

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.157 of 2018

Arising Out of PS. Case No.-99 Year-2013 Thana- KARAHGAR District- Rohtas

Dadan Choudhary @ Dadan Nonia son of Inar Choudhary, resident of village Mirjapur, Khari, P.S. Dinara, District Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 323 of 2018

Arising Out of PS. Case No.-99 Year-2013 Thana- KARAHGAR District- Rohtas

Ujjain Choudhary S/o Late Raghu Choudhary, resident of Village- Tenuaj Tola, P.S.- Natwar, Bikramganj, District- Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 324 of 2018

Arising Out of PS. Case No.-99 Year-2013 Thana- KARAHGAR District- Rohtas

Kanhaiya Chaudhary S/o Chandrama Chaudhary, R/o Village- Siaruan Tola, P.S.- Sanjhauli, District- Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 347 of 2018

Arising Out of PS. Case No.-99 Year-2013 Thana- KARAHGAR District- Rohtas

Sujeet Kumar Singh @ Sujeet Singh, Son of Ashok Singh, Resident of Village Loknathpur, P.S Kargahar, District Rohtas.

... .. Appellant

Versus

1. The State of Bihar



2. Vicky Kumar Son of Raj Kumar Sah, Resident of Village & P.S. Natwar,
District Rohtas.

... .. Respondents

Appearance :

(In CRIMINAL APPEAL (DB) No. 157 of 2018)

For the Appellant : Mr. Sunil Kumar Pathak, Advocate

For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 323 of 2018)

For the Appellant : Mr. Manendra Kumar Sinha

For the informant : Mr. Vikram Deo Singh, Advocate

For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 324 of 2018)

For the Appellant : Mr. Vijay Kumar Mishra, Advocate

Mr. Shovendra Kumar, Advocate

For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 347 of 2018)

For the Appellant : Mr. Vikram Deo Singh, Advocate

Mr. Sada Nand Roy, Advocate

For Respondent No.1 : Mr. Abhimanyu Sharma, A.P.P.

For Respondent No.2 : Mr. Sumit Kumar Singh, Advocate

Mr. Nikhil Singh, Advocate

Mrs. Alka Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 31-07-2023

Heard the learned counsels for the appellants and learned
counsel for the State.

2. The criminal appeals arise out of common judgment
dated 09.01.2018, hence they have been heard together and are
being disposed of by this common judgment.

3. Criminal Appeal (DB) No.157 of 2018, Criminal Appeal
(DB) No.323 of 2018 and Criminal Appeal (DB) No.324 of 2018
have been preferred against the judgment of conviction dated



09.01.2018 and the order of sentence dated 16.01.2018 passed by Shri Rabindra Mani Tripathi, Fast Track Court No.2, Sasaram, Rohtas in Sessions Trial No.501 of 2013 arising out of Kargahar P.S. case No.99 of 2013, whereby and whereunder the appellants have been convicted under Sections 396 and 412 of the Indian Penal Code (referred to 'I.P.C.'). Appellant Ujjain Choudhary has been sentenced to undergo rigorous imprisonment till death under Section 396 of I.P.C. and undergo rigorous imprisonment for life under Section 412 of I.P.C. Appellants Dadan Choudhary @ Dadan Nonia and Kanhaiya Choudhary have been sentenced to undergo rigorous imprisonment for life separately. Both the sentences have been directed to run concurrently.

Criminal Appeal (DB) No.347 of 2018 has been preferred by the appellant Sujeet Kumar Singh @ Sujeet Singh (informant of Kargahar P.S. case No.99 of 2013) against the judgment and order (in part) dated 09.01.2018 and 16.01.2018 passed by Shri Rabindra Mani Tripathi, Fast Track Court No.2, Sasaram, Rohtas in Sessions Trial No.501 of 2013 arising out of Kargahar P.S. case No.99 of 2013, by which the learned trial Court acquitted the Respondent No.2 Vicky Kumar under Sections 396 and 412 of I.P.C.

4. The prosecution case, as per the fardbeyan of informant Sujeet Kumar Singh (PW3) recorded by Shri Shiv Shankar Prasad



(PW8), S.H.O. Kargahar P.S. on 18.04.2013 at 14.30 p.m., is that on 18.04.2013 at 13.30 p.m. while the informant alongwith his brother, namely, Ajit Kumar Singh after withdrawing Rs.80,000/- from P.N.B., Kargahar proceeded to his village with Hero Honda motorcycle and when they reached near Nawadih river on Kargahar to Kumhila pukka road, in the meantime three miscreants came there on Pulsar motorcycle and two persons came on another motorcycle and surrounded the informant and demanded cash, but informant's brother Ajit Kumar Singh refused to give cash, upon which one of the miscreants shot Ajit Kumar Singh, who fell down and thereafter the miscreants took cash of Rs.80,000/- from the pocket of the brother of the informant and they also took one Samsung mobile from the informant and thereafter the miscreants fled away with their motorcycles.

