

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 375 of 2017

Arising Out of PS. Case No.-92 Year-1997 Thana- Mohaniya District- Kaimur (Bhabua)
=====

Sipahi Pasi, son of Late Subhag Pasi, resident of village – Badka Sagra,
P.S. - Mohania, District – Kaimur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Rajesh Kumar Singh, Adv.
Mr. Vivekanand Singh, Adv.
Mr. Dhananjay Kr. Upadhayay, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 03-07-2019

The present appeal was filed under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment of conviction and sentence of the appellant in Sessions Trial No. 145 of 1999. The appeal was admitted for hearing on 01-05-2017, however; the appellant was never granted bail in the present appeal and he is still in custody. Considering the fact that appellant had remained in custody altogether for about



13 years, by order dated 12-03-2019 passed on interlocutory application i.e. I.A. No. 50 of 2018, the case was directed to be listed under the heading "For Hearing" as 1st case.

2. The sole appellant was convicted on 03-03-2017 for offence under Sections 364(A) and 395 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 04-03-2017 under Section 364(A) of the I.P.C., the appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs. 50,000/- (fifty thousand). In case of default in payment of fine, he was directed to further undergo simple imprisonment for 2 years. Under Section 395 of the I.P.C. by the same order i.e. order dated 04-03-2017, the appellant was sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 5,000/- (five thousand). In case of default in payment of fine, he was directed to further undergo simple imprisonment for 6 months. Both the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Sri Om Prakash Singh, learned Fast Track Court – I, Kaimur, Bhabhua in Sessions Trial No. 145 of 1999 (arising out of Mohania P.S. Case No. 92 of 1997).



3. The case was initiated on the basis of written information submitted by Rameshwar Rai (P.W.1), which was presented to officer incharge of Mohania Police Station. In the written report, it was disclosed that informant (P.W.1) on 03-06-1997 alongwith his nephew Abhay Kumar Rai (victim) aged about 25 years was returning back to his house from Mohania on a motorcycle, being driven by his nephew Abhay Kumar Rai. It was disclosed that at about 11:00 PM, while they reached near village Dasauti, they noticed 7-8 persons in uniform carrying weapons. Amongst them, one person asked to stop the motorcycle, whereupon they stopped. Thereafter, the uniformed accused persons caught hold of both i.e. informant and his nephew and tied their hands by गमछा (*gamachha*). One of the accused persons pushed motorcycle from metalled road to the side road and both informant and his nephew were pushed through back of the rifle to some extent. In the meanwhile, they inquired from the informant in respect of his where-about and also about caste and thereafter, they forcibly took Rs. 4,000/- (four thousand), which was kept by the informant. The accused persons were whispering to gun down, however; one of the accused persons intervened and life of both informant and his



nephew was saved. Thereafter, they made a demand of ransom of Rs. 4,00,000/- (four lacs). They freed the informant, keeping his nephew with them, with specific direction to hand over ransom amount of Rupees four lacs to a particular person with certain identification. The informant from the place of occurrence moved and stayed in the night at the house of one of the muslim person (P.W.2) and disclosed all those facts to him and subsequently on the next date in the morning at 6:00 A.M., he submitted written information in the Kaimur Police Station.

4. On the basis of written information, a formal F.I.R., vide Mohania P.S. Case No. 92 of 1997, was registered under Sections 364(A) and 395 of the I.P.C. against 7-8 unknown accused persons. After registering the case, the police started investigation. It is case of the prosecution that investigating officer, as per information provided by the informant, went to the place of occurrence, where the motorcycle was found and same was handed over to the informant.

5. During investigation, complicity of the appellant and others came to fore and as such, chargesheet was submitted on 31-07-1998 against appellant showing two accused persons as



absconder. After submission of chargesheet, the learned Chief Judicial Magistrate, Kaimur took cognizance and case of appellant alongwith one Rajeshwar Dubey was committed to the court of sessions, however; subsequently case of Rajeshwar Dubey was separated from the trial of the present appeal and case of appellant proceeded. The case of appellant was committed to the court of sessions on 27-08-1998 and as such, it was numbered as Sessions Trial No. 145 of 1999. After commitment, on 19-02-2000 charge under Sections 364(A) and 395 of the I.P.C. was framed against the appellant, which was denied by him and he claimed to be tried.

