

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.322 of 1995

=====

Maichal Ram @ Maikal Ram, Son of Ram Bachhan Ram, Resident of Village Babhani, P.S. Buxar (Muffasil), District Buxar.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Nil Kamal, Advocate

For the Respondent/s : Mr. Shivesh Ch. Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 25-04-2019

This appeal has been preferred against the judgment of conviction dated 19.4.1995 and sentence order dated 20.4.1995 passed by learned Additional Sessions Judge-II, Buxar in Sessions Trial No. 63/92, arising out of Buxar (M) P.S. Case No. 70/90 by which and whereunder, the learned Additional Sessions Judge-II, Buxar convicted the appellant for the offence punishable under Section 396 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/- and in the event of default of payment of fine, the appellant was directed to go further simple imprisonment for three months.



2. It is pertinent to note here that appellant and two others, namely, Manoj Kumar and Geeta Kumari were put on trial in the above stated Sessions Trial No. 63/92 but aforesaid Manoj Kumar and Geeta Kumari were acquitted of the charge framed against them under Section 396 of the Indian Penal Code by the impugned judgment.

3. Briefly stated the fact of the prosecution case is that P.W. 6, Jai Prakash Singh, gave his fardbeyan to Officer-in-Charge, Buxar Town Police Station on 2.5.1990 at 2.30 A.M. at Sub-Divisional Hospital, Buxar to this effect that in previous night, i.e., between 1/2.5.1990, he along with his father, younger brother, namely, Om Prakash Singh (P.W. 2) and cousin brother, namely, Laxman Singh (P.W. 5) were sleeping on the roof of their house and at about 11.45 P.M., he as well as Om Prakash Singh and Laxman Singh woke up on the cry of his father and they noticed that 5-6 miscreants were fighting with his father. P.W. 6 further claimed that three miscreants came near him as well as Om Prakash Singh and Laxman Singh and threatened them to shut their mouth and they put guns on them. He further claimed that the miscreants, who were fighting with his father, shot fire on his father, as a result whereof, his father having sustained injury fell down there. The miscreants assaulted his



grandmother, Manko Devi and one Sandhya Kumari with legs and snatched key from them and, thereafter, they got down from the roof and committed dacoity in his house. The aforesaid miscreants opened main door through which some other miscreants entered in house. The dacoits committed loot for near about 25 minutes and, thereafter, they fled away with looted booty. The dacoits also made firing while they were leaving the place of occurrence. The dacoits were lean and thin and were bearing Lungi and Ganji. Some of the dacoits had covered their faces and they were aged about between 30 to 35 years. P.W. 6, further, claimed that F.I.R. named witnesses came after the dacoity and injured was taken to Sub-Divisional Hospital where he was declared brought dead. P.W. 6, further, claimed that the dacoits were flashing torches and, in the light of torches, he identified 4-5 dacoits.

4. On the basis of aforesaid fardbeyan, Buxar (M) P.S. Case No. 70/90 for the offence punishable under Section 396 of the Indian Penal Code was registered on 2.5.1990 and, on the same day, formal F.I.R. was drawn up against unknown dacoits. The formal F.I.R. as well as fardbeyan of P.W. 6 were put up before learned A.C.J.M. on 5.5.1990, i.e., after three days of institution of the case.



5. P.W. 10 Nageshwar Singh, the then S.I. of Buxar (M) Police Station took the charge of investigation. He inspected the place of occurrence, seized blood, two bamboos and prepared seizure list. He noticed that the doors of rooms were broken and articles were found scattered. He recorded the statements of witnesses and, in course of investigation, arrested the appellant and after taking permission from the court, he produced the appellant on T.I.P. However, after completion of investigation, he submitted charge sheet against appellant and others.

6. The cognizance of the offence was taken and the case was committed to the course of sessions, in usual way.

7. Accordingly, appellant and charge sheeted accused Manoj Kumar and Geeta Kumari were put on trial. The appellant along with charge sheeted accused Manoj Kumar and Geeta Kumari stood charged for the offence punishable under Section 396 of the Indian Penal Code. The appellant and others denied the charge and claimed to be tried.

8. In course of trial, prosecution examined, altogether, 10 prosecution witnesses and also got exhibited certain documents including chart of T.I.P. The statements of appellant and two others were recorded under Section 313 of the



Cr.P.C. in which they denied the prosecution story and claimed their false implication.

