

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.70 of 2014

(Against the judgment/ order dated 15.04.2013/ 22.04.2013,
passed by Additional Sessions Judge-IV, Danapur, Patna in
Sessions Trial No. 435 of 2007, arising out of Danapur P.S.
Case No. 244/06)

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Ashutosh Sharma @ Santosh Sharma @ Shawaz Ahmad @ Shawaz @ Kalu, Son
of Md. Nehal Ahmad, Resident of Village - Bari Khagaul, P.S.- Khagaul, District-
Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 480 of 2013

Arising Out of PS.Case No. -244 Year- 2006 Thana -DANAPUR District- PATNA

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Pawan Paswan, Son of Sudama Paswan, Resident of Saidpura, P.S. Khagaul,
District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 551 of 2013

Arising Out of PS.Case No. -244 Year- 2006 Thana -DANAPUR District- PATNA

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Amit Kumar @ Amit Kumar Sinha @ Amit Singh, son of Bhola Singh, resident of
15/1 Surendra Seth Lane, Police Station Jora Bagan, District Kolkatta-6 (W.B), at
present C/O Bhim Singh, son of Late Ram Dayal Singh, Nandu Tola, P.S. Khagaul,
District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 1055 of 2013

Arising Out of PS.Case No. -244 Year- 2006 Thana -DANAPUR District- PATNA

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Sonu Sao @ Rakesh Roshan, S/O Sri Ram Nath Sao, Resident of Mohalla- New
Panchvatti Nagar, Bhatta Road, Danapur Cant, P.S- Danapur, District- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 70 of 2014)

&

(In CR. APP (DB) No. 1055 of 2013)

For the Appellant : Mr. Manish Kumar No. 13, Advocate
Mr. Rohit Kumar, Advocate
Mrs. Fauzia Shakil, Advocate

(In CR. APP (DB) No. 480 of 2013)

For the Appellant : Mr. Ghanshyam Tiwary, Advocate

(In CR. APP (DB) No. 551 of 2013)

For the Appellant : Mr. Sabal Kumar Jha, Advocate

For the State : Mr. A.K. Sinha, A.P.P.
(In all appeals) Mr. D.K. Sinha, A.P.P.
Mr. A. Sharma, A.P.P.
Mr. Ajay Mishra, A.P.P.

For the informant : Mr. Bindhyachal Singh, Advocate
(In all appeals) Mr. Vipin Kumar Singh, Advocate
Mr. Binay Kumar, representative of informant

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 24 -12-2014

These four appeals arise out of judgment/ order dated 15.04.2013/ 22.04.2013, passed by Additional Sessions Judge-IV, Danapur, Patna in Sessions Trial No. 435 of 2007, whereunder four accused, appellants herein, have been convicted for the offence under Section 396 read with Section 120B of the Penal Code and sentenced to suffer life imprisonment with further direction to pay fine of Rs. 10,000/-, in default of payment of fine, to further suffer rigorous

imprisonment for six months. Appellant Sonu Sao @ Rakesh Raushan has further been convicted for the offence under Section 412 of the Penal Code and directed to suffer rigorous imprisonment for ten years with further direction to pay fine of Rs. 5,000/-, in default of payment of fine of Rs. 5,000/-, to further suffer rigorous imprisonment for three months.

2. Prosecution case, as set out in the fardbeyan of informant Ajay Kumar Sinha (P.W. 12), office staff of Ajay Kumar, proprietor of Hindustan Liver Limited, Danapur, recorded by S.I. Madan Prasad of Danapur Police Station on 02.05.2006 at 16:00 hours in the office of Om Avantika Distributors, Lal Kothi, Danapur Bazar, Patna is that he is presently serving as Accountant of Ajay Kumar, son of Nav Ratan Lal (P.W. 6), Mohalla- Lal Kothi, Danapur and on 02.05.2006 at about 15:20 hours, while he was discharging office work along with other staff, namely, Shashi Bhushan Sharma (not examined), Ajay Kumar (not examined), (torn) Kumar Sinha and Manoj Choudhary (P.W. 13) in the office hall of Om Avantika Distributors, situate in the first floor of the house of Ajay Kumar, son of Nav Ratan Lal (P.W. 6), a miscreant struck on his head with the butt of a country made pistol asking him to hand over the keys of the Godrej almirah. Just then sound of firing shots were heard from the adjoining chamber of the proprietor of the firm Sanjay Kumar @