6. During the trial, from the prosecution side, altogether 17 witnesses were examined. The informant Ram Ishwar Rai was examined as P.W.1 and during his evidence, he proved his signature on the written report, which is the basis of the F.I.R. and he supported the case, as was explained in his written report. P.W.6 Sri Shiv Dhyan Singh is learned Judicial Magistrate, Kaimur, who had recorded statement of one Ram Bachan Pasi (P.W.17) under Section 164 of the Cr.P.C. and he proved his signature on the statement of Ram Bachan Pasi recorded under Section 164 Cr.P.C., which was marked as



Ext.2. P.W.12 Sri Vijay Bahadur Yadav, who at the relevant time was posted as Judicial Magistrate, Kaimur, had conducted Test Identification Parade (hereinafter referred to as 'T.I.Parade') and he proved the T.I.Parade chart, which has been marked as Ext.3, whereas rest of the witnesses namely P.W.2 Dr. Ali Mohammad Ansari, P.W.3 Liyakat Ansari, P.W.4 Dadan Rai, P.W.5 Shyam Bihari Prajapati, P.W.7 Ram Bachan Ram, P.W.8 Nandu Pd. Gupta, P.W.9 Jawahar Lal Sah, P.W.10 Mainuddin Ansari, P.W.11 Munna Pal, P.W.13 Ram Awadh Pasi, P.W.14 Jagdish Pasi and P.W.17 Ram Bachan Pasi, since did not support the prosecution case, were declared hostile. However, P.W.15 and P.W.16 namely Ram Sukul Pasi and Ram Chandra Pasi respectively were only tendered and as such, their evidence has got no relevance.

7. Besides oral evidence, from the prosecution side, only three documentary evidences have been produced, which are signature and writing of the informant on the written report, which is the basis of the F.I.R. marked as Ext.1, signature of P.W.6 learned Judicial Magistrate, Kaimur, who recorded statement under Section 164 Cr.P.C. of Ram Bachan Pasi (P.W.17) has been marked as Ext.2 and T.I.Parade chart was



marked as Ext.3. The investigating officer has not been examined in this case.

8. Sri Rajesh Kumar Singh, learned counsel assisted by Sri Vivekanand Singh, learned counsel for the appellant, after placing entire evidence, has argued that despite the fact that there was no iota of evidence against the appellant, the learned Trial Judge in a mechanical manner has passed the judgment of conviction and sentence. It has further been argued that so far as involvement of the appellant in the case is concerned, it may not be believed on the ground that no evidence has been brought on record as to how after such a long time appellant's name had come as one of the accused in the present case. The identification of the appellant is also under the cloud of doubt, since right from the very beginning, a stand was taken that the appellant, while was in custody, was shown to witnesses and this is the reason that at the time of recording statement under Section 313 of the Cr.P.C., a specific ground was taken by the appellant that he was shown to the witnesses while he was being produced before the court for T.I.P. Besides this, the prosecution has miserably failed to establish as to how name of the appellant has transpired in the present case. He submits



that during investigation, the investigating officer had got recorded statement of P.W.17 under Section 164 of the Cr.P.C. to show, as if, appellant was one of the member of the accused persons, who had committed the crime. However, P.W.17 during evidence has resiled from his earlier statement recorded under Section 164 of the Cr.P.C., save and except identifying his signature on the statement recorded under Section 164 Cr.P.C. He had categorically stated that whatever statement was recorded, was recorded as per dictate of the police official. In absence of any lead showing involvement of the appellant in the crime, only doubtful identification of the appellant in T.I. Parade could not have been a ground for passing judgment of conviction and sentence.

9. Sri Rajesh Kumar Singh, learned counsel for the appellant has emphasized that it is a peculiar case, in which, occurrence had taken place on 03-06-1997 and subsequently, to the reasons best known to the investigating officer, his (appellant) name had come to fore from the mouth of P.W.17 while recording his statement under Section 164 of the Cr.P.C., which was recorded on 12-06-1997. Even though, the name of the appellant had come in so called statement of P.W.17



recorded under Section 164 of the Cr.P.C. on 12-06-1997, the appellant was belatedly remanded in the present case on 07-10-1997. Sri Singh, learned counsel for the appellant has drawn our attention to the ordersheet of the court below to show that on 07-10-1997, the appellant was remanded in Mohania P.S. Case No. 92 of 1997. He submits that it is not the end of the matter. Even though, the appellant was remanded on 07-10-1997, without any plausible explanation, he was produced for T.I.Parade much belatedly on 20-03-1998. According to Sri Singh, in such situation, there was no reason for the learned Trial Judge to place any reliance on such T.I.Parade, but even then, only on the basis of T.I.Parade, the appellant has been held guilty by the learned Trial Judge.

