

Cr. Appeal (SJ) No. 1998 of 2004
With
Cr. Appeal (SJ) No. 2006 of 2004
With
Cr. Appeal (SJ) No. 168 of 2005
With
Cr. Appeal (SJ) No. 427 of 2005

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
[Against the judgment of conviction and order of sentence dated 13.10.2004 (sentence passed on 15.10.2004) passed by Sri Arun Kumar Rai, learned Additional Sessions Judge-I Chaibasa in S.T. No. 20 of 2004 arising out of Muffasil P.S. Case No. 13 of 2003 Corresponding to G. R. Case No. 59 of 2003]

Cr. Appeal (SJ) No. 1998 of 2004

Uday Biruly ... Appellant
-Versus-
The State Jharkhand ... Respondent

**With
Cr. Appeal (SJ) No. 2006 of 2004**

Nara Kudada ... Appellant
-Versus-
The State Jharkhand ... Respondent

**With
Cr. Appeal (SJ) No. 168 of 2005**

Sushil Biruly ... Appellant
-Versus-
The State Jharkhand ... Respondent

**With
Cr. Appeal (SJ) No. 427 of 2005**

Sunil Sardar ... Appellant
-Versus-
The State Jharkhand ... Respondent

CORAM: HON'BLE MR. JUSTICE AMBUJ NATH

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For the Appellant(s): M/s. Sanjeev Thakur Advocate

For the State : M/s. Tarun Kumar A.P.P.

: M/s. Vandana Bharti Spl.P.P.

: M/s. Shailesh Kumar Sinha A.P.P.

13/Dated 22.04.2024

1. Heard Mr. Sanjeev Thakur learned counsel appearing for the appellant(s) and Mr. Tarun Kumar learned A.P.P. Ms. Vandana Bharti learned Spl.P.P. and Mr. Shailesh Kumar Sinha learned A.P.P. respectively.

2. The aforesaid appeals arise out of the same impugned judgment of conviction and order of sentence. Accordingly, all these appeals are being disposed of by a common judgment. The appellants have filed these appeals against the judgment of conviction and order of sentence dated 13.10.2004 (sentence passed on 15.10.2004) passed by Sri Arun Kumar Rai, learned Additional Sessions Judge-I Chaibasa in S.T. No. 20 of 2004 arising out of Muffasil P.S. Case No. 13 of 2003 Corresponding to G. R. Case No. 59 of 2003 holding the appellants guilty of offences under Sections 395/412 of the Indian Penal Code and thereby sentencing them to undergo rigorous imprisonment for five years each for the offence under Sections 395 of the Indian Penal Code. No separate sentence was passed for the offence under section 412 of the Indian Penal Code.

3. The prosecution case was instituted on the basis of fardbeyan of the informant Manoj Kumar Agrawal alleging therein that on 18.02.2003 at about 04:00 P.M., he was returning from Seraikella on his Maruti Van bearing registration no. BR-18-A-2358 with his driver Paras Kishore Prasad and younger brother Sanjay Kumar Agarwal. When they reached near Bada Bridge at roro river, they were waylaid by four to five persons. The accused persons on pistol point looted Rs. 22000/- from the informant. The informant had claimed to identify the accused persons.

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4. After investigation police found the occurrence to be true and submitted charge-sheet under sections 395/412 of the Indian Penal Code. The cognizance of the case was taken by the learned C.J.M, Chaibasa under the aforesaid sections.

5. Charge was framed against the appellants under Sections 395/412 of the Indian Penal Code. The contents of the charge were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution has adduced both oral and documentary evidence. On the basis of the evidence, available on the record learned trial court held the appellants guilty and sentenced them accordingly.

7. From the perusal of the oral testimony of the prosecution witnesses, it appears that Manoj Kumar Agarwal P.W.1 is the informant of this case. He has supported the case as made out in his fardbeyan. He has stated that on 18.02.2003, while he was returning to Seraikella with his driver Paras Kishore Prasad and his younger brother, they were waylaid by the dacoits who looted Rs. 22000/- from them and they also looted Titan watch from his brother. He has not identified the appellants in the dock.

Sanjay Kumar Agrawal P.W.2 is younger brother of the informant. He was one of the persons travelling on the vehicle when the occurrence took place. He has stated that on 18.02.2003, he alongwith his brother Manoj Kumar Agarwal were returning in their Maruti Van alongwith driver Paras Kishore Prasad. When they reached near the bridge at Roro river, 3 persons intercepted them and on revolver point they took away cash from his brother and wrist watch from his possession. He has also stated that he had identified the appellants during the test identification parade but he cannot identify them in the dock due to passage of time.

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The driver of the vehicle Paras Kishore Prasad has not been examined as witness. It is further the case of prosecution that some of the looted articles were recovered from the possession of the appellants.