5. On the basis of aforesaid fardbeyan of the informant, formal F.I.R. was drawn up and Kargahar P.S. case No.99 of 2013 dated 18.04.2013 was registered under Section 396 of I.P.C. against unknown. The police after investigation submitted charge sheet against four accused persons besides pending investigation against some other unknown, whereafter cognizance was taken by the S.D.J.M. under Sections 396 and 412 of I.P.C. and thereafter the case was committed to the Court of Sessions. Charges were



framed against the appellants to which the appellants pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined altogether eleven witnesses, namely, Ravindar Singh (PW1), Munna Kumar Singh (PW2), Sujeet Kumar Singh-informant (PW3), Gaya Singh (PW4), Umesh Singh (PW5), Lal Babu Rai (PW6), Chandan Singh (PW7), Shiv Shankar Prasad (PW8), Ganga Shankar Prasad (PW9), Ambika Prasad Singh (PW10) and Gaurav Kumar (PW11). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of informant on fardbeyan), Ext.1/1 (signature of Rajesh Singh on fardbeyan), Ext.1/2 (signature of PW8 Shiv Shankar Prasad on fardbeyan), Ext.1/3 (identification of signature and writing of Shiv Shankar Prasad on fardbeyan), Ext.2 (inquest report), Ext.3 (signature of Umesh Singh on seizure list of recovered mobile from the possession of Kanhaiya Chaudhary), Ext.3/1 (signature of Umesh Singh on seizure list of recovered mobile phone and two motorcycles from the possession of Ujjain Chaudhary), Ext.3/2 (signature of Lalbabu Ram on seizure list of recovered mobile phone and two motorcycles from the possession of Ujjain Chaudhary), Ext.3/3 (writing and signature of Shiv Shankar Prasad on seizure list of recovered mobile phone from the possession of Kanhaiya Chaudhary), Ext.4



(signature of Chandan Singh and Shashi Singh on seizure list of recovered pen, blood stained chapal, dibiya of tobacco and blood stained soil from the place of occurrence), Ext.4/1 (signature of Shiv Shankar Prasad on seizure list of recovered pen, blood stained chapal, dibiya of tobacco and blood stained soil), Ext.9 (postmortem report of deceased Ajit Singh). The defence has not produced any oral or documentary evidence in support of its case. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

7. The learned Counsels for the appellants in Criminal Appeal (DB) Nos.157/2018, 323/2018 and 324/2018 along with the learned Counsel for the respondents in Criminal Appeal (DB) No.347/2018 submitted that the judgment of conviction and the order of sentence suffered from several infirmities that had been overlooked by the learned trial Court, rendering the impugned judgment unsustainable in the eyes of the law. The first point raised by the learned Counsels pertained to non-examination of Rakesh Singh as a witness, which they claimed, had caused prejudice to the case. Additionally, the learned counsels raised suspicion regarding the presence of witnesses at the alleged place and also asserted that the prosecution had failed to establish the place and manner of occurrence beyond reasonable doubt. To



support this contention, the learned Counsels drew attention to the allegation that the informant and the deceased were returning from the Bank. However, at the place of occurrence, no motorcycle was recovered and the presence of the deceased and the informant is also not proved beyond reasonable doubt. Furthermore, the learned counsels pointed out a significant flaw in the prosecution's case concerning the reliability of the Test Identification Parade (T.I. Parade) conducted by the Investigating Officer. They argued that the Investigating Officer did not adhere to the guidelines outlined in the Bihar Police Manual, 1978, regarding the proper conduct of the identification parade. Notably, the identity of the accused was disclosed before identification, and discrepancies arose from the recovery of two mobile sets, while in the fardbeyan only one was reported stolen during the dacoity. According to the learned Counsels, these irregularities cast doubt on the investigation and prejudiced the prosecution's entire case. Considering the facts and circumstances of the case, the learned Counsels contended that it became exceedingly challenging to assert with certainty that the appellants were indeed involved in the alleged incident. Therefore, they argued that severe lacunae existed in the prosecution's case, and the chain of circumstances did not



unequivocally establish the guilt of the appellants. Consequently, the learned counsels submitted that the findings of the learned trial Court were flawed in terms of both the law and the facts, bereft of sound legal reasoning, devoid of merit, and consequently, the judgment of conviction should be set aside.

