Supreme Court of India
Sheikh Hasib Alias Tabarak vs The State Of Bihar on 23 August, 1971
Equivalent citations: AIR 1972 SC 283, 1972 CriLJ 233, (1972) 4 SCC 773, 1971 III UJ 830 SC
Author: I Dua
Bench: I D Shelat, S Roy
JUDGMENT I.D. Dua, J.

1. Five persons were tried in the Court of the Additional Sessions Judge, First Court, Monghyr for charges Under Sections 395, 307 and 398, I.P.C. All of them were convicted Under Section 395, IPC and acquitted of the charge Under Section 398, IPC. Accused, Akal Yadav, was in addition convicted Under Section 307, IPC and was sentenced to undergo rigorous imprisonment for life under each count. The other accused persons were sentenced to undergo rigorous imprisonment for ten years each Under Section 395, IPC.

2. On appeal the High Court set aside the convictions of Akal Yadav, Anandi Yadav and Ashique Mian and allowing their appeals acquitted them. The convictions and sentences of Sheikh Habib alias "Tabarak, the appellant in this Court and of Sheikh Quddua alias K.hudwa were maintained Sheikh Hasib alias Tabarak alone has appealed to this Court with Special leave under Article 136 of the Constitution.

3. According to the prosecution case on January 28, 1963 at about 7.45 p.m. several dacoits had collected on P.W.D. road near Telia Talab, Monghyr police station mofassil and committed dacoity in respect of the properties of a number of passers by. Ganesh Prasad (P.W. 1) and his brother Kamaleshwar Tanti (P.W. 2) who were going together on a cycle from Mong-hyr to their village Nawagarhi, were held up by about 15 dacoits and were deprived of several valuable articles like watch, cycle, shirt, muffler and money. Those articles were forcibly snatched from them on threat of violence. They were then made to sit on one side, away from the main road. When they were sitting there, Thakur Prasad Choudhary (P.W. 6), resident of village Garhi Rampur and Mukhia of the village Panchayat and Ram Baran Mandal (P.W. 3) also happened to come on a rickshaw from Monghyr side and while passing by the place of occurrence they too were intercepted by the dacoits and deprived of their properties. A woman named Dayabati Devi (P.W. 4) and one Prayag Narain Gupta (P.W. 5), a homeopath doctor, who also happened to pass that way in a rickshaw were also attacked by the dacoits and forcibly deprived of their belongings. In the meantime Ram Baran Mandal (P.W. 3) and Thakur Prasad Choudhary (P.W. 6) somehow managed to escape in their rickshaw. When they reached Telia Talab crossing from where one road goes towards Jamalpur, another towards Bariarpur and the third one to-wards. Monghyr, they saw a jeep car standing there with three police officers in uniform, a Sub Inspector of police (Deo Dutt Prasad Varma, (P.W 8, and an Inspector of police (Jadunandan Singh, P.W. 10) along with driver-constable (Bansidhar Singh, P.W. 9). Thakur Prasad Choudhary, Mukhia, narrated to them the occurrence of dacoity and the loss of his property and told them that the dacoits were still busy in their nefarious activities. After giving this information he accompanied those officers in the jeep to the place of occurrence. Ram Baran (P W. 3) went away towards his village. Thakur Prasad Choudhary pointed out to the police officers the place of occurrence as soon as it became visible in the light flashed by the headlights of the jeep. The jeep stopped near the place of occurrence and it is alleged that more than eight dacoits were found

present at the spot. The Inspector (P.W 10) ordered the constable to get down and arrest the dacoits. Pursuant to this order Bansidhar, constable, got down from the jeep but one of the dacoits aimed a lathi blow at him. When the other occupants of the jeep tried to get down one of the dacoits fired at them hitting both the Inspector and the Sub-Inspector causing them bleeding injuries. The jeep then drove away towards Monghyr in order to get the Sub-Inspector and the Inspector (P.Ws. 8 and 10} treated in the hospital. While passing in front of the police station of Monghyr on their way to the Sadar Hospital, the Sub-Inspector and the Inspector informed the policemen at the police station about the dacoity in question near the Telia Talab and said that since they themselves had sustained injuries at the hands of the dacoits they were on their way to the hospital The dacoits had apparently disappeared in the meantime and nobody was caught at the spot. It is not necessary to state any more facts for the purpose of the present appeal. Suffice it to say that the fate of the entire prosecution case depends on the evidence regarding the identification of the persons charged So far as the present appellant is concerned the only evidence against him it that of his identification by Jadunandan Singh, Inspector of police (P.W. 10). The question, therefore, arises whether his testimony relating to the identification of the appellant provides evidence which, according to the settled principles, can be considered sufficient for sustaining his conviction.

