

(1985) 01 PAT CK 0022
In the Patna High Court
Case No : Criminal Appeal No. 171 of 1983 (R)

Bandhan Nayak

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-01-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Penal Code, 1860 (IPC) — Section 396
Police Act, 1861 — Section 12, 7

Citation : (1985) 33 BLJR 425 : (1985) PLJR 745

Hon'ble Judges : Satyeshwar Roy, J; Abhiram Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy and Abhiram Singh, JJ.—The persons were put on trial in a case u/s 396 of the Indian Penal Code. During the course of trial, one of them, namely Jamua, died. The appellant was found guilty u/s 396 of the Indian Penal Code and was sentenced to undergo imprisonment for life.

2. On 8-7-1982, P.W. 5 lodged an information with the police that in the previous night there was a dacoity in their house. In course of the dacoity rice and utensils were taken away and Chamar Singh was murdered. P.W. 5 did not name anybody as the person who had committed dacoity in their house. However, during the course of investigation, the appellant and Anr. were apprehended. In the T. I. Parade, (he appellant was identified by P. Ws. 2 and 5. The Court below relied on the evidence of these two witnesses and found the appellant guilty.

3. P.W. 1 was the son of Chamar Singh; P.W. 2 was the brother of Chamar Singh and P.W. 3 was a neighbour of Chamar Singh and in whose house also there was a dacoity. P.W. 5 was the widow of Chamar Singh. In the Test Identification Parade, these four persons were witnesses. P. Ws. 1 and 3 could not identify anybody from out of the suspects as the person or persons who had committed dacoity in the house of Chamar. However, P.W. 2 and 5 both identified the

appellant.

4. Mr. Banerjee, learned Counsel appearing on behalf of the appellant submitted that no reliance can be placed on the identification made by P. Ws. 2 and 5 and the appellant cannot be held guilty of the charge. He further submitted that the Test Identification Parade conducted by the Magistrate had no significance as the appellant had already been shown to P. Ws. 2 and 5 at the Police Station. The learned Court below has considered the evidence regarding the Test Identification Parade in paragraphs 13, 14 and 15 of the impugned judgment.

5. Before proceeding to appreciate the submission of Mr. Banerjee with reference to the facts of this case it is necessary to notice the nature and scope of test identification parade. We will deal this elaborately because in a number of cases we have found that courts below have no clear idea about it.

In *Harnath Singh Vs. State of Madhya Pradesh*, the Supreme Court observed="During the investigation of a crime the police has to hold identification parades for the purpose of enabling witnesses to identify properties which are subject-matter of the offence or to identify the persons who are concerned therein. They have thus a two-fold object, first, to satisfy the investigating authorities that a certain person not previously known to the witnesses was involved in the commission of the crime or > particular property was the subject-matter of the crime. It is also designed to furnish evidence to corroborate the testimony which the witness concerned tenders before the Court." In *Budhsen and Another Vs. State of U.P.*, , the Supreme Court observed that the statements made at these Parades in the course of identification do not constitute substantive evidence and these Parades are essentially governed by Section 162 of the Criminal Procedure Code. The persons required to identify and accused should have had no opportunity of seeing him after the commission of the crime and before identification. The evidence in order to carry conviction should ordinarily clarify as to how and what circumstances became to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The Court as a rule of prudence generally looks for corroboration of the sworn testimony of witness as to identity of the accused who are strangers to him in the form of earlier identification proceeding.

The evidence as to identification must be subjected to a close and careful scrutiny by the Court.

6. Test Identification Parade is of great significance which will also appear from the fact that in the Bihar Police Manual, 1978 (Vol. 1), the Manual elaborates, procedure has been laid down for this instead of leaving it to the whims and caprice of police officers. We may note that the Manual consists of rules framed with the authority of the State Government under Sections 7 and 12 of Police Act, 1861 and those rules therefore have the force of law.

Rule 236 of the Manual lays down the procedure for" holding of Test identification

parade. It will be useful to quote the relevant parts of that rule:

Rule 236 (a)-Whenever it is necessary that a person suspected of having been concerned in any offences should be identified by a witness, the following instructions shall be complied with word by word:

(1) These suspects shall be kept at a place where identifying witness cannot have access to him.

(2) At the time of taking the suspects to Court from Jail, precaution shall be taken that none is able to see them and hence they shall be taken in closed vehicles or if such vehicles are not available, their faces shall be covered in such a manner that they cannot be recognized.

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

(4) The investigator shall not keep suspected persons in police custody before holding test identification.

(5) The prosecutor shall request the Magistrate that these persons should not be released on bail before identification.

