

**Dablu Singh and Another Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Mar-11-2014

**Judge :** Dharnidhar Jha

**Appeal No. :** Criminal Appeal (SJ) No. 261 of 2002

**Appellant :** Dablu Singh and Another

**Respondent :** State of Bihar

**Judgement :**

1. The present criminal appeal challenges the judgment of conviction and order of sentence dated 16.05.2002 and 21.05.2002 respectively passed by the learned Presiding Officer, Fast Track Court, Munger in Sessions Trial No.237 of 1997 by which the two appellants were convicted of offence under Section 395 IPC and each of them was directed to suffer rigorous imprisonment for seven years as also to pay a fine of Rs.2,000/- else to suffer rigorous imprisonment for a further period of six months.

2. There is no dispute in the fact that dacoity was committed in the house of Arun Kumar Sharma (P.W.1) in the night intervening the 1st and 2nd of November, 1996 at about 2 A.M. There were about 6-7 dacoits who had entered inside the house being armed variously including guns and after getting the doors of the house opened plundered the house. During course of dacoity, the mother of P.W.1 was also assaulted and she was forced to hand over the ornaments which were

stored in an Almirah, as per the description given in the very fardbeyan of the case. The other properties and ornaments were also plundered by the dacoits from different family members as appears from the same document.

3. The case was instituted and investigation proceeded during which course some persons were suspected to have participated in commission of the offence which included Ram Rekha Singh and Wakil Singh, both acquitted, and these two appellants Dablu Singh and Rajendra Prasad Singh who were put on test identification parade in which the informant and three lady inmates of the house participated. The test identification parade was conducted by Sri Vijoy Kumar Mandal, Judicial Magistrate, 1st Class, Munger(P.W.9) and it appears that both the appellants were identified by P.W.1 Arun Kumar Sharma, the informant, and P.W.5 Smt. Sudha Devi, the mother of P.W.1 Arun Kumar Sharma. While identifying the two appellants the witnesses made specific statement as to in what connection they had identified the two appellants and accordingly, the two appellants were convicted.

4. As appears from the evidence of P.W.1 Arun Kumar Sharma, P.W.3 Vijoy Prasad Sharma, P.W.4 Anirudh Sharma, P.W.5 Smt. Sudha Devi, P.W.6 Ranjeet Kumar Sharma and P.W.8 Sulochana Sharma the dacoits had entered inside the house in the night of occurrence and had plundered the house and had taken away the properties. Some of the properties were also recovered from the accused persons but the learned trial Judge acquitted the accused persons of the charge under Section 412 of the IPC in lack of satisfactory evidence. The learned trial Judge also acquitted two accused, namely, Ram Rekha Singh and Wakil Singh on the ground that the age of the two appellants which was stated by the witnesses and which appeared initially in the fardbeyan was 60-70 years, whereas, as per prosecution case the dacoits were aged in between 25 to 30 years and as such their identification may not be correct. Besides, they did not also have two identifications against them. As regards the present appellants, as appears from the evidence of P.Ws.1 and 5 as also of P.W.7 Sri Vijoy Kumar Mandal, Judicial Magistrate, who was supervising the test identification parade, not only two appellants were identified by them but P.W.7 also stated as to in what connection P.Ws. 1 and 5 had identified the two appellants.

5. As per Rule 236 (a) of the Bihar Police Manual, 1978 which relates to identification of suspects, the identification has to be done as per the rule as also as per direction contained in Form No.42, the recognized form for recording the proceedings of test identification parade. A mere look to Ext-2, the test identification parade, especially its Column-7, may point out that it has never to be a mere formality of pointing out a particular person as one of the dacoits who had been identified during the course of dacoity, but the witnesses who had identified such suspects has to state as to in what connection the suspects had been seen and identified during the course of commission of dacoity. The very column contains the illustrations as to how the identification has to be made and indicates that if a dacoit had been seen moving at the time of commission of dacoity or had been seen indulging into a particular act of dacoity, then that act has to be specified by the witnesses. On perusal of Ext-2 and the evidence of P.W.7, the Judicial Magistrate, what appears is that both P.Ws.1 and 5 duly pointed out that P.W.1 Arun Kumar Sharma identified the appellant Dablu Singh while he was standing at the door with the gun while P.W.5 Sudha Devi identified him as a person who had forced the daughter-in-law of P.W.5 to part with the ornaments and by handing over the same to him. Likewise, P.W.1 Arun Kumar Sharma identified appellant Rajendra Prasad Singh in connection with the act of snapping the cable connection attached to the television while P.W.5 stated that she had seen appellant Rajendra Prasad Singh moving with the attach which was containing Rs.50,000/- in cash. Thus, what this court finds is that the identification was not mere formal evidence rather it was indeed an evidence as per rules of the Police Manual which were fully admissible and acceptable.

6. It appears from the record that a plea was taken by the appellants that they had already been shown to the identifying witnesses and as such they had identified them in the test identification parade. There could be many reasons to reject the contention and one of the important reasons which strikes me is that if they had been shown at the police station to the witnesses by the police, then P.Ws1 and 5 could not have been so specific in pointing out to P.W.7, the Judicial Magistrate as to in what connection the witnesses had identified the two appellants. On this score alone, the defence of the appellants is fit to be dismissed.

7. After having considered the evidence of the prosecution, I find that the learned trial Judge did not commit any error in appreciating the evidence and reaching the conclusion to convict the appellants. The judgment and order of sentence appears meritorious as a result of which the appeal stands dismissed. Let the two appellants surrender to their bail bonds to serve out the sentence. In case, they do not surrender, the trial Court shall ensure that both appellants are arrested and committed to custody to serve out their sentence.

8. Smt. Uma Kumari has assisted the Court as Amicus Curiae and the Court desires that she be paid one hearing fee by the High Court Legal Services Committee and for that purpose let a copy of the first and last pages of this judgment be made over to Smt. Uma Kumari, an Advocate of this Court appearing in this matter as Amicus Curiae.

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