

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.200 of 2013

Arising Out of PS. Case No.-117 Year-2010 Thana- SANDESH District- Bhojpur

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Singhasan Sahni @ Sahdeo Sahni S/O Ram Chander Sahni, Resident Of
Village- Badarpur Milki, P.S.- Mahuwa, District- Vaishali

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Priya, Amicus Curiae

For the Respondent/s : Mr. M. Dayal, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 09-01-2025

Today, on repeated calls, no one appears on behalf of the appellant, as the case is of the year 2010 (15 years old) and no one is present on behalf of the appellant. Hence, let an *Amicus-Curiae* be appointed in this case for disposal of the case.

2. Accordingly, Ms. Priya, learned Advocate is hereby appointed as *Amicus-Curiae* to assist this Court in the present matter.

3. Heard Ms. Priya, learned *Amicus-Curiae* for the appellant and Mr. M. Dayal, learned APP for the State.

4. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of



conviction dated 28.02.2013 and order of sentence dated 04.03.2013 passed in Sessions Trial No. 142 of 2011 in connection with Sandesh P.S. Case No. 117 of 2010 passed by learned Adhoc Additional Sessions Judge-I, Bhojpur at Ara, whereby and where-under the appellant has been convicted for the offence under Section 392 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years under Section 392 of Indian Penal Code with fine of Rs. 10,000 and on failure of payment, the appellant will further be sentenced to simple imprisonment for three months.

5. The brief facts leading to the filing of the present appeal on the basis of the written statement of the informant to O/C of Sandesh PS Station, Bhojpur on 12.12.2010 are that on the midnight of 11.12.2010, when after taking meal the informant and his parents were sleeping in the house in their separate room, they heard the noise of his cow jumping. He was awoken by the noise and he further heard the sound of opening of door of his father's room and when he came out of the room along with his mother to see the cow, he saw 2-3 persons holding his father on pistol point and the accused persons put pistol point on them also and brought them in his room and ordered them to sit on the bed and threatened to take their lives.



In the mean time, one accused came there and ordered not to raise alarm lest he would shoot them. Two accused persons were standing with pistol and rest accused persons started breaking the lock of the box by *Khanti* and took out ornaments, clothes, and utensils of *tilak*, bucket of brass, Barguna, two bowls of phool, glass, plate of bowl of silver and one fish and Rs. 5000/- (Five thousand) in cash and further snatched three Jiutia of gold, nose pin, earrings on pair, payal of silver from his mother. After that, all four accused persons threatened to shoot them if they raised alarm and they came out of the house and hearing the sound of vehicle, the informant and his parents raised alarm upon which his neighbor Satrugan Singh came there along with other villagers and opened the door. He and his parents told him about the occurrence. One of the accused was of whitish color and clean saved and another accused was of blackish color. The accused persons committed the offence of dacoity after jumping over the wall of courtyard. The articles which were looted belong to his Bhabhi and could be disclosed by his Bhabhi. All the accused persons were wearing Shirt-Pant. During occurrence, the accused persons took out the battery of the informant's mobile phone.

6. Further, on the basis of the said written



statement of the informant, Sandesh P.S. Case No. 117, dated 12.12.2010 under Section 392 Indian Penal Code was registered and after investigation charge-sheet of the offence under Section 395 Indian Penal Code against the present appellant had been submitted and accordingly, cognizance had been taken by the learned Chief Judicial Magistrate, Bhojpur at Ara and he had conducted TIP in jail premises on 24.12.2010.

7. The prosecution examined altogether 8 witnesses to substantiate the charges levelled against the appellants, who are namely PW-1 Shatrughan Singh, PW-2 Jai Kumar Singh, PW-3 Dinesh Singh, PW-4 Saroj Devi, PW-5 Manish Kumar Singh, PW-6 Jitendra Singh, PW-7 Ram Vinay Singh and PW-8 Anand Kumar Singh.

8. PW-1 Shatrughan Singh has stated in his examination-in-chief that the occurrence took place in the night of 11-12-2010 and at that time he was sleeping at his door. Hearing alarm, he went to the door of Dinesh Singh where some people were already present. Dinesh Singh told him that the accused persons had confined him, his wife, and his son and the dacoity has been committed in his house. He said that the almirah was broken and house-hold articles were scattered.