(6) If the physical characteristics of any suspected person are such that on account of these he can be searched in a group, then as far as possible such persons shall be assembled for mixing up who have similar characteristic or the characteristics shall be covered. The investigator shall see before identification parade begins that the suspected person is available in it.

(7) for identification, one suspected person is to be mixed with 8-10 other persons and not that ten suspected persons shall be mixed in a small group.

(8) Identification should be done without delay because identification done with delay is not fully acceptable to Courts.

(9) Where the description of suspected persons in the first information report or in the statements of witnesses are so explicit that there is no suspicion left of any kind, it is not essential to hold identification parade.

(10) The investigating officer though his presence may be essential outside shall not be present while the identification is in progress.

(11) If a witness is unable to attend an identification parade and identification is considered necessary, this may be arranged with reference to photograph, details of which are incorporated in Appendix 22.

(12) When suspected persons are brought for identification its chart shall be prepared in P. M. Form No. 42. An indication of the above facts should be given in case diary and identification chart.

(b) x x x (c) The identification parades shall be conducted as far as possible

before a Magistrate but for any reason, a Magistrate cannot be available then before any other responsible officer, such as the services of Deputy Registrar shall also be admissible.

(d) The witnesses shall have to certify in the prescribed columns of the chart that the method in which the identification has been carried out was correct, and

(e) x x x x

7. Having noticed the legal position, we now consider this case. To our mind, it appear that the learned court below has committed a grave error of law in applying the law regarding evidentiary value of a Test Identification Parade. From the law laid down by the Supreme Court and the rule quoted above it is apparent that very strict provisions have been laid down for holding a fair and impartial Test Identification Parade so that innocent persons may not be falsely implicated, The law is quite clear on the point that the identifying witnesses should have no opportunity to see the suspect before the actual T. I Parade and after the commission of the crime and abundant precautions should be taken for the same. According to the rule, the T. I. Parade shall be conducted either by a Magistrate or by a responsible officer. But, in no case the Investigating Officer should be present at the place where identification is in progress. In this case just the contrary had happened. It is clear that the learned court below has shown complete ignorance of the provisions laid down for holding Test Identification Parade. In the opinion of the court below the T. I. Parade held by the investigating Officer at the Police Station has not varied the regular T. I. Parade conducted by the Magistrate P.W. 7.

8. P. Ws. 2 and 5 admitted in paragraphs 4 and 9 of their evidence respectively that they had gone to the Police Station on being called by the Investigating Officer, P.W. 9 after the appellant was arrested and they had opportunity to see him. They had gone to the Police Station together. The Court below after discussing their evidence believed their testimony. There can be no room for doubt that the appellant was shown to the aforesaid two witnesses whether alone or along with others after the commission of the crime. The Court below has held that the witnesses were truthful as they have not concealed the truth about identifying the appellant at the Police Station and it has also held that the witnesses were not under the influence of the investigating Officer. This cannot be said to be the proper way of appreciating the evidence regarding identification and this sort of interpretation by the Court below is definitely in our opinion, against the well settled principles of law relating to the identification of suspects. It is surprising that the Court below has not denounced the holding of previous T, I. Parade by the Investigating officer. The holding of previous T. I Parade by the investigation officer at the police Station makes the subsequent T. I Parade by the Magistrate meaningless. It was not expected that the court below would ignore this basic principle while appreciating the value to be attached to the T. I. Parade. The court below has also overlooked the fact that according to Ext. 1/1 (the T. I. Chart), P.W. 2 identified the appellant as the person who was taking out

articles from the house. But the appellant has been found guilty u/s 396 I.P.C. P.W. 2 did not say at the time of T. I. Parade before the Magistrate that he identified the appellant as the person assaulting the deceased Chamar Singh Munda. He also did not say in his evidence before the Court that he identified the appellant as the person who assaulted the deceased Chamar Singh Munda, rather in his evidence, he said that the appellant was the person who was holding the door and was saying that if anybody came out he would be murdered. So far P.W. 4 was concerned, she did not say in Court the part which the appellant played at the time of dacoity. Hence, the conviction u/s 396 IPC of the appellant cannot be based on the testimony of P. W, 2 and 5.

9. In the result, the appeal is allowed. The judgment and the order of conviction and sentence passed by the Court below are hereby set aside. The appellant is discharged from the liability of the bail bond.

10. With anguish we note that the Judicial Commissioner, Ranchi (Sri Om Prakash) who tried the case has no elementary knowledge regarding the appreciation of the evidence relating to Test Identification Parade.