Sanju, son of Nav Ratan Lal, where Sanjay Kumar was discussing matters with T.S.I. Binod Kumar Sinha (not examined), in the room two miscreants along with Godown Incharge Mohan Jha had earlier entered. No sooner the informant heard the gun shot, his gold chain, weighing 11 gms., was snatched by the miscreant from his neck. The miscreant also entered the chamber of Sanjay Kumar @ Sonu. Informant saw Sanjay Kumar ridden with bullet coming out of his chamber holding one of the miscreants who was dark complexioned and about 5'3" in height. Sanjay Kumar, however, fell down, as he has suffered two bullet wounds, one near nipple and the other in the waist. The dark complexioned miscreant had put on jeans. The miscreants also snatched the wrist watch and golden chain of Sanjay Kumar after he fell down, went away with two bags containing cash, cash-book, account-book and other documents including telephone diary. The informant also furnished in the fardbeyan description of the other miscreants who forcibly brought Mohan Jha (P.W. 8) from ground floor to the first floor. It is further stated in the fardbeyan that the injured proprietor was taken to the clinic of Dr. Hai, situate in Raja Bazar, where he died during treatment. Four miscreants had come to the first floor. One of the miscreants on the point of pistol had confined Godown Keeper Raghubans Thakur in the godown and also snatched his wrist-watch and Rs. 580/- from him. Miscreants also



snatched Rs. 900/- and telephone diary from the informant. The miscreants were aged between 22-30 years, clean shaved but two of them had not shaved for the last 5-6 days. Informant claimed in the fardbeyan that he can identify the miscreants who came upstairs and the other staff, who remained in the ground floor, can identify the miscreant who remained in the ground floor. The informant further claimed in the fardbeyan that the miscreants made good their escape on two Hero Honda Splender Motorcycle and one Scooter and furnished the number of one of the two Hero Honda Motorcycles, BR-1P 1250. Besides the informant, Manoj Kumar Choudhary (P.W. 13) also put his signature over the fardbeyan.

3. S.I. Madan Prasad of Danapur Police Station, having scribed the fardbeyan, forwarded the same to Danapur Police Station on 02.05.2006 at 17:30 hours, on the basis of which Danapur P.S. Case No. 0244/06 dated 02.05.2006 was registered against 6-7 unknown by Sri R.B. Yadav, Inspector-cum-Officer-in-Charge of Danapur Police Station for the offence under Section 396 of the Penal Code on the same day at 17:30 hours with further endorsement that S.I. Madan Prasad is investigating the case. The First Information Report was dispatched from the Police Station on 02.05.2006 but was received in the Court of A.C.J.M., Danapur on 05.05.2006.

4. During investigation of the case Accused No. 1 Amit



Kumar was arrested on 12.05.2006. After his arrest, Amit Kumar recorded his confessional statement on the same day i.e. 12.05.2006 at 15:00 hours (Exhibit-11), which led to recovery of three country-made pistol, six live cartridge of .315 bore, two L.G. Reliance mobile set having SIM No. 9334441756, 9334283829, one black small bag containing 7 coins. Rin Advance was found inscribed over five coins, on the 6th, 7th coin Nestle Acqua Blue Close-up and picture of Goddess Laxmi and Lord Ganesh was found inscribed respectively, four plastic bags, four bills of Om Avantika Distributors, six plain letter-head of Om Avantika Distributors indicating that the firm was dealing with the products of Hindustan Liver Limited, one wedding invitation card sent by Ranjit Kumar, addressed to Sanju Bhaiyaji and family, one old calculator of Citizen Company, one wrist-watch of Libra Company with black dial. Investigating Officer having seized the aforesaid articles from Accused No. 1 further proceeded with the investigation of the case and put Amit Kumar on Test Identification Parade in Danapur Jail on 17.05.2006, who was identified by P.W. 5 Satyendra Singh, P.W. 7 Manoj Kumar as one of the miscreants who actively participated in the occurrence after coming to the office premises in the first floor. The Test Identification Parade of Accused No. 1 was conducted by Judicial Magistrate Chandra Mohan Jha (P.W. 18). The T.I. Chart is marked as Exhibit-12/2. The coins and



other articles recovered from the house of Accused No. 1 Amit Kumar was also put on Test Identification Parade on 06.06.2006 in which the recovered coins and other articles were identified by Sunil Kumar (P.W. 11) and Manoj Kumar Choudhary (P.W. 13), the two employees of the deceased. Test Identification Parade of the articles was conducted on 06.06.2006 by Raj Nandan Wardiar (P.W. 14), Circle Officer, Danapur. The T.I. Chart has been marked as Exhibit-5.

