dablu Mandal @ Vijay Yadav. During cross-examination at the end of the accused, more particularly Pawan Kumar Yadav at Para-4, he had stated that he had not done any other thing, than whatever been allotted to him. He had not deposited any



mobile in the court.

27. PW-18 is the main I.O., who had stated that on 12.01.2010, he was Officer-in-charge of Shahkund P. S. on which date, he received charge of investigation of the instant case and accordingly, proceeded with an investigation, recorded statement of witnesses, then had gone to Belhar and seen the photo copy of F.I.R., seizure list of Belhar P. S. Case No.04 of 2010. On 16.01.2010, he had gone to Haweli Kharagpur P. S. and seen the photo copy of F.I.R., seizure list, extra-judicial confessional statement of Tuntun Vishwakarma. In Para-3, he had stated that he had recorded inculpatory extra-judicial confessional statement of Bipin Kumar Mandal, Bambam Yadav. He procured injury reports of Constable No.432-Vishwa Mohan Prasad, Constable No.514-Bishram Kuzur, Constable Din Dayal Jha, Constable No.373-Nitish Kumar. He had seen the print out of call details relating to Mobile No.9162097460 along with others and then, analyzed the extra-judicial confessional statement of Bipin Mandal. He had further stated that from the print out, he had found conversation in between Anuj Das and Nityanand Chaurasiya. Then thereafter, he had submitted chargesheet. Also submitted call details. During cross-examination at Para-5, he had stated that he had not visited the place of occurrence. He had not conducted T. I. Parade. He had not prepared map relating to the P.O.,



because of the fact that P.O. was not inhabitant on account thereof, there was no examination of the person of the boundary. One temple happens to be some distance from the place of occurrence. Then had stated that the persons present at the temple were examined. He had further stated that accused Pawan Kumar Yadav had got no criminal antecedent. After the present occurrence, he has been remanded in Sultanganj P. S. Case No.17 of 2010. In Para-9, he had stated that he had not procured call details relating to accused Bambam Yadav. No mobile set was recovered from the possession of Bambam Yadav.

28. PW-19 on 28.01.2010 was Officer-in-Charge of the Sultanganj P. S., on that day, he had recorded inculpatory extra-judicial confessional statement of Pawan Kumar Yadav and exhibited the same.

29. From the evidence available on the record, it is evident that PW-16, PW-17, PW-18 and PW-19, out of whom, PW-16 happens to be the part I.O. while PW-18 happens to be the remaining I.O. had not deposed anything adverse to the interest of these appellants. They have not even stated to the extent how these appellants been arrayed as an accused. In the aforesaid background, the evidence of other PWs have to be seen. From the evidence of PW-5, Bishram Kuzur, it is apparent that accused persons had used towel (Galmochha) while they raided at the P.O. PW-6, informant, had



stated that it was severely cold, darkness had fallen down. In the aforesaid background, now the evidence of PW-7, PW-4, PW-2 and PW-1 remain. From their cross-examination, it is evident that they have not been tested on that very score, but even during course of examination-in-chief, none of them including others had spoken with regard to source of identification, nor the I.O. (PW-16) as well as PW-18 have disclosed regarding source of identification. From the evidence, it is crystal clear that the witnesses have no access to know about the appellants since before. So, was it possible to claim identification after such long interval for the first time in Court, reliable one. In the aforesaid background, the appellants are found at least entitled for benefit of doubt.

30. That being so, the finding recorded by the learned lower Court is hereby set aside. All these appeals are allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	17.04.2018
Transmission Date	17.04.2018