9. The defence also examined two witnesses to prove that the appellant was residing at village Nadaon since his childhood. However, from perusal of statement of appellant recorded under Section 313 of the Cr.P.C. as well as trends of cross-examination of prosecution witnesses coupled with claim of defence witnesses, it appears that appellant claimed his false implication on account of village politics.

10. Learned trial court after analysing the prosecution evidence convicted the appellant solely basing his findings on the testimony of P.W. 1, P.W. 3 and P.W. 6 and also taking note of chart of T.I.P. which was marked as Ext. 4.

11. Learned counsel appearing for the appellant challenged the impugned judgment of conviction and sentence order arguing that the learned trial court has not properly appreciated the evidence available on the record and only on the basis of claim of P.W. 1 and P.W. 3 convicted the appellant. He submitted that P.W. 1 and P.W. 3 claimed to have identified the appellant in T.I.P. but learned trial court failed to take note of this fact that appellant was arrested on 4.5.1990 at 5 A.M. as admitted by P.W. 10 in his cross-examination and, admittedly,



the appellant was produced before the learned Magistrate on 5.5.1990 and between the aforesaid period, the appellant was kept in Thana Hazat. He submitted that no doubt, the defence failed to put any question in respect of the above stated fact but it is a matter of common sense that after arrest, the appellant was kept in Thana Hazat as admittedly, he was produced before the court on 5.5.1990. He further submitted that the aforesaid fact goes to show that there was ample opportunity before the P.W. 10 to produce the appellant before prosecution witnesses. He further submitted that admittedly, the T.I.P. of the appellant was held on 17.5.1990, i.e., after 15 days of the alleged occurrence and, therefore, the aforesaid fact also goes to show that P.W. 1 and P.W. 3 might have seen the appellant before test identification parade. He, further, submitted that P.W. 3 admitted in her statement that at the time of dacoity, she was in her room but she did not disclose the source of light, though she claimed that she could identify the dacoits while they were flashing torches and almost similar statement has been made by P.W. 1. He, further, submitted that it is unbelievable that P.W. 1 and P.W. 3 could be able to identify the dacoits in the light of torches flashed by the dacoits. He further submitted that in the present case, except the claim of P.W. 1 and P.W. 3 as well as T.I.P. chart



(Ext. 4), there was nothing against the appellant to prove that he had participated in the alleged occurrence. He, further, submitted that the evidence of T.I.P. is a very weak evidence and only on the basis of T.I.P., no person can be convicted unless the T.I.P. is corroborated by any other material evidence. In support of his contention, he referred decision of **Iqbal and Another Vs. State of Uttar Pradesh reported in 2015 (3) PLJR 216 (SC)** wherein at para 15 of the aforesaid judgment, it has been held by Hon'ble Apex Court as follows:-

“Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence.”

12. He, next, submitted that the prosecution witnesses admitted that the informant and his family members had grudging and enmity with their agnates and, as a matter of fact, the appellant's father was working as labourer at the house of agnates of the informant and his family members. He further submitted that although the prosecution witnesses have not admitted the above stated fact but they have not, specifically, denied the suggestion given to them by defence in this regard



and, therefore, in the aforesaid circumstance, the possibility of false implication of the appellant cannot be ruled out. He, next, submitted that it is admitted case of the prosecution that the appellant was arrested from his house but admittedly, no looted articles was recovered from the house of the appellant, therefore, in the aforesaid circumstance, the appellant was entitled to get benefit of doubt but the learned trial court convicted the appellant on the basis of above stated weak evidences.

13. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that P.W. 1 and P.W. 3 identified the appellant not only in T.I.P. but also before the court and both the aforesaid prosecution witnesses, specifically, stated that the appellant had participated in the occurrence. He further submitted that P.W. 9, Sri Akshaywar Ram, the then Judicial Magistrate, Buxar proved the chart of T.I.P. and, specifically, stated that he held T.I.P. of the appellant in accordance with rules and the defence could not succeed to impeach the credibility of P.W. 1 P.W. 3 and P.W. 9 and, therefore, in the aforesaid circumstance, there is no scope before this Appellate Court to disturb the findings recorded by the learned trial court.



14. Having heard the above stated rival contentions of the parties, we went through the records and along with Lower Court Records. The only question arises for determination as to whether the impugned judgment of conviction and sentence order is liable to be sustained.

15. As we have already stated that in course of trial, prosecution examined, altogether, 10 prosecution witnesses but out of them, only P.W. 1 and P.W. 3 claimed to have identified the appellant in T.I.P. as well as before the trial court.

