

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.86 of 2003

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1. BUKHI RAM DHARHI @ DUKHI RAM SON OF LATE BARBARI RAM.
 2. RADHE SHYAM DHARHI SON OF KALE DHARHI.
BOTH ARE RESIDENT OF ORIA, P.S.-SEKHPURA, DISTRICT-MUNGER.

... .. APPELLANT/S

VERSUS

THE STATE OF BIHAR

... .. RESPONDENT/S

Appearance :

For the Appellant/s : Mr. Kumar Rakesh Chandra, Amicus Curiae
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 05-02-2019

1. As the learned counsel for the appellant failed to appear on account thereof, Mr. Kumar Rakesh Chandra, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Radhe Shyam Dharhi along with Bukhi Ram Dharhi @ Dukhi Ram (since deceased) have been found guilty for an offence punishable under Section 395 IPC and sentenced to undergo R.I. for 10 years vide judgment of conviction and order of sentence dated 29.01.2003 passed by Presiding Officer, Additional Court No.1, Nalanda at Biharsharif in connection with Sessions Trial No.27 of 1985/248 of 2001.

3. There was dacoity in the house of informant Ganesh Mahto (PW.3) in between night of 13/14 June 1983 and during course thereof, he along with his brother Noori Mahto were kept under vigil by the dacoits but, getting an opportunity escaped, raised alarm attracting the villagers who confronted with the dacoits and during course thereof,



one of the member of the dacoits was killed while remaining managed to escape along with the looted articles.

4. Accordingly, Sarmera P.S. Case no.33 of 1983 was registered against unknown followed with an investigation and during course thereof, appellants were apprehended on suspicion, articles were recovered from Dukhi Ram and during course of T.I. Parade both the appellants, Bukhi Ram Dharhi @ Dukhi Ram (since deceased) were identified, the seized articles were also put on T.I. Parade, and was identified consequent thereupon, both of them were charge sheeted, tried meeting with the ultimate result, subject matter of instant appeal.

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, reliability of T.I.P. have been challenged by filing a petition Ext.A pleading that the I.O. shown the witnesses when they have come to court on production.

6. Altogether five Pws have been examined on behalf of prosecution who are PW.1-Arjun Prasad, PW.2-Nuri Mahto, PW.3-Ganesh Mahto, PW.4-Sheopujan Singh, PW.5-Hardeo Prasad. Side by side has also exhibited Ext.1-Signature of Ganesh Mahto on fardbeyan of Sarmera P.S. Case no.33/1983, Ext.2-FIR with signature of S.I. Sivpujan Singh, Ext.3-Writing of Sivpujan Singh on on seizure list, Ext.2/2-Seizure list (East-South Khatta), Ext.-3/4-Signature of witness Jai Ram Mahto of seizure list (East-south Khatta), Ext.3/5-Signature of Prabhu Prasad on seizure list (East-Sough Khatta), Ext.3/1-Seizure list



(In south way of informant), Ext.3/2-Signature of Jairam Mahto on seizure list (above), Ext.3/3-Signature of Prabhu Prasad on above seizure list, Ext.3/1-Signature of Jairam Mahto and Prabhu Prasad on seizure list of Bichala Kita, Ext.4-Injury Report of Arbind Prasad, Ext.4/1-Injury report of Arjun Pd, Ext.4/2-Injury report of Bhagbunviya Devi, Ext.5-Seizure list (East facing house of Deukhi Ram), Ext.6-Signature of Chandeshwar Singh on seizure list, Ext.6/1-Signature of Rajo Ravidas on seizure list, Ext.7-Identification of suspect (Rule-230). Defence has also exhibited, Ext.A- Petition filed on their behalf before the learned CJM to the effect that before conduction of T.I. Parade, they were shown to the witnesses by the I.O.

7. Heard learned Amicus Curiae as well as learned A.P.P. Gone through the record, including the judgment impugned. After going through the same, it is evident that recovery was from the possession of Bukhi Ram Dharhi @ Dukhi Ram, against whom there were two identification i.e. by PW.2 and PW.3. It is further evident from the record that the articles having been recovered from the possession of Bukhi Ram Dharhi @ Dukhi Ram were put on T.I. Parade and were identified by the informant however acquittal with regard thereto. Because of the fact that Bukhi Ram Dharhi @ Dukhi Ram is dead and further, only substantial sentence has been inflicted against him including the present appellant, on account thereof, the appeal abated against Bukhi Ram Dharhi @ Dukhi Ram more



particularly in the background of the fact that none of his heirs intended to challenge the same in accordance Section 394 of the Cr.P.C.

8. Now coming to the status of remaining appellant Radhe Shyam Dharhi, from the judgment impugned, it is evident that learned lower court was very much apprehensive having single identification against him. It is further evident that appellant Radhe Shyam Dharhi has been identified only by the PW.3, informant. From the judgment impugned, it is evident that learned lower court had put emphasis by referring so many decisions that even on the basis of single identification conviction could be recorded but, subject to authenticity, reliability and the learned lower court swayed on that very score without perceiving the fact that the evidence of PW.3 relating to identification of appellant needs in depth scrutiny in the background of the fact that he along with his brother Nuri Mahto have slept at the same place, both of them were overpowered by the dacoits, both of them were tied, although, during course of evidence PW.2 Nuri Mahto and PW.3 Ganesh Mahto have not stated with regard to part played by the miscreant but, from the evidence of PW.5, the Magistrate who had exhibited the T.I. chart has categorically stated that during course of identification of both the accused, both the witnesses have disclosed that both the accused were engaged in tying them with the lungi and assaulted that means to say, there was close proximity in between and in the aforesaid background, non identification by the PW.2 against the appellant Radhe Shyam Dharhi is a circumstance whereupon, the



reliability of PW.3 regarding identification of appellant Radhe Shyam Dharhi came under question mark whereupon, appellant is found entitled for benefit of doubt. Consequent thereupon, the judgment of conviction and sentences recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is 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
CAV DATE	NA
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