8. The learned A.P.P. for the State in Criminal Appeal (DB) Nos. 157/2018, 323/2018 and 324/2018 along with the learned Counsel for the appellant in Criminal Appeal (DB) No.347/2018, on the other hand, submitted that the judgment of conviction and the order of sentence under challenge require no interference, as the prosecution has been able to prove the case beyond all reasonable doubts. It has been contended that all three witnesses in the test identification parade identified all four accused, except the informant in relation to one accused. The mobile phone of the deceased and the informant, along with the two motorcycles, were seized upon the confession of the accused. It has been stated that minor inconsistencies in the testimony of the witnesses do not undermine the entirety of their evidence. As such, it has been contended that the guilt of the appellants has been satisfactorily proved by the evidence adduced during the course of the trial, and there is no infirmity in the judgment of conviction of the learned trial Court.



9. After perusing the record and hearing the arguments advanced by the parties, following issues arise for consideration in these appeals: -

(I) Whether the disclosure of the identity of the accused before the Test Identification Parade would vitiate the prosecution case?

(II) Whether the prosecution has established the manner of occurrence beyond reasonable doubt?

(III) Whether contradictions in the testimonies of the eyewitness and the non-examination of Rakesh Singh, an alleged eyewitness, prejudice the trial of appellants?

10. In order to address issue No. I, it is evident imperative to thoroughly examine the deposition of PW1, PW2, PW3 and PW8 as their testimony holds significant relevance regarding the T.I. Parade. The Investigating Officer (PW8) in para 14 of his deposition stated that he along with the informant saw the CCTV footage of the Bank, upon which the informant (PW3) raised suspicion against the accused. The disclosure of CCTV footage to the informant prior to the identification parade raises concerns regarding compliance with the guidelines outlined in the Bihar Police Manual 1978, specifically Section 236(a)(3) of the manual, which reads as:

“236. Identification of suspects. ---(a)



(3) As far as possible, the photographs of suspected persons shall not be published before identification.”

This Section emphasize that the photographs of suspected individuals shall not be published before the T. I. Parade takes place. The inference arises from the understanding that the CCTV footage is akin to a form of photograph that was shown to the witness (PW3) before the formal identification parade. Further, from the perusal of the testimony of the PW1 in paragraph 6 and the paragraph 10 of PW2, we are of the opinion that they had sufficient opportunity to observe and note the features of the accused during their visit to the jail for the test identification parade. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court passed in the case of ***Sk. Umar Ahmed Shaikh v. State of Maharashtra***, reported in ***(1998) 5 SCC 103***, wherein it was observed in ***para no. 107*** that:

“... .. what value could be attached to the evidence of identity of accused by the witnesses in the Court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW2 and PW11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eyewitnesses and had caused failure of justice.”



In light of the above discussion, it would not be judicious to place reliance on the T. I. Parade to establish the guilt of the accused. It is imperative to acknowledge that the T. I. Parade does not hold the status of substantive evidence; rather, its role lies in corroborating or contradicting the testimonies provided by witnesses in court. However, the T. I. Parade constitutes a crucial aspect of a comprehensive investigation. Therefore, if the initial investigative procedure exhibits flaws arising from the breach of established guidelines, it raises doubt regarding the integrity of the entire T.I. Parade and the prosecution case.

Hence, the issue no. I, is decided in affirmative.

11. With reference to issue no. II, it is essential to examine the evidence pertaining to the witnesses regarding the occurrence. In the fardbeyan, it has been stated by the informant that he and his deceased brother were returning home on a motorcycle after withdrawing Rs. 80,000/- from PNB, Kargahar bank. However, the testimony of PW2 presents conflicting accounts of the occurrence. In para 1, it was stated that the motorcycle of the accused hit the motorcycle of the deceased, causing it to stop. However, contradicting his earlier statement in para 16, it is described that the deceased's motorcycle was 10 feet away from the motorcycle of the accused and when the deceased was sitting on the motorcycle, then



the accused shot him, resulting in both the deceased and the motorcycle falling on the ground. It is furthermore noteworthy that the other two eye witnesses said that the accused stopped the motorcycle of the deceased by surrounding them and then the accused alighted from his motorcycle and shot the deceased. However, the Investigating Officer (PW8 in para 17 and 19) states the absence of any motorcycle or the tyre marks of the motorcycle at the place of occurrence. The prosecution's case gets further hammered in light of the deposition of the Investigating Officer, who stated that there was no CCTV footage of the deceased at the Bank counter or during money withdrawal. This further creates doubt regarding the deceased being present with the money, that is alleged to be stolen during the dacoity. Such fundamental defects cast reasonable doubts on the authenticity of the prosecution's case in the absence of essential evidence like motorcycle at the place of occurrence and absence of material proof regarding the presence of the deceased at the Bank, from where it has been alleged to have withdrawn the money. Therefore, this Court is of the opinion that the prosecution has not been able to prove the manner of occurrence in accordance with the standard parameters of the criminal law.

