

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.78 of 1995

(Against the Judgment of conviction and order of sentence dated 30.03.1995 passed by the 3rd Additional Sessions Judge, Arrah in Sessions Trial No. 162 of 1993)

Dudhnath Nat, son of Teras Nat, Resident of village – Karaja, P.S. Barchora, District – Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 99 of 1995

Allauddin Nat, son of Husini Nat, Resident of village- Aanerbanar Jamalpur, P.S. Siwan, District – Siwan.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 91 of 1995

Mala Nat, son of Dasai Nat, Resident of Village- Sarangpur, P.S. Arrah Sadar, District – Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 78 of 1995)

For the Appellant/s : Mr. Amrit Anunay, Amicus Curiae

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

(In Criminal Appeal (DB) No. 99 of 1995)

For the Appellant/s : Mr. Amrit Anunay, Amicus Curiae

For the Respondent/s : Mr. S.C. Mishra, A.P.P.

(In Criminal Appeal (DB) No. 91 of 1995)

For the Appellant/s : Mr. Amrit Anunay, Amicus Curiae

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 21-02-2019

All the above stated Criminal Appeals have been preferred against the common Judgment of conviction and sentence order dated 30.03.1995 passed by the 3rd Addl. Sessions Judge, Arrah in Sessions Trial No. 162 of 1993 by which and whereunder, learned 3rd Addl. Sessions Judge, Arrah convicted all the above stated appellants for the offence punishable under Section 396 of the Indian Penal Code and sentenced them to undergo Rigorous Imprisonment for life and, accordingly, the above stated criminal appeals were heard together and a common Judgment is being passed in all the above stated three criminal appeals.

2. Briefly stated, the prosecution case is that P.W.1 Harendra Singh gave his fardbeyan on 09.05.1992 at 9.30 P.M. on pitch road situated near Birahimpur High School before Officer-in-Charge Barhara Police Station to this effect that he along with his cousin brother, namely, Tarkeshwar Singh was going to his home by motorcycle and at about 9.00 P.M. reached near Birahimpur High School and noticed that the road was blocked by someone keeping boulders on the road. He also noticed that some persons were standing near the aforesaid



boulders, however, the aforesaid persons all of a sudden encircled him and his cousin brother and started assaulting them. He claimed that out of the aforesaid persons, one person asked him to release all the belongings and he, out of fear, gave his sicko wrist watch to the aforesaid person. He further claimed that in the meantime, his cousin brother Tarkeshwar Singh started fleeing leaving behind his motorcycle, but one of the miscreants, who was carrying Kata in his hand slit the neck of Tarkeshwar Singh as a result whereof, his brother fell down on earth and started wriggling in pain. He claimed that he, too, started fleeing out of fear, but, in the meantime, he saw that a vehicle reached there from Ara and the above stated miscreants committed loot with the occupants of the aforesaid vehicles and also assaulted them. He further claimed that, anyhow, he reached to village Barkalohar raising alarm, which attracted villagers and after that he along with villagers, again, reached to the place of occurrence, where he found his cousin brother Tarkeshwar Singh dead. He also claimed that one of the culprits was tall built and having mustache and beard and the aforesaid culprit was speaking local dialect Bhojpuri, whereas the other culprits were of dark complex and were wearing lungi, ganji and dhoti. He further claimed that one of the culprits was carrying country made pistol, whereas two



culprits were carrying kata and one culprit was carrying lathi in his hand. He further claimed that all the culprits after committing loot fled away towards western side. He claimed that he identified all the culprits in the headlight of motorcycle, car and tource. He further claimed that the aforesaid culprits had also looted two other persons.

