

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.134 of 2009

Amarnath Yadav, son of Narad Prasad Yadav, resident of village
-Bhandarichak, P.S.-Bounsi, District-Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 145 of 2009

Manish Sah @ Guddu Sah, son of Sri Kishori Prasad Bhagat, resident of
village-Bhandari Chak, P.S.-Bounsi, district-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 134 of 2009)

For the Appellant/s : Mr. Subodh Kumar Jha, Adv.
Mr. Pranav Kumar Jha, Adv.

For the State : Mr. Parmeshwar Mehta, APP

(In Criminal Appeal (SJ) No. 145 of 2009)

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae

For the State : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 14-12-2018

1. There was commission of dacoity by the unknown dacoits in the house of Chakradhar Choubey along with Umesh Chandra Mishra, Satrugan Mishra and Jagdish Dubey for that, on the fardbeyan of Chakradhar Choubey, Bausi P.S. Case No.54/2000 was registered against unknown. During course of investigation, as is evident charge sheet was submitted against accused Guddu Sah @ Manish Sah, Amar Nath Yadav, Awani Kant Jha, Niroj Kumar Mishra, Yaswant Chaudhary at first instance, keeping the investigation pending against others whereupon, the case was committed and Sessions Trial No.1590/2004 commenced, proceeded upon and by the judgment



impugned others have been acquitted while appellant Amar Nath Jha (Criminal Appeal (SJ) No.134 of 2009) has been convicted and sentenced for.

2. On account of filing of supplementary charge sheet against sole Manish Sah @ Guddu Sah, the case was committed and Sessions Trial No.1590A/2004 has been drawn up, sailed and by the judgment impugned Manish Sah @ Guddu Sah (Criminal Appeal (SJ) No.145 of 2009) has been held guilty whereupon, sentenced.

3. That being so, it is apparent that though both sessions trial sailed independently but, relates with same occurrence and that being so, both the appeals are being decided by a common judgment but, dealing with with the case of both the appellants independently for the convenient sake.

(a) Criminal Appeal (SJ) No.134 of 2009

4. Appellant, Amar Nath Yadav has been found guilty for an offence punishable under Section 395 of the IPC and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for two years vide judgment of conviction dated 04.02.2009 and order of sentence dated 06.02.2009 by the Additional Sessions Judge, FTC-IV, Banka in Sessions Trial No.1590/2004.

5. 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 oral nor documentary evidence has been adduced on behalf of appellant.

6. Altogether nine Pws have been examined on behalf of prosecution who are PW.1-Chakradhar Choubey, PW.2-Umesh Chandra Mishra, PW.3-Uday Kumar Mishra, PW.4-Dhananjay Kumar Mishra, PW.5-Pramod Pandey, PW.6-Narendra Kumar Choubey, PW.7-Ashok Mishra, PW.8-Mani Shankar Mishra and PW.9-Amar Jyoti Srivastava. The prosecution also exhibited Ext.1-Signature of informant over fardbeyan, and Ext.2-TIP chart.

7. Gone through the evidences whatever been deposed at the end of the respective witnesses in consonance with the finding recorded by the learned lower court. The learned lower court, as is evident from para-13 of the judgment impugned has recorded finding of guilt against the appellant only on the ground that PW.9, the Magistrate in whose presence TIP was conducted during course of investigation has exhibited the TIP chart. Whatever been deposed before the court happens to be the substantive piece of evidence. When the witnesses failed to identify the appellant/accused in dock during course of evidence then in that circumstance, they would be absence of substantive piece of evidence against the accused whereupon, mere examination of PW.9, the Magistrate before whom TIP was conducted would not be sufficient to support the prosecution case with regard to identification of appellant/accused being one of the member of the dacoit nor, the aforesaid evidence could be considered in accordance



with Section 9 of the Evidence Act as, the major link, on account of non-cooperation at the end of the prosecution witnesses, the event of identification in dock gone away, would not justify the finding recorded by the lower court. The examination of magistrate would only suggest that TIP relating to present case has been conducted earlier, and during course thereof, the statutory precautions were taken, identification was claimed/not claimed, but it is the witness who has to claim, corroborated identification of an accused in dock during trial. Now coming to the material witnesses, it is apparent that PW.1 to PW.8, though they substantiated the factum of dacoity but, did not claim identification of the appellant/accused in dock. Even, PW.3, who had ideal during course of investigation in TIP, failed to identify and on that very score, prosecution had not declared him hostile and in likewise manner, failed to draw attention on that very score.

8. In the facts and circumstances of the case, the judgment impugned is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(b) Criminal Appeal (SJ) No.134 of 2009

9. None appears on behalf of appellant on account thereof, Sri Arun Kumar Tripathi has been requested to assist the court as an Amicus Curiae.

10. Appellant, Manish Sah @ Guddu Sah has been found guilty for an offence punishable under Section 395 IPC and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to



Rs.5000/- in default thereof to undergo R.I. for two years vide judgment of conviction dated 04.02.2009 and order of sentence dated 06.02.2009 passed by Additional Sessions Judge, FTC-IV, Banka in Sessions Trial No.1590A/2004.

11. From the record, it is evident that only two witnesses namely, PW.1-Manishankar Mishra and PW.2-Amar Jyoti Srivastava, Judicial Magistrate before whom TIP was conducted have been examined coupled with Ext.1, the TIP chart. After going through the evidence available on the record, it is apparent that virtually it happens to be a case of no evidence. PW.1 had not claimed identification of the appellant while PW.2 simply endorsed conduction of TIP. Consequent thereupon, the judgment impugned would not survive and is accordingly set aside. Appeal is allowed. Appellant is on bail, hence discharged from its liability. First and last page of judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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