9. PW-2 Jai Kumar Singh has stated in his



examination-in-chief that in the mid-night of 10.12.2010 the occurrence took place. At that time he was sleeping in his house. Hearing alarm he went to the house of Dinesh Singh where he saw the household articles of Dinesh Singh were scattered and he came to know that Shatrughan Singh, mukhiya of the village opened the Kundi of the house from outside. He saw Dinesh Singh's wife and son weeping and saying that the accused persons had committed dacoity in his house on pistol point.

10. PW-3 Dinesh Singh has stated in his examination-in-chief that occurrence took place at 11:45 P.M. in the night on dated 12.12.2010. At that time he was sleeping in his house. His wife and his son were also sleeping and cow was tied up in Varanda. The accused persons untied the cow due to which the cow started jumping and his head was broken. PW-3 came out in the courtyard and tried to catch the rope of cow by bending himself and in the meantime the accused persons surrounded him and put pistol point on his earlobe and forced him to open the door of his son's room. They took out the battery from his son's mobile phone. The accused persons forced him, his son and wife to sit on the bed of his son and one of the accused person was standing at their back and one of the accused persons sat on the chair kept before them. All the



accused persons had pistol in their hands. After that all the accused persons started carrying away the household articles and after that he said to his wife to give all his ornaments, upon which his wife handed over Jiutia, nose-pin and Payal to him. He identified four accused persons under the light from the bulb which was in all four corners of the house. He had participated in TIP. He has identified the accused who was present in the dock.

11. PW-4 Saroj Devi (Mother of the informant) has stated in her examination-in-chief that the occurrence took place two years ago at 11:45 PM in the night. At that time she was sleeping with her husband in the house in the southern room of the house and in adjacent room, her son was also sleeping. Hearing the sound of breaking of the lock of the gate, she woke up. Her cow was tied up in the Veranda which the accused persons had untied. Her son said to his father in this regard as the cow is untied. In all the four corners of the house electric bulb was lightening. The accused persons were hidden and as soon as her husband came out of the room to tie-up of the cow, the accused put pistol point at his earlobe and did not permit to tie up the cow rather the accused persons tied up the cow. Hearing the sound of fire, she raised alarm as CHOR-



CHOR, then the accused persons threatened her to her life and put revolver at her. After that the accused persons brought her and her husband in the room of his son and forcibly opened her son's room and forced them to sit on the bed of his son. The accused persons asked the keys to all the rooms to open them to which she declined. The accused persons started breaking the locks of the rooms and locks of three Trunks and two boxes and took out all the articles which were kept therein. The accused who was standing in the dock of the trial court had confined her, her husband and her son on the bed having revolver in his hand and giving threat to their lives. The accused persons were five in numbers. The accused persons took out her Mangalsutra, three Jiutia, Tops of the ear of gold and Payal. The accused persons had taken shakkar of hand, Darkas, two nose-pin of silver and two rings of gold which were in the box. The accused persons locked her, her husband and son in the house and went away. Hearing the sound of vehicle, she, her husband and her son raised alarm and hearing alarm, Mukhiya ji and other villagers came there and opened the door from outside. She claimed to identify the accused persons by their faces. She has further stated that after 11-13 days, she had gone to jail premises to take part in TIP and among nine persons, she identified the present



accused who was sitting on the chair having revolver in his hand and had confined them at the time of occurrence.

12. PW-5 Manish Kumar Singh who is informant of this case, has stated in his examination in-chief that at 11:45 PM. in the night two years ago, the occurrence had taken place. At that time he was in the house sleeping and in the adjacent room his parents were also sleeping. His father woke-up and had gone out of the room and his mother also followed his father. He then woke-up and when his door was knocked and he came out of the room and saw that his father had a revolver on his head and the accused persons brought his parents and him in his room. One of the accused sat on the chair and asked him and his parents to sit on the bed and further asked for fire-arms, upon which, he said that he has no fire-arms but the accused persons searched out but could not find. The accused persons took out nose-pin, Jiutia, ear-rings and Payal of his mother and also took out the articles of his Bhabhi. The accused persons had asked the keys from his mother to his mother declined, upon which the accused persons started breaking locks. The accused persons confined him and his parents in the house and locked him and his parents from the outside of the house and threatened to shoot if they raise alarm. After the departure of accused



