

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No. 914 of 2005

Chaneshwar Paswan Appellant
Versus
The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Ms. Alaka Kumari, Advocate
: Mrs. Ayush Kumar Verma, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.

Oral Judgment in Court
13/Dated:28th June, 2024

This Criminal Appeal has been filed on behalf of the appellant by challenging the judgment of conviction dated 31.05.2005 and sentence dated 31.05.2005 passed in S.T. No.240 of 2002, corresponding to G.R. No.1271 of 2001 by Sri Gautam Mahapatra, learned 7th Additional Sessions Judge, Palamau at Daltonganj by which the appellant has been convicted for the offence under Section 395 of the I.P.C and sentenced him to undergo R.I for seven (07) years and fine of Rs.5,000/- and in default of fine he is further sentenced to undergo imprisonment for one year.

2. An F.I.R was instituted by Chando Devi that on 05.10.2001 at about 11.00 p.m. while all the family members were sleeping in the house then she woke up hearing the sound of dog barking and saw 7 to 8 persons were standing at the Angan and all of them over powered her and her husband at the point of Pistol and demanded cash and ornaments. Thereafter the miscreants entered into the room and looted away valuable articles including Wrist Watch, Ornaments after breaking the lock of the boxes and also looted away

cash of Rs.100/-. The Dacoits were in the age group of 20-30 years and some of them had covered their face and some of them were armed with Pistol. The informant claimed to have identified two persons from the miscreants and one of the miscreants was Arbind Paswan, who was holding a Pistol and the other person was dacoit Jagan Bishwakarma and she claimed to have identified both the Dacoits in the Moonlight.

3. On the basis of fardbeyan of the informant-Chando Devi, the police instituted Chhatarpur P.S. Case No.83 of 2001 for the offence under Section 395 of the IPC against said Arbind Paswan, Jagan Bishwakarma and five unknown.

4. The police, after investigation, had submitted charge sheet on 10.01.2002 only against Jagan Bishwakarma and Chaneswar Paswan @ Yogendra Paswan (i.e. the appellant) under Section 395/397 of the I.P.C.

5. Learned counsel for the appellant submitted that the appellant is innocent and has committed no offence. It is submitted that it was the first offence of the appellant and he was in custody since 20.10.2001 till 27.06.2007 (i.e. around five years and eight months) and as such lenient view may be taken for the appellant.

6. On the other hand, learned APP for the State has raised no objection.

7. It transpires that after lodging of the FIR by the informant-Chando Devi on 06.10.2001 against the five miscreants, the police submitted charge sheet on 10.01.2002 against Jagan Bishwakarma and Chaneshwar Paswan @ Yogendra Paswan (i.e. the appellant) for the offence under Sections 395/397 of the I.P.C. Thereafter the learned C.J.M, Daltonganj had taken cognizance under Section 395/397 of

the I.P.C.

8. It transpires that after supplying of the police papers to the accused persons including the appellant, the charges were framed on 12.03.2003 under Section 395 and 397 of the IPC against the appellant-Chaneshwar Paswan @ Jogender Paswan and one Jagan Bishwakarma by Sri R.R. Tripathi, learned Additional Sessions Judge, FTC-III, Palamau at Daltonganj and to which they pleaded not guilty and claimed to be tried.

9. During trial, the prosecution had got examined seven (07) witnesses in support of its case, who are as follows:-

- (i) P.W-1 is Chando Devi i.e. the Informant,
- (ii) P.W-2 is Brahmdeo Yadav,
- (iii) P.W-3 is Rookmani Devi,
- (iv) P.W-4 is Pradeep Kumar Chourasia,
- (v) P.W-5 is Keswar Bishwakarma,
- (vi) P.W-6 is Lakhan Mistry and
- (vii) P.W-7 is Sheela Devi.