5. Investigating Officer learnt that Accused No. 2 has been arrested by the Officer-in-Charge of Giddhi Police Station on 26.06.2006 in connection with Arms Act case. After receiving the said information, Investigating Officer reached Giddhi Police Station, Hazaribagh and recorded his confessional statement at Giddhi Police Station on 26.06.2006 at 10:00 A.M. (Exhibit-11/2) indicating the circumstances in which he resorted to crime in the town of Khagaul, Patna after he joined his foster father Dr. Nihal Ahmad with whom his mother Kishori Sharma eloped along with his younger brother Anup Sharma from Jehanabad and began to reside at Chhoti Khagaul (Chiktoli) disclosing the incidents in which he was involved except the present one. Later Sri Madan Prasad obtained remand of Accused No. 2 in the present case on 05.07.2006 and having brought him to Danapur Police Station, recorded his further confessional statement on 15.07.2006 at 9:00 A.M., disclosing involvement in the present and

other incidents, which has been brought on record vide Exhibit-11/1. Accused No. 2 was also put on Test Identification Parade in Danapur Jail on 01.08.2006, which was also conducted by Judicial Magistrate, Chandra Mohan Jha (P.W. 18) vide T.I. Chart (Exhibit-12/1). In the Test Identification Parade Accused No. 2 was identified by Nav Ratan Lal (P.W. 6).

6. Accused No. 3 Pawan Paswan was arrested in connection with the present case on 16.11.2006 and released on bail on 12.09.2007. From the records it does not appear that he was ever put on Test Identification Parade so as to enable the prosecution witnesses to identify him as one of the miscreants involved in the case.

7. Accused No. 4 Sonu Sao was arrested in connection with the present case on 18.06.2008 and put on Test Identification Parade on 23.06.2008, which was conducted by Lalta Prasad, Judicial Magistrate, Danapur (P.W. 17). In the Test Identification Parade Accused No. 4 was identified by Manoj Kumar (P.W. 7) and Mohan Jha (P.W. 8), injured, both employees of the deceased. T.I. Chart has been marked as Exhibit-12.

8. In the light of the investigation conducted by Madan Prasad, S.I., charge-sheet dated 09.08.2006, supplementary charge-sheet dated 19.12.2006 was submitted against the four appellants and



one Pappu @ Fighter (not put on trial), Kunal Sharma (acquitted), Vijendra @ Pagala (absconder) and Sunil Paswan (deceased), on the basis of which cognizance was taken under orders dated 27.12.2006 for the offences under Section 396, 120B of the Penal Code with direction to issue Production, Non-Bailable Warrant for appearance of the accused in custody, absconders respectively. After commitment, charges against the appellant Accused No. 1, 2, 3 and 5 (acquitted accused) for the offences under Sections 396, 120B of the Penal Code was framed under order dated 14.11.2008. Charge against Accused No. 4 under Section 396, 120B of the Penal Code was framed under order dated 26.02.2009 which was further amended under order dated 26.08.2011 including charge under Section 412 of the Penal Code. The appellants and the acquitted accused, however, denied the charges and claimed to be tried.

9. In order to bring home the charge against the appellants and others, prosecution examined 18 witnesses.

P.W. 1 Balram Singh and P.W. 2 Sadhu Singh are the witnesses of seizure of gold chain of the deceased, recovered from the house of Accused No. 4 Sonu Sao @ Rakesh Raushan vide seizure-list dated 18.06.2008 (Exhibit-1).

P.W. 3 Rameshwar Ram is the incharge of Malkhana of Danapur Police Station where gold chain, recovered from the house of

Accused No. 4 Sonu Sao, was kept.

P.W. 4 Namita Gupta is the wife of deceased, who identified the gold chain of her husband recovered from the house of Accused No. 4.

