

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1118 of 2022

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| 1. Bholu Singh @ Bhu Kumar Singh @ Bholu Kumar Singh | |
| 2. Kush Singh | |
| 3. Chandan Chaubey @ Chandan Choubey | |
| 4. Monu Choubey | Petitioners |
| Versus | |
| The State of Jharkhand | Opp. Party |

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioners : Mr. Manoj Kr. Choubey, Advocate
For the State : Mrs. Kumari Rashmi, A.P.P.

Order No. 09 Dated : 28.06.2024

Heard, learned counsel for both the parties.

1. This criminal revision petition is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge-II, Palamau in criminal appeal No. 36 of 2019 under Sections 394 of the IPC.
2. The case of the prosecution, is that on 20.08.2016 at about 3:45 A.M, a road robbery was committed, in which, two trucks were looted and, in the process, the driver of one of the Trucks was critically injured by knife.
3. On the basis of the statement of driver Harpal Singh, which was recorded in Sadar hospital in Daltonganj, Rehla P.S. Case No. 44/2016 was registered under Sections 394 of the IPC against four named accused persons.
4. Police during investigation apprehended one of the accused persons, Bholu Singh and on his confessional statement, the other co-accused were apprehended namely Kush Singh, Chandan Chaubey and Monu Choubey. Charge sheet was submitted against all three accused persons under Sections 394 and 411 of the IPC and they were put on trial under these Sections.
5. Altogether eleven witnesses were examined on behalf of the prosecution and relevant documents including the seizure list of the part of the looted articles were adduced into evidence.
6. After the prosecution evidence, the statement of the accused persons was recorded under Section 313 Cr.P.C. Defence is of innocence, but no specific defence has been pleaded.
7. Learned trial Court convicted the accused persons for the offence under Sections 394 of the IPC and the said judgment of conviction has been affirmed in appeal.
8. It is submitted by the learned counsel on behalf of the petitioners that informant of the case, P.W.- 9 has deposed in para 4 of his deposition that the statement was not read over to him and he did not know the author of the said statement.
9. It is argued by the learned counsel that judgment of conviction has been returned on the

basis of the test identification of accused persons. However, the Magistrate who conducted the identification has deposed in para 4 that on 17.11.2016 they were identified by the Investigating Officer.

10. Furthermore, there is delay of three months in conducting the TIP. It is also argued that as per the prosecution case, name of other three accused persons came on the confessional statement of the Bholu Singh. However, during trial Bholu Singh was not identified in the Court.
11. It has been held by Hon'ble Supreme Court in *Hari Nath & Another Vs. State of UP 1988 1 SCC 14* that the identification is vitiated in case of delay in holding the TIP.
12. Learned A.P.P. has defended the judgment of conviction and sentence. It is submitted that there is no shred of doubt regarding the incidence in which the informant was injured and his statement was recorded on the same day. It is argued that accused, Bholu Singh was arrested on the spot at the time of occurrence and all the accused persons were identified both in TIP as well as in Court.
13. It is argued that any irregularity in identification of the accused persons, TIP will not be fatal to the prosecution case as TIP is only corroborative evidence not the substantive evidence. P.W.-8 has deposed in para 7 that he had identified three accused persons in jail and also in the Court.
14. It is also argued that Bholu Singh was arrested on the spot and for that there was no question of putting on TIP, therefore, P.W.-8 has said that he was not identified in jail and deposed that Bholu Singh is present in the Court.
15. Having considered the submissions advanced on behalf of both sides the matter for consideration is whether the Judgment of conviction and sentence is vitiated on account of irregularity in the TIP, when the accused persons have been identified during trial.
16. Law is settled that in the exercise of revisional jurisdiction, the Court is to confine itself to the legality and propriety of the Judgment or order and will not interfere with the impugned order, unless it is perverse.
17. In criminal adjudication mainly two facts need to be proved. First is the actual commission of the offence and secondly the person involved in the offence. In the present case commission of road robbery is established by the consistent account of the witnesses. The case was lodged without any delay on the basis of the statement of the injured victim, and one of the accused viz Bholu Singh was apprehended on spot.
18. With regard to the complicity of the appellant, three of the accused persons have been identified both in TIP, as well in the Court during trial by the victim. The fourth accused was apprehended on spot, therefore he had not been put on TIP. Even if it is assumed that there was irregularity in the TIP, which appears to be in the present case, that will by itself not erode the evidentiary value of the identification in the Court. Appreciation of evidence is to be made considering the totality of evidence against the overall facts

and circumstance of the case. In any case defect in investigation cannot be a ground to cast away the testimony of witnesses, which is otherwise proved. In this regard refer to **Yogesh Singh Vs Mahabeer Singh and ors AIR 2016 SC 5160; AIR 2013 SC 1000 Hema Vs. State through Inspector of Police Madras**. It has been held in **State of Rajasthan Vrs. Kishore [1996 SCC (Cri) 646]**, that the real fact that I.O committed illegality or irregularity during course of investigation would not cast doubt on the prosecution case nor trust worthy or reliable evidence can be cast aside to record acquittal on that count. So unless serious prejudice is caused to the accused because of the latches in investigation, no adverse inference can be drawn.

19. Further, identification in TIP during investigation is part of the investigation and it is not substantive piece of evidence. Any irregularity committed during investigation cannot be said to be the sole ground to discard the prosecution case in its entirety if it is otherwise proved by other cogent and reliable evidence. It has been held in **Matru Vs state of UP 1971(2)SCC75** identifications tests do not constitute substantive piece of evidence. They are primarily an assurance to the investigating agency that their investigation is progressing in the right line. The identifications can only be used as corroborative evidence. In **Ramnath Mahto Vs State of Bihar, 1996(8)SCC 630** When the witness had identified the accused in TIP but out of fear did not identify him in the dock, this was not held to be fatal to the prosecution.
20. It has been deposed by Investigating Officer (PW-10) in Para 2 that accused Bholu Singh was apprehended on spot. Since Bholu Singh was arrested by this witness therefore I.O he becomes direct eye witness. When an accused is apprehended on spot and is named, there is no purpose of putting him on TIP.
21. Having considered the evidence on record, I do not find any illegality in the impugned Judgment of conviction. Considering the nature of offence interference in the Sentences imposed will be unwarranted.

Criminal Revision petition stands dismissed.

(Gautam Kumar Choudhary, J.)