10. The prosecution in support of its case had got marked the following documents as Exhibits, which are as follows:-

- (i) Exhibit-1 is the TIP Chart,
- (ii) Exhibit-1/1 is the Signature of Chandrashekhar Prasad Sharma

11. Thereafter the appellant-Chaneshwar Paswan and Jagan Bishwakarma were examined under section 313 Cr.P.C on 16.02.2005 and to which he denied the circumstances put forth before him.

12. The defence in support of its case had got examined three witnesses, who are as follows:

- (i) D.W-1 is Udeswar Bishwakarma,
- (ii) D.W-2 is Bansi Bishwakarma and
- (iii) D.W-3 is Brij Nath Paswan

13. Thereafter the learned court below, after hearing both

the sides had acquitted the co-accused Jagan Bishwakarma for the offence under Sections 395/397 of the I.P.C by giving benefit of doubt whereas the Court below has convicted the appellant for the offence under Section 395 of the IPC and sentenced him to undergo RI for seven (07) years and pay fine of Rs.5,000/-, hence this appeal has been filed.

14. It appears from the FIR that the dacoits had committed dacoity not only in the house of Chando Devi but also in the house of one Brahmdeo Yadav and it is alleged that the miscreants had committed loot of around Rs.10,000/- and clothes from the house of Brahmdeo Yadav.

15. Before scrutinizing the evidence of P.W-1, it would be relevant to refer the evidence of other witnesses.

16. P.W.-2 is Brahmdeo Yadav, who has stated during his evidence that he is acquainted with the informant-Chando Devi and stated that the dacoity was committed in the house of Chando Devi and the family member of the informant was assaulted by Lathi. However, he had not identified any Dacoit and not taken the name of this appellant before the learned Court below. He further stated that he was also assaulted by the Dacoits but he did not recognize any Dacoits. He also stated that the accused persons present before the Court below had not committed any dacoity.

Thus, P.W-2 has not supported the prosecution case and has supported the prosecution case merely on the point of committed dacoity but he completely denied for identifying any accused persons including the appellant for committing dacoity in his house. Thus, the evidence of P.W-2 is not reliable.

17. P.W-3 is Rookmani Devi, who had supported the

prosecution case that Dacoits had committed dacoity in her house and they were assaulted by Dacoits and they had looted clothes, jewellery. However, on being shown the accused persons, she clearly stated that she did not identify any accused persons including the appellant for committing dacoity in her house.

Thus, P.W-3 has also not supported the prosecution case and her evidence is not reliable.

18. P.W-4 is Pradeep Kumar Chourasia, who is Judicial Magistrate and had conducted T.I. Parade on 14.12.2001 and stated that the witness Chando Devi (i.e. the Informant) had identified the appellant-Chaneshwar Paswan for pointing Pistol towards her. He has proved the T.I.P Chart marked as Exhibit-1/1. Thus, P.W-4 is a formal witness.

19. P.W-5 is Keswar Bishwakarma who is the neighbour of Brahmdeo Yadav and stated during evidence that on hearing alarm he arrived at the house of Brahmdeo Yadav and heard that dacoity was committed in his house.

However, during cross-examination, he stated that his vision is not clear and he cannot identify any person even in the day and the police have not recorded his statement.

Thus, P.W-5 has also not identified the appellant. Thus, the evidence of P.W-5 is not reliable.

20. P.W-6 is Lakhan Mistry who is the husband of the Informant and he stated that while he along with his wife Chando Devi and daughter in-law-Phula Devi and Sheela Devi were in the house then Dacoits, who were 8-10 persons entered into his house and shown their Pistol and Bandook etc. They had assaulted him and his family members. However, he had not identified any Dacoits. This P.W-6 has

been declared hostile by the prosecution and even on being shown the appellant-Chaneswar Paswan, he had not identified him.

Thus, P.W-6 has not identified the Dacoits during his evidence and hence P.W-6 is not reliable.