10. Learned counsel for the appellant has also argued that identification of the appellant in the night at 11:00 PM is also questionable. He submits that despite the fact that prosecution has come out with a case that on the next date motorcycle was recovered from the place of occurrence, which was treated as source of identification, but the same has neither been produced during the trial nor any chit of paper has been brought on record to show as to whether the recovered



motorcycle was seized or not or any seizure list was prepared or not. Accordingly, it has been argued that the judgment of conviction and sentence is liable to be set aside.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor has opposed the appeal. He has argued that it is a peculiar case, in which, nephew of the informant (P.W.1) was kidnapped, ransom amount was demanded and Rs. 4,000/- (four thousand) was looted from the informant. He has further argued that till the date of recording of evidence of P.W.1, the nephew of the informant had not been recovered. He further submits that the appellant was identified amongst 7-8 unknown accused persons in the head-light of motorcycle, while the informant and his nephew were intercepted by the accused persons and as such, the impugned judgment of conviction and sentence may not be interfered with.

12. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, we are of the considered opinion that it was not a case of conviction of the appellant in absence of any cogent evidence on record. During the trial, only one witness i.e. P.W.1, who is the informant of the case, has come forward to



support the prosecution case. Besides P.W.1, P.W.6/Judicial Magistrate, who had recorded statement of one of the witness i.e. P.W.17, has come forward to depose that he had recorded statement of P.W.17 under Section 164 of the Cr.P.C., in which, he had disclosed regarding involvement of the appellant. Similarly, P.W.12 Sri Vijay Bahadur Yadav is another Judicial Magistrate, who had held Test Identification Parade, in which, the appellant was shown to be identified by the informant. During evidence, not a single chit of paper has been brought on record as to under which order, either P.W.6 recorded statement of P.W.17 under Section 164 Cr.P.C. or under which authority, P.W.12 has conducted T.I.Parade. In normal course, it was duty on the part of the prosecution to bring on record such order of learned Magistrate, which is absent in the present case. The impugned judgment of conviction and sentence is liable to be set aside mainly on following grounds:-

(i) No reason has been assigned by the prosecution as to under what circumstance, when the appellant on whatsoever reason was remanded in the present case on 07-10-1997, he was put on T.I.Parade after more than five months i.e. on



20-03-1998. It goes without saying that till the date of T.I.Parade, the case against the appellant was under-investigation and once an accused was in custody during investigation, as per statutory provision, on interval of every fifteen days an accused is required to be produced before the trial court. In such situation, plea taken by the appellant under Section 313 of the Cr.P.C. that he was shown to the witnesses, while being produced before the court, may not be disbelieved. In such situation, there was no meaning of Test Identification Parade.

(ii) The prosecution has miserably failed to bring on record as to how the appellant's name had come to fore as one of the associate in the present crime. Though source of introduction of the appellant as accused was the statement of P.W.17, recorded under Section 164 of the Cr.P.C., the said witness resiled from his earlier statement and as such, the source of introduction of the appellant as accused in the present case from the very beginning has come into cloud of doubt. There is no reason to



place any reliance on subsequent Test Identification Parade in respect of the appellant, which is itself under cloud.

(iii) It is case of the prosecution that occurrence had taken place in the night at 11:00 PM. Regarding identification of the appellant, aid of head-light of the motorcycle and torch light was taken, but during trial, not even single chit of paper has been brought on record to show as to whether the said motorcycle was seized from the place of occurrence or not, however, the prosecution has come out with a case that in the next morning after drawing up formal F.I.R., the investigating officer visited the place of occurrence and had found motorcycle of the informant, which was subsequently handed over. In such situation, it was mandatory on the part of the investigating officer to prepare a seizure list and thereafter, the motorcycle was required to be handed over to the informant, however; during trial, nothing has been brought on record.



(iv) Normally in a case, in which, F.I.R. was lodged against unknown, examination of the investigating officer is necessary. In the present case, no explanation has been given by the prosecution for non-examination of the investigating officer. Certainly, in absence of investigating officer, defence was seriously prejudiced to draw attention to previous statement of informant or other witnesses, who had come forward to support the prosecution case. Moreover, in the present case, most of the witnesses have turned hostile.

13. In view of aforesaid facts and circumstances, the Court is of the opinion that the prosecution has miserably failed to establish its case beyond all reasonable doubt and as such, there is no reason to approve the judgment of conviction and sentence.

14. Accordingly, the judgment of conviction dated 03-03-2017 and order of sentence dated 04-03-2017 passed by Shri Om Prakash Singh, learned Fast Track Court 1st, New, Kaimur, Bhabua in Sessions Trial No. 145 of 1999/Registration



No. 3958 of 2014 (arising out of Mohania P.S. Case No. 92 of 1997) is, hereby, set aside and appeal is allowed.

15. Since the judgment of conviction and sentence has been set aside, the appellant-Sipahi Pasi, who is in custody, is directed to be released forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
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