Dhan Singh Biruly P.W.3 has stated that some money and coins were recovered from the house of appellant Nara Kudada. seizure list was prepared and he has signed the seizure list. He has proved his signature on the seizure list which is Ext.- 2.

Mahendra Banra P.W.4, Birbal Banra P.W.5 and Suresh Biruly P.W.6 and Ram Krishna Biruly P.W.7 have been declared hostile.

Dr. B. K. Singh P.W.8 has examined the driver Paras Kishore Prasad who has sustained injury during the occurrence. He has proved the injury report which is Ext.-.3.

Rajiv Ranjan Prasad P.W.9 is one of the investigating officers of this case. He has got the test identification parade of the appellants conducted. He has further proved the test identification chart which is Ext.- 4.

Shankar Maharaj P.W.12 is the Judicial Magistrate who got the test identification parade of the appellants conducted. He has identified the test identification chart which was marked as Ext.-4 earlier.

Tara Nand Singh P.W.10 is officer-in-charge of Muffasil police station. He has proved the fardbeyan which is Ext.-5 and formal FIR which is Ext.- 6. He has stated that on the basis of confidential information, he apprehended Prakash Alda. Thereafter, appellant Nara Kudada was apprehended and from his possession Rs. 1860/- and some change were recovered. He has proved the seizure list which has been marked as Ext.- 7. The seized cash and change were also produced in the court which was marked as material Ext.-1

A.B.E. Khalkho P.W.11 had got the test identification parade of the recovered articles conducted. The seized money and change were put on test identification parade and it was identified. He has proved the test

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identification chart which is Ext.- 8.

From the perusal of the seizure list Ext.- 7. it appears that Rs.1860/- were recovered from the house of co-accused Nara Kudada. However, the seizure list bears the signature of accused Sunil Sardar and Prakash Alda.

From the perusal of the test identification chart, it appears that accused Sunil Sardar and Prakash Alda were put on test identification parade and they were identified by the informant Manoj Kumar Agrawal and Sanjay Kumar Agarwal. It appears that the appellant Uday Biruly, Nara Kudada and Sushil Biruly were not put on test identification parade. It appears that only Sunil Sardar [In Cr. Appeal (SJ) No. 427 of 2005] was put on test identification parade. While the other three appellants were not put on test identification Parade.

Sunil Sardar was identified in test identification parade but none of the appellants including him were identified by the witnesses in the dock. As far as the appellant Uday Biruly is concerned. He was neither identified in the test identification parade nor in the court, nothing is said to have been recovered from his possession. As far as the appellant Sunil Sardar is concerned, he is said to have been identified in the test identification parade but he was not identified in the dock. As far as the appellant Sushil Biruly is concerned, he was neither identified in the test identification parade nor in the dock. As far as the appellant Nara Kudada is concerned, he was neither identified in test identification parade nor in the dock but rupees 1860/- is said to have been recovered from his possession.

8. Statements of the appellants were recorded under Section 313 Cr.P.C. Defence is general denial of the occurrence and false implication.

9. Mr. Sanjeev Thakur, learned lawyer appearing on behalf of

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appellants submitted that as far as the appellant Sunil Sardar is concerned. He has been identified only in the test identification parade but he has not been identified in the court.

Reliance has also been placed upon the decision of Hon'ble Supreme Court passed in Vijayan Vs. State of Kerala (1999) 3 SCC 54 wherein it was held:

“That witnesses identifying the accused in test identification parade but failed to identify in the court then test identification loses its importance”

The test identification parade is not the substantive piece of evidence **in Malkhansingh & Ors. Vs State of Madhya Pradesh as reported in (2003) 5 SCC 746**. It was held by the Hon'ble Supreme Court that test identification parade is not a substantive piece of evidence. Yet, it may be used for the purpose of corroboration.

10. The evidence of test identification parade is admissible under section 9 of the Indian Evidence Act. However, this evidence is corroborative in nature. Identification in T.I. Parade is a guiding factor for the police during the stage of investigation, so as to ascertain whether the investigation is on the right track or not. Identification of the accused in the dock by the witnesses is a substantive piece of evidence.

11. As discussed above, the prosecution has tried to prove that rupees 1860/- and some change was recovered from the possession of the appellant Nara Kudada, this money was put on test identification parade and was identified by both the informant Manoj Kumar Agarwal. P.W.1 and Sanjay Kumar Agarwal P.W.2 has stated that there was no mark of identification on the notes which were looted as such the identification of the money and the change in test identification parade becomes very irrelevant.

12. In view of the aforesaid facts; I am of the opinion that the prosecution has not been able to prove its case against the appellants for

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the offence under sections 395/412 of the Indian Penal Code and the learned trial Court had wrongly held the appellants guilty under the aforesaid sections.

13. These appeals are allowed. The judgment of conviction and order of sentence passed by the learned Trial Court holding the appellants guilty for the offence under sections 395/412 is set aside.

14. Pending I.A. if any also stands disposed of.

(Ambuj Nath J.)