3. On the basis of Fardbeyan of Harendra Singh (P.W.1), Barhara P.S. Case No. 83 of 1992 was registered for the offence punishable under Section 396 of the Indian Penal Code and on the same day, formal F.I.R. was drawn up for the above stated offence against unknown persons. The P.W.13, namely, Raghuvansh Prasad Singh took the charge of investigation and in course of investigation, he arrested Nanhak Nat and Allauddin Nat and sent them to judicial custody. He recorded the statements of witnesses and also arranged Test Identification Parade of Nanhak Nat as well as appellant in Criminal Appeal (D.B) No. 99 of 1995 namely, Allauddin Nat, but before completion of investigation, he was transferred and, accordingly, in the month of July, 1992, he handed over the charge of investigation to P.W.14, namely, Ram Naresh Singh, who arranged the Test Identification Parade of appellant in Criminal Appeal No. 91 of 1995, namely, Mala Nat and after completion of investigation submitted charge



sheet against the appellants. The cognizance of the offence was taken and the case was committed to the court of Session, in usual way.

4. All the appellants and co-convict Nanhak Nat stood charged for the offence punishable under Section 396 of the Indian Penal Code to which they denied the charges and claimed to be tried.

5. In course of trial, prosecution examined, altogether, 15 prosecution witnesses and also got exhibited inquest report, Postmortem report etc. The statements of appellants were recorded under Section 313 of Criminal Procedure Code, in which they reiterated their innocence and claimed that they were brought to police station, where Police got identified them by the witnesses prior to their test identification parade.

6. The appellants also got examined three defence witnesses and got exhibited some documents in support of their defence.

7. From perusal of the trends of cross-examination of prosecution witnesses, evidence adduced on behalf of the appellants as well as their statements recorded under Section 313 of the Criminal Procedure Code, it is obvious that



the defence of the appellants was total denial of claim of the prosecution and further they, specifically, took stand that they were brought to police station, where witnesses identified them prior to their test identification parade and they had not committed any offence.

8. Learned trial court having analyzed the evidences available on the record, convicted the appellants on the basis of testimonies of P.W.1, P.W.6, P.W.7, P.W.8, P.W.9 and P.W.10.

9. Learned *Amicus Curiae* Sri Amrit Anunay appearing for appellants assailed the impugned Judgment of conviction and sentence order arguing that the impugned Judgment is based on surmises and conjectures and, as a matter of fact, the learned trial court completely ignored this fact that prior to holding of Test Identification Parade, the appellants were shown to the witnesses. He further submitted that according to the prosecution case itself, the alleged occurrence took place in night and there was no source of identification except so called light of headlights of motorcycle, car and torch. However, it was very difficult to identify all the culprits in the headlight of motorcycle as well as torch. He submitted that the prosecution witnesses did not disclose who was carrying torch at the time of



the alleged occurrence. He further submitted that the Test Identification Parade was not held legally and the materials available on the record go to show that prior to holding Test Identification Parade, the appellants were kept at Police Hazat, where witnesses came and the aforesaid fact clearly indicates that the appellants were shown to the witnesses prior to holding of Test Identification Parade. He further submits that, moreover, the Test Identification Parade was held after more than 20 days of arrest of the appellants and the aforesaid delay in holding the Test Identification Parade also creates doubt about the genuineness of Test Identification Parade.

10. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that P.W.1 Harendra Singh and P.W.6 Mantu Singh are victims of Dacoity and they very clearly supported the factum of dacoity and, furthermore, they participated in Test Identification Parade and identified the appellants in Test Identification Parade. Therefore, the aforesaid evidence is sufficient to hold that it were appellants, who committed the alleged occurrence and the learned trial court, rightly, convicted and sentenced the appellants.

11. Having heard the contentions of both the



parties, we went through the record along with lower Court's records. The only question arises for determination as to whether prosecution succeeded to prove its case beyond all shadow of reasonable doubts and as to whether the learned trial court, rightly, convicted and sentenced the appellants passing the impugned Judgment of conviction and sentence order or not?

12. As we have already stated that, altogether, 15 prosecution witnesses were examined and out of them P.W.1 Harendra Singh, P.W.6 Mantu Singh, P.W.7 Birendra Pratap Singh, P.W.8 Dhananjay Mishra, P.W.9 Raju Singh and P.W.10 Sanjay Kahar claimed themselves to be victim of alleged dacoity.