persons, he and his parents raised alarm upon which the villagers came there and opened the main door of the house. The accused persons took out the battery of his mobile set. He had claimed to identify the accused persons with their faces. He has further stated that he had participated in TIP and he had identified who was the accused person who was standing in the dock. He has further stated that he had given written petition with his signature in Sandesh P.S. He has identified the writing of his petition along with his signature as Ext.1. He has identified the accused who was standing in the dock and this accused had put him and his parents on pistol point in his room.

13. PW-6 Jitendra Singh has stated in his examination-in-chief that at about 11:45 PM in the night on 11.12.2010, the occurrence had taken place. At that time he was in his house and in the morning when he got up and went to the house of Dinesh Singh, he found the members of the family of Dinesh Singh weeping and all the house-hold articles scattered in the courtyard. Locks of 3-4 boxes were broken. Dinesh Singh was telling that in the night dacoity had been committed in the house and the dacoits had looted away all the articles of the house and the accused persons had pistols in their hands.

14. PW-7 Ram Vinay Singh who is Investigating



Officer of the case has stated that on 12.12.2010 he was posted as S.I. of police in Sandesh P.S. District-Bhojpur. On that day, the o/c of Sandesh Police station had received a written petition of informant Manish Kumar on the basis of which Sandesh P.S. Case no.117 of 2010 under Section 392 of the Indian Penal Code has been registered and investigation was handed over to him.

14.i. During investigation, he went to village Narainpur at the house of Manish Kumar, informant and recorded re-statement of informant and inspected the Place of occurrence. According to him the Place of occurrence of the case is the house of informant facing east situated in Village Narainpur adjacent to the *pakka* road to sakaldiha at its east side. There is a varanda in-front of the house and at north-south to the Varanda, two rooms have been constructed and in the middle of Varanda door, main entrance doors is situated and from this road, the informant and his family members comes-out and goes in and inside the house there is courtyard. At south side to the courtyard, three rooms in a row and at north side a separate room is situated. Adjacent to the northern room at west, a stair is situated and beneath the stair there is exit for female member of the house and at the west to the courtyard three



rooms in a row and at north one room is without roof. There is hand-pipe at east north corner and at north-south to east varanda is situated. Adjacent to the eastern room, there is stake and dung were scattered there. It was told to him that in eastern room to at the side of south it was locked in which bhabhi of the informant was residing and lock was broken and the room was opened. In southern room to east informant and in middle room the parents of informant were sleeping. In all the rooms wooden door have been found. It was also told to him that accused persons after breaking the locks of the boxes and trunk by *Khanti*, took out clothes, ornaments, utensils and cash amount. He found in all the rooms articles of the boxes scattered and the mirror of almirah was broken and there was sign of breaking in the almirah. At the east side, the main door of the house of informant and after that pakka road from Sandesh to Sakaldiha, at west, potato field of informant. At north, main door of the informant after that foundation of the house of Chhetru Singh and at south the land of Satya Narain Singh to the occurrence, are situated.

14.ii. He further stated that he recorded the statements of witnesses, namely, Saroj Devi, Dinesh Singh and Shatrughan Singh who told him physical identification of the



accused persons and on that basis accused had been arrested when he was on patrolling near Chilhaus petrol pump when he saw a person going towards the southern boundary wall of the petrol pump in the night, who attempted to hide himself and started fleeing at west side. The arrested accused told his name as Singhasan Sahni @ Sahdeo Sahni s/o Ramchandra Sahni of village Mak, P.S. Mahua, District- Vaishali. The arrested accused gave no satisfactory answer as to why he was present there at that time. When his person was searched out, a Nokia mobile set Model No.1200, EMEI NO. 35984201711990 SIM Card No. 8092036716 and Driving License No. 815 of 2005 dated 22.03.2005 was found. Seizure list was prepared in presence of witnesses Hari Narain Sah and Srikant Chaudhary. He has identified this seizure list as Ext. 2. He further stated that after taking permission from the Court, he arranged TIP of accused through witnesses namely, Dinesh Singh, Manish Singh and Saroj Devi, in premises of Ara Jail. He has further stated that he could not find the whereabouts of the looted articles but finding the offence true against the present accused he kept investigation continued and finally he submitted charge-sheet under Section 395 of the Indian Penal Code.