16. P.W. 10 Nageshwar Singh (I.O.), admitted in his cross-examination that he arrested the appellant on 4.5.1990 and the Lower Court Record goes to show that the appellant was produced before Magistrate on 5.5.1990. Although, the defence did not put specific question regarding the keeping of the appellant in Hazat after his arrest and before his production before the Magistrate but it is well known fact that after arrest and before production, accused is kept in Thana Hazat. Since the timing of arrest of the appellant has not come in deposition of P.W. 10 nor defence asked any question from P.W. 10 in this regard, therefore, we have no option except to peruse case diary and para 38 of the case diary goes to show that the appellant was arrested on 4.5.1990 at 5 A.M. and the Lower Court Record



reveals that he was produced before the court on 5.5.1990. Therefore, it is obvious that after arrest, the appellant was kept in Thana Hazat for near about one day.

17. P.W. 1 Shivjee Singh @ Dara Singh, claimed that in the night of 1.5.1990, he was sleeping on the roof of his house and P.W. 6 Jai Prakash Singh, P.W. 2 Om Prakash Singh, Ramji Singh (deceased), P.W. 5 Laxman Singh as well as his mother Manko Devi and his sister Manju were also sleeping on the roof of their house. He further claimed that he woke up on the cry of Ramji Singh (deceased) and saw 4-5 persons fighting with Ramji Singh. The aforesaid persons were carrying guns in their hands. He further claimed that in the meantime, some other persons came on his roof and out of them he identified Manoj Kumar. He further claimed that dacoits shot fire on Ramji Singh, as a result of which, he having sustained firearm injury fell down there. He, further, claimed that he also identified one Mukundi Nonia, Birbal Chamar and Geeta Kumari and all the aforesaid persons were carrying guns. He, further, claimed that the dacoits were flashing torches and they were uttering his name. He claimed to have identified the above stated persons in the light of torches. This witness further claimed that above stated persons and unknown dacoits got down from the roof and



committed loot in his house and after opening main door, they fled away towards west side. This witness, further, claimed that Ramji Singh was taken to Buxar Hospital but he died. This witness, at para 7 of his examination-in-chief, claimed that some suspects were put before him as well as P.W. 3 in T.I.P. and he identified appellant, Maichal Ram. This witness claimed that he had seen the appellant at the time of occurrence while he was carrying a gun in his hand. On being cross-examined by the defence, this witness expressed his ignorance to know that the Sasural of appellant was in his village but admitted to know his co-villager Luis Ram. However, this witness again expressed his ignorance when the defence put specific question to this witness to this effect that the appellant was maternal grandson of aforesaid Luis Ram. This witness, at para 11 of his cross-examination, admitted that after two or three days of the alleged occurrence, he had gone to Police Station to hand over the list of looted articles. He, further, admitted that after some days he again, he went to Police Station to lodge a Sanha. This witness denied that the appellant was shown to him prior to holding of T.I.P. This witness, further, admitted that he was not holding torch at the time of alleged occurrence. This witness, further, admitted that 4-5 dacoits had come on the roof and out of them,



he had identified only 3 dacoits. This witness, further, stated that Manoj Kumar had shot fire on deceased Ramjee Singh. This witness, further, admitted that he got himself hide and saw the dacoits from the distance of 14-15 hands.

18. The perusal of statement of this witness goes to show that after two or three days of the alleged occurrence, he went to Police Station to hand over the list of looted articles. It is admitted case of the prosecution that alleged occurrence took place in the night of 1/2.5.1990 and the fardbeyan was recorded on 2.5.1990. It is also admitted case of the prosecution as evident from perusal of testimony of P.W. 10 that the appellant was arrested in the morning of 4.5.1990 and, subsequently, he was produced before Magistrate on 5.5.1990. Therefore, it is obvious that after two days of the alleged occurrence, the appellant was arrested and was kept in Thana Hazat before his production to Magistrate. The above stated fact reflects that when P.W. 1 went to the Police Station to hand over the list of looted articles, the appellant was in Thana Hazat. In the aforesaid circumstance, this possibility could not be ruled out that the appellant was shown to the P.W. 1 before holding his T.I.P.