P.W. 5 Satyendra Singh is an employee of the deceased. He identified Accused No. 1 in Test Identification Parade conducted in Danapur jail on 17.05.2006 vide T.I. Chart Exhibit-12/2. He also identified Accused Nos. 1, 2 and 4 in Court.

P.W. 6 Nav Ratan Lal is the father of the deceased. He identified Accused No. 2 Sahbaz Mian on 01.08.2006 vide T.I. Chart (Exhibit-12/1). He further identified Accused Nos. 2, 4 in Court.

P.W. 7 Manoj Kumar is also an employee of the deceased, who identified Accused Nos. 1, 4 in the Test Identification Parade conducted on 17.05.2006 and 23.6.2008 vide T.I. Chart dated 17.05.2006 and 23.06.2008 (Exhibits-12/2, 12). He also identified Accused Nos. 1, 4 in Court.

P.W. 8 Mohan Jha is also an employee of the deceased who suffered injury during the occurrence and also identified Accused No. 4 in Test Identification Parade held on 23.06.2008 vide T.I. Chart dated 23.06.2008 (Exhibit-12). He further identified Accused Nos. 1, 2 and 4 in Court.

P.W. 9 Dr. C.B. Kumar conducted autopsy on the dead

body of deceased Sanjay Kumar vide Post Mortem Report (Exhibit-3).

P.W.10 Sidheshwar Prasad, Home Guard Constable, has brought material exhibit from Malkhana of Danapur Police Station to Court.

P.W. 11 Sunil Kumar is an employee of the deceased who identified office articles seized from the house of Accused No. 1 vide T.I. Chart dated 06.06.2006 (Exhibit-5).

P.W. 12 Ajay Kumar Sinha is the informant of the case and Accountant serving in the office of the deceased. He identified Accused Nos. 1, 2 and 4 in Court.

P.W. 13 Manoj Kumar Choudhary is also an employee of the deceased and is an attesting witness on the fardbeyan.

P.W. 14 Raj Nandan Waradiar served as Circle Officer, Danapur and conducted Test Identification Parade of the recovered articles from the house of Accused No. 1 Amit Kumar.

P.W. 15 Chetana Nand Jha, Officer-in-Charge, Ekangarsarai Police Station arrested Accused No. 4 on 18.06.2008, recorded his confessional statement and recovered the gold chain of deceased Sanjay Kumar @ Sanju.

P.W. 16 Madan Prasad is the Investigating Officer of the case.

P.W. 17 Lalta Prasad, Judicial Magistrate, Danapur conducted Test Identification Parade of Accused No. 4 on 23.06.2008 vide T.I. Chart (Exhibit-12).

P.W. 18 Chandra Mohan Jha, Judicial Magistrate, conducted Test Identification Parade of Accused Nos. 1, 2 on 17.05.2006 and 01.08.2006 vide T.I. Chart (Exhibit-12/2 and 12/1).

10. Accused No. 2 also examined four witnesses to support his plea of *alibi*, namely, D.W. 1 Karun Kumar Singh, D.W. 2 Narayan Dixit, D.W. 3 Lila Devi and D.W. 4 Sita Kumari.

11. Learned counsel for Accused No. 1 submitted that Accused No. 1 was arrested in the present case on 12.05.2006 and recorded his disclosure statement on the same day. He was produced before the learned A.C.J.M., Danapur on 13.05.2006 for his judicial remand and remanded to the custody of Sub-Jail, Danapur. Later, Investigating Officer filed petition dated 16.05.2006 before the A.C.J.M., Danapur requesting the learned Magistrate to grant police remand of Accused No. 1 for five days. Aforesaid request was also considered on the same day granting the Investigating Officer police remand of Accused No. 1 for three days. In view of the aforesaid facts, learned counsel for Appellant No. 1 in Cr. Appeal (D.B.) No. 551 of 2013 submitted that in view of order dated 16.05.2006 granting police remand of Accused No. 1 for a period of three days, the Test



Identification Parade conducted by learned Judicial Magistrate (P.W. 18) in Sub-Jail, Danapur on 17.05.2006 in which Accused No. 1 was identified by P.Ws. 5, 7 perhaps was conducted in presence of police officials, as such, no reliance be placed on the Test Identification Parade conducted on 17.05.2006 by P.W. 18 vide Test Identification Chart (Exhibit-12/2). In this connection, he also referred to the evidence of the identifying witnesses, P.W. 5 Paragraph 5 and P.W. 7 Paragraph 7 where the two witnesses stated that the Test Identification Parade was conducted in presence of the police officials but the witness does not remember the name of the police official. In this connection, learned counsel for Accused No. 1 further referred to the evidence of Judicial Magistrate (P.W. 18) Paragraph 5 where the learned Magistrate stated that he had put identification mark on the accused.