15. PW-8 Sri Anand Kumar Singh who was



posted as Judicial Magistrate- Ist Class in Sessions Division, Ara on 24.12.2010 and on that day following order of Chief Judicial Magistrate, Ara, he went to Ara Jail and in his presence TIP of suspect (present accused) has been conducted in which witnesses Manish Kumar Singh, Saroj Devi and Dinesh Singh had identified the suspect (present accused). He has identified the identification chart as Ext. 3.

16. On behalf of defence, two defence witnesses namely, DW-1 Ashok Kumar Singh and DW-2 Ramakant Singh have been examined.

17. DW-2 Ashok Kumar Singh has stated that he was Mukhiya of Ahpura Panchayat from 2006 to 2011. On 10.12.2010, he along with Ramakant Singh, Mukhiya of Bagarpur- Panchayat, Munna Singh, Mukhiya of Chillhaus Panchayat and B.D.O. Siya Ram Paswan of Sandesh Block, proceeded to Sonapur fair at 5 PM in the evening by four wheeler of Ramakant Mukhiya. In Patna Ex-Vehicle driver of Ramakant Singh met them who had driven the vehicle from Patna to Sonapur fair and the driver was with him the whole night and early in the morning at 6 AM returned to Patna and left there. Later on, he came to know that the accused had been implicated in a false case.



18. DW-1 Ramakant Singh has stated in his examination-in-chief that he was Mukhiya of Baga Panchayat from 2006 to 2011. He claimed to have little knowledge of the accused as he was ex-driver of his Scorpio vehicle purchased in January 2009 in the name of his brother. On 12.12.2010 the accused was not the driver of his vehicle. On 10.12.2010 he, Ashok singh Mukhiya of Ahpura Panchayat, Munna Mukhiya of Chillhaug Panchayat and Siya Ram Paswan, the then BDO of Sandesh Block had gone to see Sonapur fair by Scorpio, the Scorpio was being driven by Shailendra Sharma and when Singhasan Sahni was contacted, Singhasan Sahni told him that he was in Patna and he would also accompany them. Singhasan Sahni had driven his vehicle from Patna to Sonapur and on 11.12.2010 Singhasan Sahni left his vehicle in Patna. Singhasan Sahni was driver of the vehicle of Som Yadav but Singhasan Sahni told him that his payment was not regular, upon which he asked him to come. On 12.12.2010, A.S.I Ram Vinay Singh of Sandesh P.S. telephoned him that a person has been arrested and requested to come and identify him as he was claiming to be driver of his vehicle. He went to Police Station and identified the accused and on request, the police did not released Singhasan Sahni. He returned home. He further stated that the



character of Singhasan Sahni is very good.

19. Learned *Amicus-Curiae* for the appellant submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. From the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the offence under Section 395 of the Indian Penal Code is not made out as only four persons had participated in the commission of offence and FIR has been registered against 2-3 unknown persons. In the written statement of the informant the number of accused persons has been mentioned to be not more than four persons. In this regard PW-5 informant Manish Kumar Singh has not numbered the offenders rather he has stated about the present accused only and he further stated that after departure of accused persons, they raised alarm. The counsel further submitted that there is delay in TIP as appellant was arrested on 13.12.2010 and TIP was held in Jail premises on 24.12.2010 (TIP Chart Ext-3) and it should be held in an interval of 11 days of arrest and the accused person had been kept in police station for more than five days.



19.i. Learned Amicus-Curiae for the appellant submitted that there is no source of light at the place of occurrence mentioned in the F.I.R because the time of occurrence is 11:45 PM in the night but it is evident from the evidence of Investigating Officer that there is no source of light when he reached at the place of occurrence and there he also recorded the statement of witnesses and their also not mentioned about the source of light nor seized any equipment for source of light and here it is doubtful that how the witnesses claim to identify the accused/appellant in dark night. The Investigating Officer stated in para 15 that he did not seize broken locks and also in para 17 stated that he arrested the accused on the basis of suspicion and not on the basis of physical structure stated by the witnesses. She further submitted that the Learned trial Court has failed to appreciate the evidence in it's right perspective and the impugned judgment of conviction is bad in law as well as on fact and such to set aside.