21. P.W-7 is Sheela Devi, the daughter in-law of the Informant and has stated that 08-10 person had committed dacoity in her house and had threatened them. However, she claimed to have identified Dacoit Jagan Bishwakarma. She also stated that dacoity was also committed in the house of Brahmdeo Yadav. However, she did not identify the appellant-Chaneswar Paswan for committing dacoity in her house.

During cross-examination, she further stated that she identified co-accused-Jagan on the same day and prior to this she did not identify.

Thus, P.W-7 has not supported the prosecution case against the appellant and her evidence is contradictory to the evidence of P.W-1-Informant and evidence of P.W-2 to P.W-6.

22. So far as the evident of P.W-1-Informant is concerned, she has named two persons in the F.I.R i.e. Arbind Paswan and Jagan Bishwakarma, who committed dacoity in her house. However, during her evidence she stated before the Court below that Dacoits have committed dacoity in her house and she had identified Jagan Bishwakarma and Chaneswar Paswan @ Yogendra Paswan. She tried to emphasise that her husband was assaulted by Jagan Bishwakarma brutally. She claimed that she had identified Jagan Bishwakarma and Chaneswar Paswan before

the learned Judicial Magistrate.

However, during her cross-examination, she admitted that her son-in-law is Udeswar Bishwakarma and Banshi Bishwakarma is the brother of Udeswar Bishwakarma but she is not known to him and she could not say the name of even her Samdhi. She admitted that she had not identified Jagan Bishwakarma before the learned Judicial Magistrate. She further admitted that Dacoits had not assaulted her by the Butt of the Rifle rather assaulted by hands and her husband was treated in the Hospital at Chatarpur. She denied that sister of accused Jagan is her *Gotni* and she denied that they had any dispute with said Jagan Bishwakarma and for falsely implicating Jagan Bishwakarma

During her further cross-examination on behalf of the appellant-Chaneswar Paswan, she denied to have seen any occurrence but admitted that her house is situated at a distance of five mile from her house. She denied for identifying the appellant-Chaneswar Paswan at the instance of Ram Pravesh Singh. She denied that he was identified before the Magistrate at the instance of said Ram Pravesh Singh.

Thus, it is evident that the informant has supported certain facts regarding identification of one co-accused-Jagan Bishwakarma and also for implicating the appellant-Chaneswar Paswan. However, she had named one Jagan Bishwakarma in the F.I.R, who is the own brother of her own sister in-law-Udeswar Bishwakarma-D.W-1.

23. So far as defence witness, D.W-1-Udeswar Bishwakarma is concerned, who stated during his evidence that he, Banshi Bishwakarma and Harihar Bishwakarma are

three brothers and the informant Chando Devi is his mother in-law and her husband is father in-law. He also stated that Jagan Bishwakarma is his own Bahnoi of his brother Banshi Bishwakarma and there is dispute among his brother and the accused-Jagan has taken the side of his brother Banshi Bishwakarma. However, the name of Jagan was given at the instance of his mother in-law. Now the matter is settled between both the sides.

Thus, the evidence of D.W-1-Udeswar Bishwakarma shows that the informant has falsely implicated the co-accused-Jagan Bishwakarma.

24. D.W-2 is Banshi Bishwakarma, who has also stated that Jagan Bishwakarma is his Bahnoi and the Informant Chando Devi is mother in-law of his own brother Udeswar Bishwakarma. There was dispute among the brother with regard to the landed property and now the case has been settled. However, Chando Devi-Informant has falsely implicated Jagan Bishwakarma in the dacoity case.

25. D.W-3 is Brij Nath Bishwakarma, who is a formal witness and has stated that the appellant-Chaneswar Paswan is a social person and he has no dispute with Chando Devi.

Thus, D.W-3 is a formal witness.

