

(2011) 12 PAT CK 0103**Patna High Court****Case No:** Criminal Appeal (SJ) No. 279 of 1999

Shrikant Paswan @ Srikant

Dusadh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Dec. 23, 2011**Hon'ble Judges:** Mandhata Singh, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Mandhata Singh, J.

Statement (fardbeyan) of one Dwarika Thakur P.W.3 has been made basis for F.I.R. which in brief is to the effect that he (informant) along with all his family members slept in the house after taking meal, at about 12.00 midnight of intervening night of 25/26.12.1995, 10-12 persons entered his house after scaling the southern boundary wall, broke open the main door of the house, entered in room after breaking open its door also. They were variously armed with weapons. After giving some direction to look towards down, household articles including three boxes with clothes, ornaments and utensils along with snatched ornaments from the female inmates were taken away by dacoits. There is description of committing dacoity in the room of informant's brother also. Further detail of household articles, utensils, clothes and ornaments is not relevant as nothing is recovered to put on T.I. parade. None of dacoits were identified by name but description is given about their age in between 30 to 40 years and about their talking in Hindi with further description of their identification, for some of them it is said that they were covering their face. Alarm was raised after coming of dacoits from the house of informant and their going to the house of his informant's cousin, villagers gathered and dacoits left the place. Claim is made that they (dacoits) were well identified by face in flash of Torch and that has come to a reality when this appellant was identified by the informant P.W.3 along with P.W.1 and 4 Mahesh Pd. Thakur and Harendra Thakur.

2. After concluding the trial, the case is ended in conviction and sentence.
3. In all eight witnesses are examined in the case, three of them are re-examined after joining trial by accused Jhakar Yadav, Munna Singh, Kishun Yadav and Raju Singh who are acquitted of by the trial court. P.W.1 and 6 Mahesh Pd. Thakur, P.W.2 and 7 Anand Bihari Thakur, P.W.3 and 5 Dwarika Thakur informant of the case, P.W.4 Harendra Thakur, P.W.8 Jageshwar Thakur, P.W.9 Smt. Panna Devi, P.W.10 Dhirendra Kumar Mishra I.O. of the case, P.W.11 Suraj Singh, a formal witness to prove execution of T.I. chart.
4. Exhibit 1 is signature of Dwarika Thakur on Fardbeyan, Exhibit 2 is protest petition, Exhibit 3 is case diary and exhibit 4 is T.I. chart dated 30.1.1996.
5. Four witnesses are examined on behalf of defense also and they are D.W.1 Krishnadeo Pandit, D.W.2 Veyas Muni Rai, D.W.3 Moti Nand Singh and D.W.4 Juthan Singh.
6. Exhibit A is an original deed dated 14.7.1986 and Exhibit A/1 is original sale deed no. 4325 but having no concern for this accused appellant rather for the accused who are acquitted of by the trial court.
7. All the witnesses are constant on the point of taking place of dacoity in the night of incident that is further added by P.W.1 Mahesh Pd. Thakur. Accused appellant was arrested in the case and put on T.I. parade conducted by Sri Parhans Rai, Chief Judicial Magistrate, Buxar in Jail. Proper procedure or caution was not taken is not the defense rather it is said that accused appellant was put on T.I. parade near about a month of his arrest that has properly been answered (explained) by the trial Judge. It is not a case that this appellant was known to the witnesses or having any grudge (enmity) for false implication and suggestion of the defense that he was brought before the witnesses is denied otherwise also there appears no mistake committed by the Trial Judge in coming to the conviction of the appellant.
8. As on the point of sentence also though it is submitted that the year elapsed and if his (appellant's) age and responsibility is taken into consideration some liberal view should be given but I find no substance in the submission.
9. This appeal is accordingly, dismissed. Judgment and order of conviction and sentence passed by the trial court in Sessions Trial No. 149/96 is affirmed. As the appellant is on bail his bail bond is cancelled. He is directed to surrender to serve the rest of the sentence. The trial court is directed to take necessary steps for taking him into custody. A copy of the judgment along with lower court records be sent back to the Trial Court forthwith.
10. Let 1st copy and last copy of judgment be handed over to learned Amicus Curiae for needful.