4. Now, according to the High Court it was mentioned in the fard beyan (Ex. I) which is treated as first information report, that the Inspector (P.W. 10) had identified two dacoits as belonging to village Banoudha. These two dacoits are Hasib and Ashique Mian, the conviction of both of whom was upheld by the High Court. Exhibit 1 was the statement made by S.I. Deo Dutt Prasad Varma (P.W. 8) to the police in the hospital. The exact words used therein so far as relevant may herein be read:

The Inspector said that among the recognized dacoits he had recognized two dacoits well that they belonged to Banaudha a nearby village. He did not remember their names. He also said that the dacoits seemed to belong to the neighbouring villages and almost all of them were young.

The evidence of P.W. 8 has not been relied upon by the High Court for convicting the appellant What is relied upon is the statement in Court of P.W. lo because the High Court felt that it was corroborated by Ex. 1. This is what the High Court has said:

Appellant Hasib and Ashique Mian both belong to village Banaudha, and it was mentioned in the fard beyan (ext. 1) that the Inspector (P.W. 10) had identified two dacoits well as belonging to village Banaudha. This description as to the residence of two of the dacoits was given before Hasib and Ashique Mian came to be arrested in connection with this case. Therefore, it is manifest that the evidence of P.W. 10 against appellant Hasib finds sufficient corroboration from the description of the culprits given in the fard-ebayan. That being so, I am of the opinion that the evidence of P.W. 10 against appellant Hasib can be safely acted upon It is true that appellant Hasib had been remanded to police custody for nearly 48 hours after his production before the Sub divisional Magistrate on 29-1-1963 But all the while P W. 10 was confined to the Hospital and as such be could not have the opportunity of seeing this appellant while he was in police custody. The complicity of this appellant in the crime has thus been established beyond all reasonable doubts.

Here the High Court appears to have clearly gone wrong in law. The legal position as to the object, value and use of first information report is well settled. The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted It can, however, only be used as a previous statement for the purpose of either corroborating its maker Under Section 157 of the Indian Evidence Act or for contradicting him Under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses. The High Court was, therefore, in error in seeking corroboration of the testimony of P.W. 10 from the F.I.R. of which he was not the maker. P.W. 10 is said to have later identified the present appellant in Court, as the person whom he had identified at the second test identification parade on the first day when he went for identifying the accused persons. That was on February 14, 1963. This is what he said in Court:

I 'attended' T.I. parade for two days. I 'attended' the (T.I.) parade twice on the first day and once on the second day. On the first day and at the first time I identified this accused (points to accused who gives out his name as Akal Jadav').He had opened fire at the time of occurrence. I identified at the second time this accused (points to accused who gives out his name as Mohammad Hasib, alias Tabarak). On the second day I identified this accused (points to one accused who gives out his name as Shekh Quddus, alias Knudwa).

It is note worthy that in the trial Court the witness did not identify the appellant as one of the dacoits whom he had seen at the time and place of the occurrence. If that is so then the question arises if the evidence of the test identification parade can from legal basis for the appellant's conviction.

5. As observed by this Court in Vaikuntam Chandrappa v. State of Andhra Pradesh the substantive evidence is the statement of a witness in Court and the purposes of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in Court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceedings. If there is no substantive evidence about the appellant having been one of the dacoits when P W. 10 saw them on January 28, 1963 then the T.I. parade as against him cannot be of any assistance to the prosecution.