19. P.W. 3, Buchi Devi is wife of deceased



Ramjee Singh, who was killed by dacoits in course of dacoity. This witness claimed that at the time of alleged occurrence, she was sleeping in a room whereas her other family members were sleeping on the roof of her house. This witness, further, claimed that someone attempted to break windows and doors of the room and she noticed that the door of her room was broken and after that 4-5 persons entered in her room. She claimed that at that time, she was sleeping on her bed but she was forcibly got down by dacoits from her bed and dacoits snatched her ornaments and also took away her belongings. She claimed to have identified Manoj Kumar and Geeta Kumari amongst the dacoits. This witness, further, claimed that she participated in T.I.P. along with P.W. 1 and in T.I.P., he identified one person and, subsequently, the name of aforesaid person was disclosed as Miachal Ram. She identified the appellant Miachal Ram before the court and claimed that while the appellant was picking box from her room, she identified her. This witness admitted that at para 10 of her cross-examination that she was not holding torch nor there was light in her room and there was complete dark in the room. However, she claimed that the dacoits were searching the articles in room by flashing torches and she identified the dacoits in the light of torches. This



witness, further, admitted at para 12 of her cross-examination, that when she came out of her room, she met P.W. 1 and she along with P.W. 1 went on the roof where she found her other family members. This witness admitted that one Triloki Singh was her agnate but expressed her ignorance to know that father of the appellant was Halwaha of aforesaid Triloki Singh. She also expressed her ignorance to know her co-villagers Joseph and Luis. This witness further admitted that after 14-15 days of the alleged occurrence, she participated in T.I.P. She denied the suggestion of the defence that the appellant Miachal Ram was well-known to her prior to T.I.P.

20. The perusal of the evidence of P.W. 3 goes to show that at the time of alleged dacoity, she was sleeping in her room and there was no source of light in the said room rather, there was dark in the said room. Furthermore, the statement of P.W. 3 goes to show that she identified dacoits in the light of torches flashed by the dacoits. P.W. 3 further admitted that when she came out of her house, she met P.W. 3 and after that P.W. 3 along with her went on the roof of house whereas, P.W. 1 claimed that he was sleeping on his roof at the time of alleged occurrence and, therefore, there is contradiction in the statements of both the above stated prosecution witnesses.



Moreover, P.W. 6, the informant, has, nowhere, stated in his fardbeyan that P.W. 1 was also sleeping on the roof at the time of alleged occurrence. P.W. 3 admitted that she participated in T.I.P. after 14-15 days and identified the appellant but as we have already noticed that she was not holding any torch in her hand at the time of alleged occurrence nor there was any light in the room in which she was sleeping at the time of alleged occurrence. Although P.W. 3 claimed that she identified the dacoits in the light of torches flashed by the dacoits but the aforesaid claim of P.W. 3 does not appear to be believable because it was not possible to her to identify the dacoits in the light of torches flashed by the dacoits.

21. P.W. 3 claimed before the court that she identified the appellant while, he was picking box from her room but such statement was not made by P.W. 3 at the time of T.I.P. which is evident from perusal of Ext.4. It is obvious from the perusal of Ext. 4 that at the time of T.I.P., she only claimed to have identified the appellant in the light of torch but she did not disclose that she identified the appellant while he was picking box from her room. Similarly, P.W. 1 claimed to have identified the appellant while he was standing on the roof of his house but P.W. 1 did not disclose the aforesaid fact at the time of



T.I.P. as evident from perusal of Anneuxre-4. However, the presence of P.W. 1 on his roof at the time of alleged occurrence appears to be doubtful in the light of admission of P.W. 3 as well as missing his name from the fardbeyan of P.W. 6 and, therefore, the claim of P.W. 1 that he identified the appellant while he was standing on his roof at the time of alleged occurrence appears to be doubtful.

22. It is well settled principle of law that evidence of T.I.P. is a weak evidence and before convicting any person on the basis of T.I.P., the prudence requires corroboration of the T.I.P. by some other evidence. In the present case, admittedly, nothing was recovered either from conscious possession of the appellant or from his house particularly, in the circumstance when the appellant was caught from his house and his house was searched. Furthermore, we find that except P.W. 1 and P.W. 3, not a single prosecution witness disclosed the name of appellant nor claimed to have identified him at the time of alleged dacoity. Therefore, in the aforesaid circumstance, we are of the considered view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the appellant is entitled to get the benefit of doubt.

23. On the basis of aforesaid discussion, we are of



the view that the impugned judgment of conviction and sentence order cannot be confirmed. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. The appellant is acquitted of the charge framed against him giving benefit of doubt. The appellant is on bail. He is discharged from liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

sudha/-santosh

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.05.2019
Transmission Date	01.05.2019