13. P.W.2 Dr. Ashok Kumar Chaudhary held Postmortem examination on dead body of deceased Tarkeshwar Singh on 10.05.1995, whereas P.W.5 Dr. Ramesh Mishra examined P.W.1 Harendra Singh and one Alliyar Khan (not examined) and Birendra Pratap Singh (P.W.7) on 09.05.1992 at about 11.30P.M.

14. P.W. 3, Srikant Singh is a formal witness. This witness proved his signature as well as signature of Jang Bahadur Singh on the inquest report as Ext.3 series. Whereas P.W. 4 Jang Bahadur Singh has been tendered and there is nothing important in the deposition of the aforesaid witness.



15. P.W.11 Udaybhan Dwivedi was posted as Judicial Magistrate at Ara and on the order of Chief Judicial Magistrate Ara, he did Test Identification Parade of appellant Mala Nat alias Dashi Nat on 31.07.1992. This witness stated that P.W.1 and P.W.6 participated in the aforesaid Test Identification Parade and identified Mala Nat in Criminal Appeal No. 91 of 1995. This witness proved the Test Identification Parade chart as Ext.5. This witness stated that P.W.1, at the time of identification of Mala Nat had claimed to have seen him assaulting by means of lathi and, similarly, P.W.6 Mantu Singh had claimed to have seen the appellant Mala Nat assaulting deceased Tarkeshwar Singh by lathi.

16. P.W.12, Nand Kumar Srivastava was posted as Judicial Magistrate, Ara on 29.05.1992 and this witness stated that on the order of Chief Judicial Magistrate, he conducted Test Identification Parade of appellant Dudhnath Nat in Criminal Appeal No. 78 of 1995, appellant Allauddin in Criminal Appeal No. 99 of 1995 as well as accused Nanahku Nat and P.W.1 had identified all the aforesaid three persons in Test Identification Parade, whereas P.W.6 Mantu Singh had only identified appellant Dudhnath Nat and appellant Allauddin Nat. He further claimed that P.W.1 had disclosed that at the time of alleged occurrence,



appellant Dudhnath Nat was carrying kata in his hand, Nanahk Nat was carrying lathi, whereas appellant Allauddin Nat was also carrying lathi in his hand. He further claimed that, similarly, P.W.6 claimed that the appellant Dudhnath was carrying Kata and appellant Allauddin was carrying pistol in his hand. This witness proved photostat copy of chart of Test Identification Parade as Ext.5. He further stated that at the time of Test Identification Parade, 27 to 28 persons were put in queue along with the suspected accused. He admitted in his cross-examination that there was scar of wound below the eye of one of the suspects, but he did not mention the aforesaid fact in his Test Identification Parade chart. He also accepted that no step was taken to cover up the aforesaid scar mark.

17. P.W.13 Raghuvarsh Parsad Singh, is Investigating Officer and this witness admitted at Para-2 of his cross-examination that accused Nanahku and appellant Allauddin were arrested by Zamadar and they were brought to Police station. This witness also admitted at the same paragraph that on 12.05.1992, accused Nanahku and appellant Allauddin were produced before the Chief Judicial Magistrate, Ara and on the same day, he recorded the statement of P.W.6 and P.W.10 at police station. He also admitted that he did not mention the time



of recording the statements of P.W.6 and P.W.10 in the case diary.