Hence, the issue no. II, is decided in negative.



12. With reference to issue no. III, it is relevant to take note that there are severe inconsistencies in the testimony of alleged eyewitnesses. Though the PW2 contends to be an eyewitness to the alleged occurrence, the presence of PW2 becomes doubtful in light of the testimony of PW3. The PW3 has specifically deposed in para no. 7 of the deposition that at the time of the alleged occurrence, he did not meet PW2. It is furthermore noteworthy that the PW2 and Investigating Officer (PW8) claimed no bloodstain on the informant's cloth, contradicting to the testimony of the PW1 and PW3.

Furthermore, it has been stated only by PW2 and PW3 that the mobile phone was stolen during the dacoity, but the PW1 remained silent. Moreover, raising severe doubts, it has been stated by the informant in the fardbeyan that only his one mobile phone was being stolen during dacoity, however, two mobile phones were recovered and seized by the Investigating Officer. Regarding which the Investigating Officer (PW8) in para 13 accepted that the sealing of the mobile phone set after seizure was not mentioned and he also not recorded the mobile phone's company number. Furthermore, the informant contradicts himself, in para 15, he claimed that no description of the accused was given, contrary to the para 8 of his own testimony and the fardbeyan where he described the identity of



the accused. It is furthermore relevant to note that the informant (PW 3) accounted of a single close-range shot conflicts with the doctor's cross-examination (PW9 in para 3), who stated specific signs would be present. However, they were absent, indicating no evidence of a close-range shot. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court passed in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra***, reported in ***(2010) 13 SCC 657***, where in ***para no. 16*** the following has been observed:

“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature maybe a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt.”

In light of the legal position as discussed above, this Court is of the opinion that there are major inconsistency and contradiction in the testimony of the alleged eye witnesses. Moreover, the informant (PW 3) in para 7 mentions the presence of Rakesh Singh at the place of occurrence, who also signed the fardbeyan but the prosecution withheld to examine him. The non-



examination of Rakesh Singh, despite being an alleged eyewitness, prejudices the case.

Accordingly, the issue no. III is decided in the affirmative.

13. In view of the findings arrived at on the issues formulated hereinabove, we are of the considered opinion that the prosecution has failed to prove the charges against the appellants and, therefore, the judgment of conviction is not tenable and the appeal against acquittal is liable to be dismissed.

14. Accordingly, Criminal Appeal (DB) No.157 of 2018, Criminal Appeal (DB) No.323 of 2018 and Criminal Appeal (DB) No.324 of 2018 stand allowed and the judgment of conviction dated 09.01.2018 and the order of sentence dated 16.01.2018 passed by Shri Rabindra Mani Tripathi, Fast Track Court No.2, Sasaram, Rohtas in Sessions Trial No.501 of 2013 arising out of Kargahar P.S. case No.99 of 2013 are set aside.

15. Since appellant Dadan Choudhary @ Dadan Nonia of Criminal Appeal (DB) No.157 of 2018 is in jail custody, he is directed to be released from custody forthwith, if not wanted in any other case. Appellant Ujjain Choudhary of Criminal Appeal (DB) No.323 of 2018 and appellant Kanhaiya Choudhary of Criminal Appeal (DB) No.324 of 2018 are on bail, they are discharged from the liabilities of their respective bail bonds.



16. In view of the facts and discussions made above, Criminal Appeal (DB) No.347 of 2018 preferred by the appellant Sujeet Kumar Singh @ Sujeet Singh (informant of Kargahar P.S. case No.99 of 2013), against the judgment dated 09.01.2018 passed by Shri Rabindra Mani Tripathi, Fast Track Court No.2, Sasaram, Rohtas in Sessions Trial No.501 of 2013 arising out of Kargahar P.S. case No.99 of 2013, by which the learned trial Court acquitted the Respondent No.2 Vicky Kumar under Sections 396 and 412 of I.P.C., is dismissed.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	AFR
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