19.ii. Learned *Amicus-Curiae* for the appellant further has relied upon the judgment of co-ordinate bench of this Court passed in ***Cr. Appeal (SJ) No. 158 of 2008, Nand Kishore Sahni vs. State of Bihar*** that:

“It has regularly been held by this Court that the evidence of test identification



parade gets suspect if it is shown that there was an enormous un-explained delay in holding test identification parade for identification of the suspected accused. The unexplained delay in holding the test identification parade with further non-explanation or not putting the appellant on test identification parade on 05.02.1994 and 22.02.1994 makes the evidence of test identification parade suspect and in that view of the matter it is not safe to act upon that evidence for upholding the judgment of conviction and sustaining the sentence passed upon the appellant.”

19.iii. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (*Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra (1998) 5 SCC 103*). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (*Chunthuram v. State of Chhattisgarh (2020) 10 SCC 733 and Ramkishan Mithanlal Sharma v. State of Bombay (1955) 1 SCR 903*).

20. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submits that



there is direct allegation against the present appellant, for dacoity. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

21. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court. I have thoroughly perused the materials on record and aforesaid judgments referred by the *Amicus-Curiae* as well as given thoughtful consideration to the submissions advanced by both the parties.

22. Having deeply studied and scrutinized the facts and the material on record of the present case, it is evident to note that there was no description of source of light mentioned in the FIR, when the investigating officer reached at the place of occurrence where he also recorded the statement of witnesses and there also not mentioned about the source of light nor seized any equipment for source of light and here it is doubtful that how the witnesses claim to identify the accused/appellant in the dark night without any source of light. None of the prosecution witnesses mentioned above the source of light at the place of occurrence in their deposition except PW-3 and PW-4. PW-3 and PW-4 have only disclosed about source



of light during the trial and not during the course of investigation. The Investigating Officer stated in para 15 that he did not seize broken locks and also in para 17 stated that he arrested the accused on the basis of suspicion and not on the basis of physical structure stated by the witnesses. The evidence of test identification parade gets suspicious as it is shown that there was an enormous un-explained delay in holding test identification parade for identification of the suspected accused. There could be an inference that the police was waiting for ensuring the identification of the appellant by witnesses after they had the opportunity of fully seeing the appellant so as to identifying him at the test identification parade. As PW-4 in her deposition para No. 7 stated that she received an information about a dacoit being arrested and thereafter, she along with other persons went to the police station and identified him and in Para 9 she stated that she has identified the same person in the TIP whom she identified at the police station. The unexplained delay in holding the test identification parade with further non-explanation or not putting the appellant on test identification parade makes the evidence of test identification parade suspectful and in that view of the matter it is not safe to act upon it. The prosecution has not established its case beyond



reasonable doubt. Apart from the TIP, I find no other evidence put forth by the prosecution to prove the guilt of the accused for offences under Section 392 of the Indian Penal Code. On the other hand, defence has also established his case as the accused person was not present at the place of occurrence and he has shown his driving license to the Investigating Officer while he was on patrolling duty. Since the prosecution has not been able to prove its case and the defence has put forth stronger evidence showing that he was not present at the place of occurrence and at the time of occurrence, the accused/appellant is hereby given the benefit of doubt and the appeal is allowed.

23. Hence, the Judgment of conviction dated 28.02.2013 passed in Sessions Trial No. 142 of 2011 arising out of Sandesh P.S. Case No. 117 of 2010, passed by learned Adhoc Additional Sessions Judge-I, Bhojpur at Ara is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

24. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 10,000/- (ten thousand) to the learned Amicus-Curiae Ms. Priya towards honorarium for assisting this Court in the present



appeal.

25. Let a copy of the first and last page of this judgment be handed over to the Advocate Ms. Priya, learned Amicus-Curiae and Office is directed to proceed further in granting honorarium to her which is to be paid by Patna High Court legal services committee.

26. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
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