

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.563 of 1994**

Sessions trial no. 191 of 1990 arising Out of Chautarwa P.S. Case No. 06 of 1989 District-
WESTCHAMPARAN (BETTIAH)

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1. Chandrika Chaudhary son of Chokat Chaudhary resident of village- Churiharwa P.S. Bathwaria (Chautarwa), district-West Champaran.
 2. Hiralal Chaudhary, son of Saral Chaudhary resident of village-Manpur Mathia, P.S. Bathwaria (Chautarwa) district-West Champaran.
 3. Bunela Khatik, son of Feku Khatic resident of village Lagunaha, P.S. Chautarwa district-West Champaran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Adya Singh, Advocate.

Mr. Arjun Prasad, Advocate.

For the State : Mr. Shiwesh Chandra Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 13-09-2018

1. This criminal appeal has been preferred against the impugned judgment of conviction and sentence order dated 22.09.1994 and 23.09.1994 respectively passed by the learned Sessions Judge, West Champaran, Bettiah in Sessions trial no. 191 of 1990 by which and whereunder all the above stated appellants have been convicted for the offence punishable under section 396 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable under the above stated section 396 of the Indian Penal Code.



2. On the basis of Fardbeyan of P.W-6, namely, Pramod Kumar Mishra, Chautarwa P.S. Case No. 06 of 1989 for the offence punishable under section 396 of the Indian Penal Code was registered against two persons, namely, Mahant Mali and Dhandhar Mishra. P.W-6 gave his Fardbeyan on 05.03.1989 at 7.30 a.m. to P.W-8 to this effect that in previous night at about 11.00 p.m., 12 to 14 dacoits, having armed with gun, rifle, Tangi, Bhala and torch, entered into his courtyard and one of the culprits flashed torch on the face of his father. P.W.-6 claimed that in the light of torch, he noticed that 7 culprits were carrying guns whereas remaining culprits were carrying Bhala, Farsa, lathi etc. He also noticed that some culprits having armed with rifle and gun were moving outside his house. Culprits asked his father about gun and cartridges upon which his father disclosed that gun and cartridges had been kept at Bettiah. Furthermore, P.W-6 claimed that culprits asked his father to provide some food and thereafter, at the direction of his father, he provided Chura and sugar to culprits. The culprits ate Chura and sugar and also remained there for one and half hour. However, the culprits expressed their desire to sleep and thereafter, his father unlocked the door of the room and thereafter, 6 to 7 culprits entered into the room and picked up gun and cartridges from the room and thereafter, dragged his father at courtyard. One of the culprits shot fire on the abdomen of his



father. Culprits also opened fire twice on P.W.-6 and the culprits were threatening to kill him but subsequently, culprits took to their heels towards south side of the village. All culprits were speaking local language and were wearing Lungi and Kurta. Culprits had also capped and had covered their faces. However, P.W-6 claimed that he identified Dhandhar Mishra of village Pakri who was carrying gun in his hand. P.W-6 claimed that he would identify the dacoits, if culprits were brought before him. P.W-6 also claimed that one Mahant Nalhari of village Pakri had enquired about his father at about 4 p.m. of the alleged date of occurrence. P.W-6 also disclosed in his fardbeyan that one Ram Swaroop Nonia had shot fired on his father.

3. After registration of the F.I.R and institution of Chautarwa P.S. Case No. 06 of 1989, P.W-8 took charge of investigation and after completion of investigation, he submitted charge-sheet against the appellants and others.

4. After cognizance and commitment, the appellants along with Mahant Mali and Dhandhar Mishra were put on trial and accordingly, stood charged for the offence punishable under section 396 of the Indian Penal Code.

5. In course of trial, altogether, nine prosecution witnesses were examined and prosecution also got exhibited certain documents including Test Identification Parade Chart as Exhibit-8. The



statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they claimed their false implication.

6. No evidence was adduced on behalf of the appellants but from perusal of statements recorded under Section 313 of the Cr.PC as well as trend of cross-examination, it appears that the appellants claimed their innocence and false implication.

7. The learned trial court, after scrutinizing the evidences available on the record, convicted the appellants and co-accused Dhandhar Mishra for the offence punishable under section 396 of the Indian Penal Code whereas co-accused Mahant Mali was acquitted for the charge.