12. Learned counsel for Accused No. 1 also challenged the identification of the coin and other office articles recovered from the house of Accused No. 1 on the date of his arrest i.e. 12.05.2006 on the ground that those articles were seized in presence of seizure-list witnesses, namely, M/s Om Pal, Shivji Prasad but both were not produced to support the factum of recovery of those articles from the house of Accused No. 1 during the Test Identification Parade held for identification of those articles. In this connection, he further pointed

out that the coin and other articles recovered from the house of Accused No. 1 was produced for Test Identification Parade on 06.06.2006 in which the articles were identified by P.Ws. 11, 13 who are not the seizure-list witness, as such, could not have deposed about the recovery of those articles from the house of Accused No. 1.

13. Learned counsel for Accused Nos. 2, 4 in Cr. Appeal Nos. 70 of 2014(D.B.), 1055 of 2013 (D.B) submitted that the fardbeyan (Exhibit 4/1) of informant (P.W. 12) on the basis of which F.I.R. of the present case was registered is not the earliest version of the occurrence. According to him Investigating Officer (P.W. 16) in Paragraph 1 has deposed that he received information about the occurrence, made entry in the Station Diary and then proceeded to the place of occurrence to verify the information received earlier but the Station Diary entry having not been brought on record, it is not known about the time, contents of the information received in the Police Station, on the basis of which Investigating Officer (P.W. 16) came to the place of occurrence. In this connection, he further pointed out that if the police arrived at the place of occurrence on receiving information about commission of the offence, which was cognizable, the information so received by the police, which set the law in motion, ought to have been treated as the First Information Report. He further states that it was imperative for the prosecution to bring on record the



information received in the Police Station which brought the police to the place of occurrence. According to him, the fardbeyan statement of the informant is a statement recorded under Section 161 Cr.P.C. and could not have been the basis of the First Information Report. He further pointed out that perusal of the First Information Report would indicate that the fardbeyan of informant (P.W. 12) was forwarded by the Investigating Officer, scribe of the fardbeyan, S.I. Madan Prasad (P.W. 16) to Danapur Police Station on the basis of which the present First Information Report was registered by the Officer-in-Charge, Danapur Police Station, Sri R.B. Yadav, but neither Sri R.B. Yadav nor person familiar with his handwriting over the fardbeyan and the First Information Report has been examined to prove his handwriting over the fardbeyan and the First Information Report. According to learned counsel, First Information Report having not been proved and brought on record in accordance with law, no reliance is required to be placed over the same.

14. Counsel for the aforesaid two appellants further pointed out that though First Information Report appears to have been dispatched to the Court on the date of occurrence itself i.e. 02.05.2006 but the same reached the Court after a delay of three days i.e. on 05.05.2006. The delay in receipt of the First Information Report in the Court is violative of Section 157 Cr.P.C. which requires the Officer-



in-Charge to send the First Information Report forthwith to the Magistrate empowered to take cognizance of the offences for which First Information Report has been registered. In the present case, according to learned counsel, there is delay of three days in between drawal of the First Information Report in Police Station and its receipt in Court. Admittedly, the present First Information Report was drawn on 02.05.2006 but received in Court on 05.05.2006 and prosecution having failed to explain the delay in receipt of the First Information Report in Court, adverse inference is required to be drawn against it. Reference in this connection has been made to the evidence of Investigating Officer (P.W. 16) in paragraphs 29, 30, 31, 32, 33. In this regard, it is also submitted that if the delay in receipt of the First Information Report in Court is not explained, then the entire investigation has to be viewed with suspicion. In this connection, he further referred to the seizure-list prepared by the Investigating Officer (P.W. 16) at the place of occurrence (Exhibit-7), which was drawn on 02.05.2006 at 4:00 P.M. and submitted that perusal of the seizure-list would indicate that the same contain the P.S. Case number of the present case i.e. Danapur P.S. Case No. 244 of 2006 and then submitted that fardbeyan of the instant case (Exhibit-4/1) having been received in Danapur Police Station on 02.05.2006 at 5:30 P.M. on the basis of which present Danapur P.S. Case No. 244 of 2006 was

