

Jitendra Turha and Another Vs. the State of Bihar

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Court : Patna

Decided On : Oct-19-2011

Judge : Gopal Prasad

Appeal No. : CRIMINAL APPEAL (SJ) NO. 114 OF 1999

Appellant : Jitendra Turha and Another

Respondent : The State of Bihar

Judgement :

Gopal Prasad, J.

1. Heard learned counsel for the appellants and the State.
2. The appellants have been convicted under Section 394 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years, however, did not give any separate sentence for offence under Sections 395 and 397 of the Penal Code.
3. The prosecution case, as alleged by the informant, Indradeo Singh, that he is a dealer of onion and use to purchase and sale onion and has sold away forty two quintals of onion for consideration of Rs.74,000/- and proceeded on bus from Siwan to Chapra and when the bus reached at Chap railway crossing, 3-4 persons caught hold and assaulted him and snatched away Rs.64,000/- which was kept tied in his waist. The informant claimed to have identified the accused person.

4. On the basis of complaint he first information report lodged. During the investigation some of the suspects were arrested, who gave confessional statement before the police and even test identification parade conducted. After the completion of the investigation the charge sheet submitted. The cognizance taken and the case was committed to the Court of sessions.

5. Trial proceeded after framing of the charge for offence under Sections 395 and 397 of the Penal Code. However, during the trial two witnesses were examined. P.W. 1 is the informant and P.W. 2 is the Judicial Magistrate, who conducted the test identification parade.

6. The informant, P.W. 1, in his evidence stated that he was going after selling onion from Siwan by bus and some persons assaulted him and snatched his money. Further, he stated that he did not identify any person. He has, further, stated in his evidence that the accused persons in dock were not the persons at the time of occurrence. This witness, P.W. 1, has been declared hostile by the prosecution and was cross examined. He though has proved fardbeyan and also admitted that he participated in test identification parade, however, stated that he identified the appellants in test identification parade who are in dock. The Court, however, noted the demeanour that the witness appears to be frightened. However, in cross examination he has stated that none has threatened him and he has gave the evidence independently though he has stated that he identified the accused persons by face and the accused persons were not in dock, which were at the time of occurrence. He has, further, stated in his evidence that daroga took him to hajat and told him to identify the person who were in hajat. This witness, however, stated that the accused persons were not those persons who were in hajat, but, he subsequently stated that they were closed in hajat. He has, further, stated that daroga told to identify them properly because he has to identify them in test identification parade. He has, further, stated that he identified the accused persons at the instance of daroga.

7. P.W. 2 is the Magistrate, who conducted the test identification parade and has stated that he conducted the test identification parade of the suspects in accordance with law and has proved the test identification chart and has, further,

stated that the witness identified Jitendra Turha and Sunil Turha in test identification parade and there is mention in test identification chart about the conduct of the accused.

8. The trial Court, on the basis of test identification chart and the evidence of the witness convicted the appellants in view of decision reported in **1996 Cr.L.J., 3585 (S.C.) (Ram Nath Mahto Vrs. State of Bihar)**. This was a case of dacoity with murder and the witness recognized the accused as dacoits in test identification parade conducted by the Magistrate. However, the witness denied to recognize before trial Court, however, the trial Court take into consideration the fact that when the accused stared at the witness, the witness trembled and the conviction is on the basis of test identification parade as well as test identification chart on the demeanour of witness in Court about the trembling of the witness at the stare of the accused, the conviction was recorded. However in the case reported in **1996 Cr.L.J., 3585 (S.C.) (Supra)** there is specific observation of the trial Court about the demeanour that he witness was trembling at the stare of the accused and taking into consideration his fact as well as the identification of the accused in test identification parade conducted as evidence to prove the identification.

9. However, here under the facts and circumstances of the case there is no specific demeanour recorded. More over, the witness has stated that the person who looked him were not present at the time of occurrence. He has, further, stated that the person to whom he identified were shown by daroga in the hajat. Hence, the identification at test identification parade becomes doubtful, hence, the appellants are entitled to benefit of doubt. More over, it is well settled that test identification parade chart and identification of accused in test identification parade is only corroborative and not substantive evidence. Hence, under the facts and circumstances ratio of decision reported in **1996 Cr.L.J., 3585 (S.C.) (Supra)** is not applicable.

10. Hence, having regard to the facts and circumstances, since the informant, has not identified the appellants and have specifically stated that the persons in dock were not present at the time of occurrence and, further, before the test identification parade he was identified the accused by the appellants and, hence,

identification and the test identification parade lost its significance. 11. Hence, under the facts and circumstances, I find and hold that the prosecution has not been able to prove its charge beyond reasonable doubts, so the order of conviction and sentence, recorded by the lower Court, is **set aside** the appeal is **allowed**.

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