8. Learned counsel appearing for appellants assailed the impugned judgment of conviction and sentence order submitting that in course of investigation, the appellants were arrested by the police and were kept in Thana Hajat and subsequently, they were put on T.I. Parade. He submits that, as a matter of fact, before arranging the T.I. Parade the appellants were shown to P.W. 6 and that was the reason PW 6 claimed to have identified the appellant nos. 1 and 3 but he failed to identify the appellant no. 2. He submits that the learned trial court wrongly observed in the impugned judgment that appellant no. 2 was also identified by PW 6. Learned counsel further submits that the



PW 6 claimed before the court that he identified face in the light of torch flashed by dacoits but the aforesaid claim of PW 6 does not appear to be believable because if a person flashes torch, it is not possible to see the face of that person from other side. He further submits that moreover, it is a case of single identification and therefore, the appellants are entitled to get the benefit of doubt.

9. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW-6 identified the appellant nos. 1 and appellant no. 3 in T.I. Parade and specifically stated that appellant no. 1 and appellant no. 3 had participated in the alleged crime. He submits that PW-9, the Judicial Magistrate, who got conducted the T.I. Parade also stated that the T.I. Parade of the appellants was held in accordance with law and, therefore, the learned trial court rightly convicted the appellants.

10. Having heard the contentions of the parties, we went through the record along with lower court record. We find that altogether, nine prosecution witnesses were examined by the prosecution and admittedly, PW-3, PW-4, PW-5 and PW-6 claimed themselves to be eye-witnesses of the alleged commission of dacoity. So far as PW-1 and PW-2 are concerned, they are admittedly hearsay witnesses and came to know about the alleged occurrence of dacoity from P.W-6. However, it is obvious from the testimonies of PW-3 to



PW-6 that the aforesaid witnesses had not disclosed the names of appellants nor claimed to have identified the appellants at the time of commission of the dacoity.

11. The prosecution has got exhibited T.I. Parade Chart as exhibit 8 and according to exhibit- 8, PW 6 participated in T.I. Parade on 24.05.1989 and identified appellant no. 1 and appellant no. 3. Exhibit 8 as well as statement of P.W-9, the then Judicial Magistrate, go to show that P.W-6 had not identified the appellant no. 2. Therefore, it is obvious that there is nothing against the appellant no. 2 to show that he had participated in the alleged crime of dacoity.

12. So far as the appellant no. 1 and appellant no. 3 are concerned, the record goes to show that they were remanded in the case on 20.03.1989 and were put on T.I. Parade on 24.05.1989. Furthermore, the lower court record goes to show that between 20.03.1989 to 24.05.1989 both the aforesaid appellants were brought to the court of A.C.J.M, Bagaha several times. Exhibit-8 goes to show that when P.W-6 claimed to have identified appellant no. 1 and appellant no. 3 both the aforesaid appellants stated before P.W.-9 that P.W.-6 got opportunity to see them when they were lodged at Hajat.

13. P.W.-8, Investigating officer of this case, has not disclosed in his deposition as to how and when the appellants were arrested by him nor any question regarding the aforesaid fact was



placed by the defence. Moreover, lower court record reveals that appellants were brought before the trial court on 20.03.1989 and T.I. Parade was arranged after two months from the date of their remand and no explanation regarding the aforesaid delay in holding the T.I. Parade of the appellants has been given by the prosecution.

14. P.W.-6 claimed that he had identified the dacoits in the light of torch flashed by the dacoits but at the same time in his fardbeyan, he claimed that the dacoits had covered their faces. Moreover, no torch has been seized in the case and, therefore, the claim of P.W-6 does not inspire confidence to this court and, in our view, the appellant nos. 1 and 3 are entitled to get the benefit of doubt.

15. On the basis of aforesaid discussions, this criminal appeal is allowed. The impugned judgment of conviction and sentence order are, hereby, set aside in respect of the appellants only. The appellants are on bail. They are acquitted of the charge giving benefit of doubt to them and they are discharged from the liabilities of bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Shahid/- Abhijeet

AFR/NAFR	NAFR
CAV DATE	NA
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