

(1985) 07 GAU CK 0004
In the Gauhati High Court
Case No : Criminal Revision No. 366 of 1984

Sri. Jaharlal Dey alias Jahar Dey

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Evidence Act, 1872 — Section 9
Penal Code, 1860 (IPC) — Section 324

Citation : (1985) 2 GLR 352

Hon'ble Judges : S. Haque, J

Bench : Single Bench

Advocate : B.R. Dey, S. Dutta and J. Deb, for the Appellant; Meera Sarma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Haque, J.—The Petitioner Jaharlal Dey alias Jahar Dey has impugned the judgment and order dated 19.9.1984 passed by the learned Sessions Judge of Cachar and Karimganj at Silchar in Criminal Appeal No. 1(3) of 1984, affirming the conviction passed by the Sub-divisional Judicial Magistrate of Karimganj in G.R. Case No. 103 of 1980 u/s 324 I.P.C,

2. The Petitioner faced the trial for the charge u/s 324 of the Indian Penal Code in the Court of the Sub-divisional Judicial Magistrate at Karimganj. The alleged of occurrence took place on 2. 2.1980, near the New Pharmacy at Station Road, Karimganj at about 5.00 p.m. The allegation was that accused Jaharlal was chased by some persons and at that time he Stabbed Rabindra Ghosh (P.W. 2) and Madhu Ghosh (P.W. 5) with a knife causing hurt. Subsequently, the accused was apprehended by some persons on that everyday and handed over to Police, P.W. 1 Shri Raghunath Ghosh, brother of the injured Madhu Ghosh lodged the First Information Report, Ext. 1 with Karimganj Police Station stating that one unknown young boy caused hurt to Rabindra and Madhu with a knife.

3. On perusal of the judgments of the trial Court as well as of the appellate

Court, it is found that both the Courts have relied the evidence of test identification parade to convict the accused. The fact of identifying the accused in the T.I.P. is by itself not a substantive piece of evidence, but is admissible u/s 9 of the Evidence Act. It only serves to corroborate the actual identification made in the Court during the trial. Identification of an accused by touching or pointing at him by a witness, in Court during, trial is a substantive piece of evidence. Identification test alone, as a rule, cannot form the basis of conviction. The evidence of a Magistrate holding T.I.P, to the effect that some witnesses identified the accused in parade by itself, is not sufficient to convict the accused. Such evidence may only serve, if free from infirmity, as corroboration to the sub(sic)tive evidence of identification in Court during trial.

4. This much is proved in the case that Rabindra Ghosh and Madhu Ghosh (P.W. and P.W. 5) sustained injuries caused by sharp weapon in the afternoon of 2.2.1980. Both of them had identified accused Jaharlal at the test identification parade held by the Judicial Magistrate (P.W. 6) on 8.4.1980. In the trial, both of them deposed that they could not recognise the person who assaulted them. They did not depose that accused Jaharlal who was present in the dock at the trial caused the injuries on them. They did not also identify accused Jaharlal in the trial- P.W. 3 Swapan Kumar Ghosh, deposed that he saw a tall man assaulting Rabindra and Madhu and then fleeing away. There was no iota of evidence in the trial to implicate the accused Jaharlal for the commission of offence charge for causing injury on Rabindra and Madhu. The trial Court as well as the appellate Court relied on the evidence of Judicial Magistrate (P.W. 6) who held the test identification parade. The Magistrate deposed that Rabindra and Madhu (P.Ws. 2 and 5) identified accused Jaharlal before him at the test identification parade. The evidence of P.W. 6 itself in no way can be made a basis for conviction. The trial Court committed illegality to base conviction of the accused relying solely on the evidence of test identification parade. The comments made by the learned Sessions Judge on the conduct of the material witnesses (P.W. 2 and 5) in para 7 of the judgment are unwarranted, The Court could take action to prosecute the witnesses for giving false evidence in the trial, but the Court cannot take resort to evidence not substantive for basing conviction only because the material witnesses had suppressed the truth by refusing to implicate the accused or had turned hostile. The judgments and order of conviction of both the Courts below are liable to be set aside and the accused-Petitioner is entitled to acquittal.

5. This revision petition is allowed. The impugned judgment conviction and sentences of the Petitioner are set aside. The accused-Petitioner Jaharlal Dey is acquitted of the charge in G.R. Case No. 103 of 1980 of Karimganj, and set at liberty forthwith.

6. The Rule is made absolute.