

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.19 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Ram Bali Paswan, son of Late Bhathu Paswan, resident of village Bihat, Tola
Majhali Bari, P.S. Barauni, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 21 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Md. Shamim Akhtar, son of Late Md. Washiuddin, resident of village Husaina, P.S.
Ballia, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 81 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Kalikant Singh, son of Late Brij Kishore Singh, resident of village Tekanpura, P.S.
Nawkothe, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.19 of 2003)

For the Appellant/s : Mr. Ajay Kumar Thakur with M/S Nilesh
Kumar, Shashank Shekhar, Ritwaj Raman,
Advocates

For the Respondent/s : Mr. Bipin Kumar, APP
(In CR. APP (SJ) No.21 of 2003)

For the Appellant/s : Mr. P.K.Sinha, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.81 of 2003)

For the Appellant/s : Mr. Rama Kant Sharma, Sr.Advocate with
M/S Lakshmi Kant Sharma, Amresh
Kumar, Advocates



For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-01-2018

These three appeals arise out of the common judgment dated 23.12.2002 and order dated 24.12.2002 passed by the Presiding Officer, Additional Court-I, FTC, Begusarai in Sessions Trial No. 333/86 by which the three appellants of these three appeals have been convicted for the offence under Section 395 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years and as such they have been heard together and are being disposed of by this common judgment.

2. The brief facts giving rise to the Sessions Trial No.333/86 are that the informant Upender Narain Singh (P.W.3) made statement to the Officer-in-Charge, Bakhri Police Station on 26.7.1977 in village Chatauna at 4 A.M. that in the night intervening between 25/26th June, 1977 about 25 dacoits reached his house armed with various arms and they were between the age group of 18-25 years and had tied the hands of the informant along with Bijoy Kumar and Shibnandan Singh and climbed on the roof of the house with the help of staircase and entered into the courtyard of the house causing grievous injury to him and other inmates and committed dacoity of cash, ornaments, clothes and documents. On hulla the villagers



assembled but as the accused were firing they could not reach the house. Further case is that the dacoits ransacked the house for about half an hour and fled away with the booty. However, they had left cover of a dagger and a pair of shoes behind them. Detailed description regarding stolen properties has also been given.

3. On the basis of aforesaid fardbeyan, Bakhri P.S. Case No. 11(6) 77 was registered under Section 395 IPC. It appears that during investigation some accused persons were arrested and they were put on TIP and identified by P.Ws. 1 to 3. Thereafter charge sheet was submitted against the appellants and after cognizance the case has been committed to the court of sessions which ultimately came to file of Shri S.M.I.I.F. Alam, the then Presiding Officer, Additional Court-I, FTC, Begusarai.

4. Charge under Section 395 IPC was framed against the appellant of the three appeals.

5. During trial, the record shows that three witnesses have been examined on behalf of the prosecution, they are P.W.1 Kapildeo Singh, who is said to have identified appellant Kali Kant Singh in TIP, P.W.2 Ramchander Singh, who is said to have identified the appellants Rambali Paswan and Shamim Akhter in TIP and P.W.3 is the informant of the case, who has also identified the appellant Rambali Paswan in TIP and the aforesaid witnesses have also



identified the appellants in court.

6. On behalf of defence also two witnesses have been examined, they are D.W.1 Subash Singh, who has stated that Kapildeo Singh and accused Kali Kant Singh are residing at adjoining village and further stated that they were known to each other from before and there is land dispute between them with respect to an orchard, D.W.2 Brahmdeo Yadav, who has stated that the villages of accused Kali Kant Singh and Kapildeo Singh are adjacent in the same Panchayat and both of them were known to each other.

7. Learned trial court considering the evidence as well as materials available on record convicted the appellants under Section 395 IPC and sentenced them as thereunder.

8. Contention of Mr.Rama Kant Sharma, learned Sr.Counsel appearing for appellant Kali Kant Singh is many fold, firstly that though P.W.1 had identified the appellant Kali Kant Singh in court and he also claims to have identified him in TIP but there is nothing in his evidence to show as to what he was doing at the time of occurrence and as to how he identified him in TIP before the Magistrate, secondly it has been submitted that as TIP chart has not been brought on record and even the Magistrate has not been examined and I.O. also has not been examined, as such, the appellants were prejudiced in their defence as to how the Magistrate has



conducted the TIP as there are certain norms for conducting TIP. Furthermore, it also does not appear as to when the accused persons were arrested and when put on TIP as delay in production of the accused persons for TIP has also been deprecated by Hon'ble Apex Court in a large number of decisions and learned counsel for the appellant has cited the decision in the case of **Soni vs. State of Uttar Pradesh: (1982) 3 SCC 368(I)**. Further contention of learned counsel is that the evidence of D.Ws. clearly shows that appellant Kali Kant Singh is neighbour of P.W.1 Kapildeo Singh and they were known to each other from before and in such a situation the identification of appellant Kali Kant Singh by P.W.1 also caused doubt about the identification.

9. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of appellant Ram Bali Paswan has contended that so far appellant Ram Bali Paswan is concerned, though he has been identified by two witnesses, P.W.2 and P.W.3 but evidence of P.W.2 in paragraph-4 itself shows that appellant Ram Bali Paswan is known to him from before and so far evidence of P.W.3 shows that he is uncle of P.W.2 and as such identification of appellant Ram Bali Paswan in TIP has no value in the eye of law. Mr. Thakur has also raised objection for non-examination of Magistrate, TIP not being proved. However, it has been submitted that in absence of TIP chart



as well as non-examination of I.O. there is absolutely no material available on record as to how much delay in production of the accused persons before the Magistrate for TIP as Hon'ble Apex Court in a large number of decisions has held that the delay in producing the appellants before the Magistrate for TIO caused serious doubt about their identification and he has relied upon a recent decision of Hon'ble Supreme Court in the case of **Md. Sajjad @ Raju @ Salim vs. State of West Bengal : 2017(2) PLJR SC 19** in support of his contention. It has further been submitted that as the Judicial Magistrate has not been examined in this case, serious prejudice has been caused to the appellant as he could not get a chance to cross examine him in the manner of conducting TIP and the source of identification and other important points.

10. Learned counsel appearing on behalf of appellant Shamim Akhtar has submitted that his case is similar to the case of appellant Kali Kant Singh as he was identified by only one witness and he has also adopted the argument advanced by Mr. Sharma as well as Mr. Thakur.

11. In this case from the evidence it appears that the appellants are not named in the FIR. However, it appears during investigation that they have been arrested and they have been put on TIP where they have been identified either by P.W.1 or by P.W.2 or



by P.W.3 and jointly by P.W.2 and 3 and it is also admitted fact that TIP chart has not been produced and Judicial Magistrate has also not been examined. Apart from that I.O. has also not been examined in this case. So far identification of appellants are concerned, it is an admitted fact that TIP chart has not been brought on record nor the Magistrate who has conducted the TIP has been examined nor the I.O. has been examined. There is also nothing on record to show as to when the appellants were arrested and as to when they were put on TIP. It is well settled principle of law that TIP has to be conducted within a reasonable time and the delay should not be exceeded too much. In the present case there is nothing on record to show as to when appellants were arrested and as to when they were put on TIP. Hon'ble Apex Court in the case of Soni (supra), as cited by learned counsel for the appellant after considering the point of delay in conducting TIP come to the conclusion in the case of Soni (supra) that delay in holding the identification parade throws a doubt on the genuineness thereof apart from the fact that it is difficult that after lapse of such a long time the witnesses would be remembering the facial expressions of the appellant. On the aforesaid point Hon'ble Apex Court in the case of Md. Sajjad (supra) has considered various judgment on the effect of delay in conducting TIP and doubted the identification of the accused in that case on the ground of delay of 25



days after arrest in TIP . Paragraph-18 of the said judgment is as follows :

“18. In the instant case none of the witnesses had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simpliciter cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by P.W.8 Swraswati Singh was also not enough to record the finding of guilt against the appellant. We, therefore, grant benefit of doubt to the appellant and hold that the prosecution has failed to establish its case against the appellant.”

12. In the present case there is nothing available on the record to show that since arrest of appellants as to how many days after appellants were sent for TIP and though the witnesses claim to have identified the appellants in TIP but they have not given any identification mark or disclosed special features or alleged any specific overt act against the appellants except appellant Ram Bali Paswan.

13. Further so far appellant Ram Bali Paswan is concerned, learned counsel has drawn my attention towards evidence of P.W.2 in which he has admitted that Ram Bali Paswan was known to him from



before and P.W.3 is the uncle of Ram Bali Paswan and in such a situation identification of accused appellant Ram Bali Paswan is not free from reasonable doubt. Similarly, evidence of DWs. also shows that appellant Kali Kant Singh is of neighbouring villager of Kapildeo Singh (P.W.1) and in such a situation his name not appearing in FIR and his identification later on is not free from any reasonable doubt and further no special feature or mark of identification has been assigned that appellant Kali Kant Singh and appellant Shamim Akhtar.

14. As discussed above, neither TIP chart has been brought on record nor the Judicial Magistrate who has conducted the TIP has been examined. There are certain norms for conducting the TIP, i.e., mixing of the accused persons, similar type of persons along with accused persons for TIP, special feature for identifying accused and as to what proportion they will be kept in the TIP by the Judicial Magistrate who has conducted the TIP has been examined in this case. Certainly defence has been denied an opportunity to cross examine on these points. In such a situation, non-production of accused in TIP and non-examination of Magistrate has certainly caused serious prejudice to the appellants. Even the I.O. has also not been examined in this case and he is an important witness on the point of arrest of appellants and their production in TIP, hence his non-examination also appears



to have caused serious prejudice in the defence of the appellants.

15. It is well settled that identification in TIP of the accused is not a substantive piece of evidence rather identification in court of the accused persons is substantive piece of evidence. However, as a rule of prudence it is expected that the identification of the accused in court requires corroboration from his earlier identification proceeding. Hon'ble Apex Court in a decision of in the case of three-judge Bench in the case of **Vaikuntam Chandrappa v. State of A.P. : AIR 1960 SC 1340** in which it has been held in paragraph 6 of the judgment as follows :

“6..... It is also true that the substantive evidence is the statement in court; but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There maybe exception to this rule where the court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding.....”

16. It appears that learned trial court has not considered these aspects of the matter which appear to be serious infirmity in the case and which goes into root of the case and identification of the appellants is itself not free from suspicion and except identification there is absolutely no other circumstance available on record.



17. Considering the every aspect of the matter and infirmities, noticed above, the impugned judgment appears to have suffered from serious infirmities as prosecution has not been able to establish the identity of the appellants in course of trial beyond all shadow of reasonable doubts.

18. Accordingly, these appeals are allowed. The impugned judgment of conviction and order of sentence are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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