26. It is evident that the I.O. of this case has not been examined by the prosecution. It is evident that there is no recovery from the appellant. It is further evident that P.W-2, P.W-3, P.W-4, P.W-5, P.W-6 and P.W-7 namely Brahmdeo Yadav, Rookmani Devi, Pradeep Kumar Chaurasia, Keswar Bishwakarma, Lakhan Mistry and Sheela Devi have not identified the appellant-Chaneswar Paswan. Even P.W-5 and P.W-7 namely Keswar Bishwakarma and Sheela Devi, i.e. the

husband and daughter in-law of the Informant had not identified the appellant for committing dacoity in his house.

27. Thus, the sole testimony i.e. the Informant-Chando Devi not identifying the appellant-Chaneswar Paswan. It is evident that the appellant is not named in the FIR, but he had been identified in the T.I.P at the instance of one Ram Pravesh Singh.

28. It further transpires that although the appellant was arrested on 20.10.2001 but T.I.P was conducted on 14.12.2001 i.e. after delay of around two months and in the meantime, he was also produced before the Trial Court. Therefore, the prior identification of the accused is also not ruled out.

29. It has been held by Hon'ble Supreme Court in the case of *Iqbal and Another versus. State of Uttar Pradesh* reported in *(2015) 6 SCC 623* at paragraph nos.15 and19 are as follows:-

“Para-15:- The evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject-matter of dacoity and the alleged weapons used in the commission of the offence.

Para-19:- The courts below based the verdict of conviction solely on the oral testimony of PW 1 to PW 3 and the identification of the appellants and other non-appealing accused in the test identification parade. As discussed earlier, in the absence of any other evidence like recovery of stolen jewellery or other articles strengthening the prosecution case, conviction cannot be based solely on the identification of the accused in the test identification parade. Serious

doubts arise as regards identification of the accused regarding complicity of the appellants in the commission of dacoity and their identification by the witnesses and the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and in our view, the conviction of the appellants under Section 396 IPC cannot be sustained and is liable to be set aside.

30. It has been held by Hon'ble Supreme Court in the case of ***Md. Sajjad Alias Raju Alias Salim vs. State of West Bengal*** reported in ***AIR 2017 SC 642*** at paragraph nos.15, 17 and 18 are as follows:-

"Para-15:-In the case in hand, apart from the fact that there was delay in holding the Test Identification Parade, one striking feature is that none of the concerned prosecution witnesses had given any identification marks or disclosed special features or attributes of any of those four persons in general and the accused in particular. Further, no incident or crime had actually taken place in the presence of those prosecution witnesses nor any special circumstances had occurred which would invite their attention so as to register the features or special attributes of the concerned accused. Their chance meeting, as alleged, was in the night and was only for some fleeting moments.

Para-17:-Similarly the issue of delay weighed with this court in Musheer Khan v. State of M.P. 5in discarding the evidence regarding test identification as under:"8. Insofar as the identification of A-5 is concerned that has taken place at a very delayed stage, namely, his identification took place on 24-1-2001 and the incident is of 29-11-2000, even though A-5 was arrested on 22-12- 2000. There is no explanation why his identification parade was held on 24- 1-2001 which is after a gap of over a month from the date of arrest and after about 3 months from the date of the incident. No reliance ought to have been placed by the courts below or the High Court on such delayed TI parade for which there is no explanation by the prosecution."

Para-18:-In the instant case none of the witnesses

had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simplicitor cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the prosecution has failed to establish its case against the appellant.”

31. Thus, in view of the above, the judgment of conviction dated 31.05.2005 and sentence dated 31.05.2005 passed in S.T. No.240 of 2002, corresponding to G.R. No.1271 of 2001 by Sri Gautam Mahapatra, learned 7th Additional Sessions Judge, Palamau at Daltonganj are set aside and the appellant-Chaneswar Paswan is acquitted for the offences under Sections 395 of the I.P.C and the appellant-Chaneswar Paswan is discharged from the liability of bail bonds.

32. Thus, the Criminal Appeal (SJ) No.914 of 2005 is allowed and stand disposed of.

(Sanjay Prasad, J.)

Saket/

AFR