

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.907 of 2006

Babuli Das

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

Advocates, appeared in this case:

For Petitioner

:

Mr. Debasnan Das, Advocate

For Opposite Party

:

Mr. Janmejaya Katikia
Addl. Government Advocate

**CORAM:
THE CHIEF JUSTICE**

JUDGMENT
14.10.2022

Dr. S. Muralidhar, CJ.

1. The Petitioner was convicted by the C.J.M.-cum-Asst. Sessions Judge, Dhenkanal by the judgment dated 24th August, 2005 in C.T. Sessions No.168 of 2004 for the offence under Section 395 IPC and sentenced to seven years rigorous imprisonment (RI) and pay a fine of Rs.2,000/- and in default to undergo RI for a period of one year. The said judgment was confirmed by the Sessions Judge, Dhenkanal in dismissing the Petitioner's Criminal Appeal No.67 of 2005 by the judgment dated 17th July, 2006. Both decisions have been questioned in the present revision petition.

2. On 10th July, 2007 this Court enlarged the present Petitioner on bail during pendency of the present petition.

3. This Court has heard the submissions of Mr. Debasnan Das, learned counsel appearing for the Petitioner and Mr. J. Katikia, learned Additional Government Advocate for the State-Opposite Party.

4. It must be noted at the outset that the Petitioner was charged both under Section 395 IPC for which he was convicted as well as Section 9-B of the India Explosive Act (IE Act) of which offence he was acquitted.

5. The case of the prosecution is that on the intervening night of 20th and 21st December, 2001 one Jitu Das along with others committed dacoity in the house of Choudhury Dilip Dash (PW 4). According to PW 4, about five of the miscreants entered into the house by breaking upon the front door and they were armed with knives. By exploding bombs they terrorized the inmates of the house. And at the point of knife Rashmita Dash (PW 5), the wife of PW 4 was compelled to handover all that gold jewellery that she was wearing to the miscreants. PW 4 is stated to have telephoned his brother Debasis Pattanaik (PW 7) who managed to chase and nab one of the culprits Jitu Das. The said Jitu Das is further stated to have disclosed the names of four of the accused which included the present Petitioner.

6. In the course of investigation on 26th December, 2001 it came to be ascertained that one of the absconding accused viz., the present Petitioner, had been detained in the Athagarh Sub-Jail in connection with Athagarh P.S. Case No.135/2001 and 136/2001.

Since the S.D.J.M, Athagarh did not permit the present Petitioner to be spared for investigation, the test identification (TI) parade was conducted in the Athagarh Sub-Jail premises on 9th April, 2002. The inmates of the house where the dacoity took place, were supposed to have identified the present Petitioner as one of the miscreants. The remaining three miscreants could not be traced out although the charge sheet was laid against all five accused persons.

7. The trial against the present Petitioner was split up. In the proceedings before the CJM-cum-ASJ, Dhenkanal, the Petitioner was convicted for the offence under Section 395 IPC and he was acquitted of the offence under Section 9-B of the IE Act. The trial Court then proceeded to sentence the Petitioner in the manner indicated above.

8. As far as the evidence against the present Petitioner is concerned, one of the crucial circumstances was the identification of the present Petitioner by PWs 4, 5 and 7. The TI parade in which the Petitioner was identified took place on 9th April, 2002 whereas the occurrence happened in the intervening night of 20th/21st December, 2001. The consequence of the delay in holding the TI parade has been discussed in the decision of the Supreme Court in ***Rajesh Govind Jagesha v. State of Maharashtra 1999 SCC (Cri) 1452***, where it was held that the delay in holding the TI Parade without any satisfactory explanation would enure to the benefit of the accused. This was reiterated in ***State v. Pravakar Behera (1991) 4 OCR 269; Puttan***

alias Kamal Prasad v. State of U.P. 1992 Supp (2) SCC 749 and Govind Pradhan v. State (1990) 3 OCR 350.

9. On the other hand, both the Courts below relied on another set of judgments in *Anil Kumar v. State of U.P. (2003) 25 OCR (SC) 106; Brij Mohan v. State of Rajasthan J.T. 1993 Supp (SC) 2003* and *Daya Singh v. State of Haryana AIR 2001 SC 1188.*

10. The evidence of PW 12, who is the investigating officer, is instructive on what happened during the TI Parade. Apart from the fact that he does not offer any explanation for the delay in conducting the TI Parade, he states as under:

“14. In fact, notices were served on the identifying witnesses through me, but I cannot say on which particular date those were served on them. The notices are not available in the case record.”

11. As regards the manner of conducting the TI Parade itself, the evidence of JMFC, Dhenkanal who was examined as PW 13 is significant. The following statements in his examination-in-chief are relevant:

“2. The witness Choudhury Das could not identify the suspect. The witness Rasmita Das correctly identify the suspect. She could identify as she told that the suspect had given a lathi blow to her causing injury on her person.

3. Witness Dipti Mayee Patnaik wrongly identified another U.T.P. as suspect.

4. The witness Debasis correctly identified the suspect stating that he had been the suspect assaulting his sister by a lathi.

5. The suspect complained that the witness Rasmita and Debasis Patnaik had seen him at the police station. Ext.6/2 is my signature in the T.I. Parade report which were prepared by me on 8.3.2002.”

12. Even in the cross-examination, there was no explanation offered for the delay in holding the T.I. Parade. PW 13 simply states that the record was sent by him on 4th March, 2002 for holding the T.I. Parade.

13. A careful perusal of the evidence of PWs 12 and 13 reveals that there is no reason afforded by the prosecution for the delay of nearly four months in holding the T.I. Parade. Since there is no other substantive piece of evidence *qua* the present Petitioner connecting him to the crime particularly since there was no recovery made of any of the stolen articles from him, the manner of holding the TI Parade and the delay in holding it become significant.

14. As already seen, the delay of four months in holding the TI parade has not been satisfactorily explained. Such a long gap could easily be utilized by the prosecution to make it easier for the PWs to identify the culprits. Further, the manner of holding the TI Parade also is not very satisfactory. It appears that adequate steps were not taken to sufficiently anonymous the accused *qua* his identification amongst others.

15. It must be noted that all the inmates did not correctly identify the accused. In the circumstances, to hold that the TI Parade was a clinching piece of evidence vis-a-vis the Petitioner is not correct.

Since there is no other evidence to link the Petitioner to the crime basing his conviction solely on the evidence of the T.I. Parade would be unsafe. While in *Anil Kumar v. State of U.P. (supra)*, *Brij Mohan v. State of Rajasthan (supra)* and *Daya Singh v. State of Haryana (supra)*, the delay in holding the TI Parade was not considered fatal to the prosecution, the delay in the present case is almost four months and has not been satisfactorily explained by the prosecution.

16. The Court is of the considered view that the conviction of the Petitioner being based largely on the TI Parade evidence and such evidence not being found satisfactory, it would be unsafe to convict the Petitioner on that basis. Consequently, on the ground of benefit of doubt, the Court sets aside the judgment of the CJM-cum-Asst. Sessions Judge, Dhenkanal and the judgment of Sessions Judge, Dhenkanal and acquits the present Petitioner for the offence under Section 395 IPC. Unless his detention is required in some other case, the Petitioner be set at liberty forthwith.

17. The petition is disposed of in the above terms.

(S. Muralidhar)
Chief Justice

S.K.Jena/Secy.