6. But otherwise too the identification proceedings in the present case do not inspire confidence. It appears that several test identification parades were held for identifying the accused persons. So far as the present appellant is concerned P.W. 10 appears to have identified him on February 14, 1963 though the appellant had been arrested as early as January 29, 1963 at about 4.15 a.m. Now, identification parades are ordinarily held at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the persons who are alleged to have been concerned in the offence. Such tests or parades belong to the investigation stage and they serve to provide the investigating authority with material

to assure themselves if the investigation is proceeding on right lines. It is accordingly desirable that such test parades are held at the earliest possible opportunity. Early opportunity to identify also tends to minimize the chances of the memory of the identifying witnesses fading away by reason of long lapse of time. But much more vital factor in determining the value of such identification parades is the effectiveness of the precautions taken by (hose responsible for holding them against the identifying witness having an opportunity of seeing the persons to be identified by them before they are paraded with other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned. In the present case the first identification parade was held on February 6, 1963 when several accused persons were included for identification in the parade. The present appellant was not included in the parade on that day. The identification parade with respect to him was held on February 14, 1963, the reason given for this delay that P.W. 10 was till then in the hospital. According to his own evidence in the trial Court, however, P.W. 10 admits to have been discharged from the hospital on February 9, 1963 In his statement before the committing magistrate (which was read as evidence by the trial Court Under Section 288, Cr.P.C. ) he had stated that he had come out of the hospital 7 or 8 days after his admission. It may be recalled that he was out of the hospital on Februarys, 1963. But even if he was discharged on February 9, 1963 it is wrong to say that the test identification parade could not be held before February 14, 1963 by reason of P.W. 10 being in the hospital till then. But this apart, it is not shown that this witness even though in the hospital for treatment of his injuries to his hand and face was not in a position to be taken from the hospital for identification as soon as the appellant was arrested or at least on February 6, 1963 when identification of a number of accused persons was held. We are also not satisfied about the fairness of the identification proceedings. It may be recalled that the first identification parade was held on February 6, 1963. Ft. however, appears that because the result of this parade was not considered satisfactory by the investigating agency an application was made to the Court of the magistrate stating that the identifying witnesses had got confused and, therefore, a fresh test identification parade should be held. Thereafter several identification parades were held on 14, 21st and 28th February, 1963. This procedure only serves to give rise to grave suspicion about the bona fides of the investigating agency. And then we find from the evidence of Jhari Lal Mahto, Sub Deputy Magistrate (P.W. 13) who had held the T.I. parade on February 14, 1963 that two identification parades were held on that day within half an hour of each other one at 5 p.m. and the other at 5.30 p.m. At both these parades P.W. 10 was present. In the first parade the appellant is stated not to have been included in the suspects to be identified. No reason is shown for his non-inclusion in that parade. It may be recalled that both the parades were held in the sub-jail in which all the accused persons were lodged. The evidence of P W. 13 is also somewhat unsatisfactory and we are far from impressed by his testimony with respect to the precautions taken by him for fair test identification parades. In his cross-examination a suggestion was thrown that there was some kind of interpolation in his report of the first T.I. parade held at 5 p.m. from which it could be suspected that the appellant was present in that parade but was not identified by P.W. 10, Whether or not the appellant was included in the suspects to be identified at 5 p.m. in either case we are unable to attach much value to his identification parade.

7. The High Court has in its judgment accepted the argument raised on behalf of the accused that they were produced in Court on February 13, 1963, and has expressed its opinion that the possibility

of P.W. 8 & P.W.10 seeing the accused persons in Court could not be entirely eliminated. This circumstance, in our view, further weakens the value of the appellant's identification held on February 14, 1963.

8. There is, however, also another aspect which requires to be noticed. Now, if P.W. 10 had recognised the appellant at the time and place of the occurrence as one of the two dacoits hailing from village Banaudha then clearly the identification test of the appellant by this witness can be of little value because the accused was already known to the witness. In that event there is no question of the identification parade dated February 14, 1963 being used as corroborative evidence supporting his identification in Court. As a result of the foregoing discussion we find that there is no legal evidence connecting the appellant with the alleged offence in question and we have, therefore, no hesitation in acquitting him.

9. We accordingly allow the appeal and acquit the appellant.