18. P.W.1 Harendra Singh supports the factum of dacoity and claimed to have identified the culprits in the headlight of motorcycle. This witness also claimed that one culprit was carrying country made pistol in his hand, two culprits were carrying Kata in their hands and one culprit was carrying lathi in his hand. This witness also stated that P.W.6 told him that he was also looted by the culprits. P.W.1, on being cross-examined by the defence, admitted that after the occurrence, he went to Police station, where he gave his statement to Daroga. He further admitted that after the above stated statement, he never made any statement before the Daroga, rather, he made statement before the Superintendent of Police at the concerned Police Station and the said statement was recorded on the next day of the alleged occurrence. This witness also admitted that when he gave his statement before the Superintendent of Police at concerned Police station, one accused was brought to the Police station and the aforesaid accused was present there. This witness also admitted that while he was making his statement before the Superintendent of Police at concerned Police station, P.W.6 Mantu Singh was also present there. This witness, further, admitted that after 15



days of the aforesaid statement, he as well as P.W.6 participated in the Test Identification Parade. He further admitted that whenever any accused was caught, he got information about the arrest of the accused.

19. P.W.6 Mantu Singh also supports the factum of dacoity and this witness states that he along with P.W.10 Sanjay Kahar was going by bicycle, but while they were on way, 5 to 6 miscreants caught them and assaulted them by means of Chaili and also snatched Rs. 5,500/- from him. The miscreants also snatched his wrist watch. This witness, further, claimed that one of the miscreants asked the others to shoot him and after that he got down from the pitch road. This witness, further, states that in the meantime, one motorcycle came there and the miscreants assaulted the riders of the aforesaid motorcycle by means of Chaili and one of the miscreants cut the neck of driver of the aforesaid motorcycle by dagger. This witness also claims that after that one car came there and the dacoits looted the belongings of occupants of the aforesaid car. This witness, further, claims that one tractor also came there and the dacoits looted the belongings of occupants of the aforesaid tractor. This witness, further, claims that in Test Identification Parade, he identified three dacoits, namely, Dudhnath Nat, Allauddin Nat



and Mala Nat. This witness, further, states that when the dacoits decamped from the place of occurrence, he came to his house and gave information about the aforesaid occurrence to his family members, who, later on, went to the place of occurrence. This witness admitted in his cross-examination that when he along with his villagers came to the place of occurrence, he remained there for ten minutes, but Police did not come till that time. This witness further stated that he returned to his village at about 10.00 P.M. and on the next day, he went to Patna. This witness, further, claimed at para-6 of this cross-examination that after next day of the occurrence, Superintendent of Police came, but he did not meet him as he had gone to Patna. This witness also admitted that for the first time, his statement was recorded by Police after three days of the alleged occurrence. This witness admitted that before giving the statement before the Police, he had not talked with anyone about the occurrence. At para-7 of this cross-examination, this witness stated that when his statement was recorded by the Police at the Police Station, P.W.1 was not present there, but this witness admitted that when his statement was recorded by the Police at Police station, appellant Dudhnath Nat was also present in the aforesaid Police station. This witness stated that the appellant Dudhnath Nat was at the distance of 100



meter from this witness but the appellant Dudhnath Nat had not been lodged in Thana Hazat. This witness, further, admitted that after recording his statement, villagers told him that one culprit was arrested by the Police. This witness, further, admitted that he was at the distance of 5-6 steps from where the motorcycle of other persons was stopped. At para-10 of his cross-examination, this witness identified his signature on affidavit, which has been marked as Ext.A. However, this witness stated that his signature on the aforesaid affidavit was obtained giving threatening to shoot him. This witness admitted that he had not lodged any complaint before the Police in respect of the above stated threatening. This witness, further, admitted that the aforesaid signature on the affidavit was taken 7 to 8 months prior to giving his statement before the Court, but he never gave any information to the Police.

20. P.W.7, P.W.8 and P.W.9 also supported the factum of dacoity, but they did not claim to have identified any dacoits. Admittedly, the aforesaid prosecution witnesses have not participated in Test Identification Parade.

21. P.W.10 also supported the factum of dacoity, but this witness also refused to have identified any person, however, this witness has been declared hostile by the prosecution.



