

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.591 of 2002

[Against the Judgment of conviction dated 12.09.2002 and order of sentence dated 13.09.2002, passed by learned Sessions Judge, Dumka, in Sessions Case No.91 of 1998 (arising out of Jama P.S. Case No.108 of 1997 & G.R. No.824 of 1997)].

Parmanand Pal, S/o Kalu Pal, R/o Village- Gaibathan, P.S. Jama, Sub Division
& District- Dumka. Appellant

Versus

The State of Jharkhand. Respondent

P R E S E N T

SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

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For the Appellant : Mr. Lalit Yadav, Advocate

For the State : Mr. Rajesh Kumar, APP

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Dated 18.11.2024.

JUDGMENT

By Court:- Heard learned counsel for the appellant and learned counsel for the State.

1. The instant Criminal appeal is directed against the judgment of conviction dated 12.09.2002 and order of sentence dated 13.09.2002, passed by learned Sessions Judge, Dumka, in Sessions Case No.91 of 1998 (arising out of Jama P.S. Case No.108 of 1997 & G.R. No.824 of 1997)] whereby and whereunder the appellant has been convicted under Section 396 IPC and sentenced him to undergo imprisonment for life.
2. The FIR has been lodged against 10-12 unknown person(s) and the same was based on the fardbeyan of the informant (Rameshwar Hembram) who died after recording of his fardbeyan. It is alleged that on 29.09.1997 at about 3:00 am, 10-12 dacoits/miscreants armed with dagger and bamboo entered into the house of the informant and assaulted the informant and his wife and looted the household utensils, cloths and other things from the house of the informant worth of Rs.12,000/-. The informant alleged that he could not identify any dacoits, but his son (P.W.3- Sukhlal Hembrom), aged about 12 years told him that he identified one of the dacoits who belonged to Village Gaibathan and he used to visit his village for selling earthen pots.
3. On the basis of the fardbeyan of the informant, the Police instituted First Information Report being Jama P.S. Case No.108 of 1997 under Sections 395 /397 IPC against the unknown. Further, Section 396 of IPC was added.
4. After investigation, the Police submitted charge-sheet and cognizance was taken and the appellant/accused was put on trial for the offence under Section 396 IPC.

5. In order to prove the case, altogether eight witnesses have been examined by the prosecution and relevant documents have been adduced into evidence and marked as Exhibits.
6. Learned APP for the State has defended the impugned judgment of conviction and sentence.
7. Heard learned counsel for both the sides and perused the entire materials on record. The sole and important issue which arises in this appeal is what would be the consequence of Test Identification Parade [TIP] if the identity of the appellant has been disclosed during investigation prior to TIP by the Police authority.
8. In this case, the informant is already dead, as such, there is no question of identifying the appellant by him. The wife who was present in the house at the time of the occurrence was also not been examined before the Court. The only witness on the point of identification of the appellant is P.W.3 [who is son of the deceased] and was present in the house. In Paras 11 & 12 of his evidence, he stated that the Police took him to the Police Station and got the appellant identified by this witness. He further stated that thereafter he was taken to the Jail and he participated in the TIP and identified the appellant also. He also identified the appellant in the Court.
9. From the aforesaid evidence, it is quite clear that the appellant was identified by P.W.3 prior to the TIP.
10. Hon'ble the Supreme Court in the case of *Gireesan Nair and Ors. vs. State of Kerala* reported in (2023) 1 SCC 180 has dealt with the aforesaid issue at Paras 44 & 45 [after referring two of the judgment of Hon'ble the Supreme Court i.e. **Budhsen vs. State of U.P.**, reported in 1970 (2) SCC s128 and **Sk. Umar Ahmed Shaikh vs. State of Maharashtra** reported in 1998 (5) SCC 103] which reads as follows :-

"44. This Court in *Budhsen v. State of U.P.*²², had directed that sufficient precautions have to be taken to ensure that the witnesses who are to participate in the TIP do not have an opportunity to see the accused before the TIP is conducted. In *Lal Singh v. State of U.P.*⁶, this Court had held that a trial would be adversely affected when the witnesses have had ample opportunity to see the accused before the identification parade is held. It was held that the prosecution should take precautions and establish before the court that right from the day of his arrest, the accused was kept "baparda" to rule out the possibility of his face being seen while in police custody. Later, in *Lalli v. State of Rajasthan*⁸ and *Maya Kaur Baldevsingh Sardar v. State of Maharashtra*²³, this Court has categorically held that where the accused has been shown to the witness or even his photograph has been shown

by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential.

45. Another crucial decision was rendered by this Court in *Sk. Umar Ahmed Shaikh v. State of Maharashtra*⁷, where it was held : (SCC p. 107, para 8)

"8. ... But, the question arises : what value could be attached to the evidence of identity of accused by the witnesses in the Court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. *Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless.* The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW 2 and PW 11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eyewitnesses and had caused failure of justice. Since conviction of the appellants have been recorded by the Designated Court on wholly unreliable evidence, the same deserves to be set aside." (emphasis supplied)

- 11.** After consideration of the aforesaid judgment of law, Hon'ble the Supreme Court has held in the aforesaid case at Paras 48 & 49 which reads as follows:-

"48. *Having considered the evidence of crucial eyewitnesses and the material indicating the conduct of the TIP, we are of the opinion that the witnesses had the opportunity of seeing the accused before the conduct of the TIP. Not only have the witnesses deposed that they had seen the suspects before the TIP, even Accused 2, at the end of the 1st TIP, had raised a grievance that the suspects were all photographed, videographed and were shown to the witnesses from the cabin of the IO (PW 84). At the end of the 2nd TIP, he had also stated that when Accused 1-19 were taken to court for the purpose of remand, and the presence of all the witnesses was arranged in the court by the police. In fact, all the accused collectively stated that they were wearing the very same dress, straight from their arrest, till the date of the TIP to indicate that the TIP did not serve its purpose. We find no reason to disbelieve the truthfulness of the statement of the accused because they had raised this contention right from the beginning and have maintained it all along.*

49. *In view of the above, we are of the opinion that there existed no useful purpose behind conducting the TIP. The TIP was a mere formality, and no value could be attached to it. As the only evidence for convicting the appellants is the evidence of the eyewitnesses in the TIP, and when the TIP is vitiated, the conviction cannot be upheld. We will now examine the other lapses while conducting the TIPs."*

- 12.** As such, Hon'ble the Supreme Court held that TIP was vitiated and the conviction cannot be upheld. Hon'ble the Supreme Court in the case of *Uday Kumar vs. State of Tamil Nadu* reported in **2023 SCC OnLine SC 283** has reiterated its view that when there is cloud over TIP it cannot be relied upon.

13. Thus, the issue has been settled. Before the test identification parade, if the accused was produced and shown to the person who was identifying the accused, the test identification parade loses its force and gets vitiated. Identification in the Court thereafter is also of no consequence.
14. In this case solely on the basis of identification of the appellant by PW 3, the appellant has been convicted. There is no other witness(es) who identified the accused as one of the miscreants.
15. It be noted that the wife of the deceased who could have been a witness on the point of identification was also not produced by the prosecution. For the reasons stated above, we find that the conviction of the appellant cannot be upheld on the basis of identification of PW 3 only.
16. As such, the impugned judgment of conviction and order of sentence is set aside. Since the appellant is in bail, as such, the sureties are discharged from the liability of their bail bonds.
17. Accordingly, the Cr. Appeal (DB) stands allowed.
18. Pending I.A., if any, stands disposed of.
19. Let T.C.R. along with a copy of this judgment be sent to the court concerned at once.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated 18.11.2024.
sandeep/pawan