22. On perusal of entire evidence of the prosecution, we find that only P.W.1 and P.W.6 claimed to have identified the appellants in course of Test Identification Parade, but as we have already stated that when the statement of P.W.1 and P.W.6 was recorded at Police Station, the appellant Dudhnath Nat was brought to the Police station. Although, P.W.6 claimed that the appellant Dudhnath Nat was at the distance of 100 meter from him, but he admitted that it was appellant Dudhnath Nat, who was brought to the Police station, when his statement was recorded, therefore, the aforesaid admission of P.W.1 and P.W.6 goes to show that the appellant Dudhnath Nat was shown to them prior to holding the Test Identification Parade of appellant Dudhnath Nat.

23. P.W.12 Nand Kumar Srivastava, the then Judicial Magistrate, Ara, who had conducted the Test Identification Parade stated that appellants Dudhnath Nat, Nanahk and Allauddin Nat were put on Test Identification Parade and P.W.1 identified all the above stated three persons, whereas P.W.6 identified only appellants Dudhnath Nat and Allauddin Nat. P.W.12, further, stated that P.W.1 claimed that at the time of alleged occurrence, appellant Dudhnath Nat was carrying Kata in his hand, appellant Allauddin Nat was carrying Lathi in his



hand and Nanahk Nat was carrying lathi in his hand. However, P.W.1 had admitted in his deposition that at the time of alleged occurrence only one culprit was carrying lathi in his hand. Similarly, P.W.6 claimed before P.W.11 that at the time of Test Identification Parade of appellant Mala Nat @ Dasai, the aforesaid appellant Mala Nat @ Dasai was carrying lathi in his hand and he was assaulting deceased Tarkeshwar Singh by means of lathi. Here the statement of P.W.2 Dr. Ashok Kumar Chaudhary is relevant. The aforesaid witness stated that he found only incised wounds on the person of deceased at the time of Postmortem examination and, therefore, it is obvious that no injury caused by hard and blunt substance was found on the dead body of deceased Tarkeshwar Singh at the time of Postmortem examination. Therefore, the aforesaid facts make the claim of P.W.1 and P.W.6 doubtful. It is also obvious from the testimony of P.W.12 that appellants Dudhnath, Allauddin and Nanahk were put on Test Identification Parade on 29.05.1992 i.e. after 20 days of the alleged occurrence and the aforesaid delay in holding the Test Identification Parade creates doubt about the genuineness of Test Identification Parade, because it has come in the evidence of prosecution witnesses that within two or three days of the occurrence, appellant Dudhnath and some others were caught by



the Police. Similarly, the Test Identification Parade of appellant Mala Nat was conducted on 21.07.1992 i.e. near about after more than two months of the alleged occurrence and there is no explanation regarding the aforesaid delay in holding the Test Identification Parade.

24. On the basis of the aforesaid discussions, we are of the opinion that no reliance can, safely, be placed upon the Test Identification Parade of the appellants. It is admitted position that except the evidence of aforesaid Test Identification Parade as well as claim of P.W.1 and P.W.6 to identify the appellants before the Court, there is nothing on the record to prove the involvement of the appellants in the alleged crime. Furthermore, the defence has got Ext.A, the signature of P.W.6 on an affidavit and it has been argued on behalf of the appellants that P.W.6 admitted in the aforesaid affidavit that he had identified the appellants on the pressure of Police. The signature on the aforesaid affidavit is admitted by P.W.6 and, therefore, the aforesaid affidavit also creates doubt about the credibility of statement of P.W.6.

25. In view of the aforesaid discussions, we are of the view that the appellants are entitled to get the benefit of doubt.



26. Accordingly, all the above stated three Criminal Appeals are allowed. The impugned Judgment of conviction and sentence order dated 30.03.1995 passed by the 3rd Addl. Sessions Judge, Arrah in Sessions Trial No. 162 of 1993 are, hereby, set aside. The appellants are acquitted from the charges giving benefit of doubt. The appellants are on bail and they are discharged from the liabilities of their bail bonds.

27. Let the copy of first and last page of this Judgment be handed over to Shri, Amrit Anunay, learned *Amicus Curiae*, so that he may make claim for his remuneration before the competent authority.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

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