registered sometimes later, Danapur P.S. Case No. 244/06 could not have been mentioned in the aforesaid seizure-list (Exhibit-7), provided the seizure-list was drawn on 02.05.2006 at 4:00 P.M.

15. Learned counsel for Accused No. 2 further assailed the identification of Accused No. 2 made by Nav Ratan Lal (P.W. 6) in the Test Identification Parade, held on 01.08.2006 on the ground that P.W. 6 is not the eye-witness of the occurrence. In this connection, he referred to his evidence in Paragraph 2 of his Examination-in-Chief, where P.W. 6 stated that he saw Accused No. 2 running away from the place of occurrence. Learned counsel further referred to the evidence of P.W.6 in Paragraphs 14, 22, 24 and 25 where P.W. 6 asserted that he had shown to the police the place from where he saw accused No. 2 running away and that he had informed the police that he also heard the firing sound from his gate and saw the deceased injured inflicted with three gun-shot wound. According to learned counsel P.W. 6 has not made the aforesaid statement to the Investigating Officer (P.W. 16) which was also confirmed by the Investigating Officer in paragraph 51 of his evidence. In view of the evidence of the Investigating Officer (P.W. 16) in Paragraph 51 learned counsel submitted that the evidence of P.W. 6 including the identification made by him in Test Identification Parade on 01.08.2006 and subsequently in Court is fit to be discarded as he



neither stated before the Investigation Officer that he heard gun shot being fired from his gate and then saw Accused No. 2 running away from the place of occurrence nor had shown him the place from where he heard the gun shot and seen Accused No. 2 running away from the place of occurrence. In this connection learned counsel also pointed out that Accused No. 2 was arrested at Hazaribagh on 26.06.2006 in connection with Giddhi P.S. Case No. 44/06 and remanded in the present case on 05.07.2006 but put on Test Identification Parade on 01.08.2006 and the delay of more than one month in holding the Test Identification Parade from the date of his arrest has not been explained. The possibility of Accused No. 2 having been shown to P.W. 6 during the period between 26.06.2006-01.08.2006 cannot be ruled out as confessional statement of Accused No. 2 was first recorded by P.W. 16 in Giddhi Police Station on 26.06.2006 at 10.00 A.M., his transit remand obtained on 05.07.2006 on the basis of which Accused No. 2 was produced from Hazaribagh in the Court of A.C.J.M., Danapur and remanded to the custody of Sub-Jail, Danapur until 14.07.2006. Fresh police remand of Accused No. 2 for three days was obtained under order dated 10.07.2006 pursuant where to his police custody was obtained by the Investigating Officer (P.W. 16) on 13.07.2006 and thereafter his second confessional statement was recorded at Danapur Police Station on 15.07.2006. In this connection



learned counsel also referred to the undated petition of Accused No. 2 addressed to the A.C.J.M., Danapur through Superintendent, Sub-Jail, Danapur, who forwarded the same under Memo No. 721 dated 19.09.2006 which was received in the Court of A.C.J.M., Danapur on 27.10.2006 as also to the order-sheet of the learned Magistrate of the same date. Perusal of undated petition indicates that while Accused No. 2 was in police custody in the Hazat of Danapur police station between 13-15.07.2006 he was made to recognize by Nav Ratan Lal (P.W. 6) and information about the said fact was given by Accused No. 2 to the Test Identification Magistrate (P.W. 18) on 01.08.2006 but P.W. 18 ignored the information. Learned counsel further assailed the identification of Accused No. 2 made by P.W. 6 on the ground that Test Identification Magistrate (P.W. 18) has not deposed in his examination-in-chief that he mixed Accused No. 2 with others having similar features. Learned counsel also referred to Paragraph 5 of the evidence of P.W. 18 that the Magistrate conducting Test Identification Parade put special mark on the accused person who was the object before the witness participating in the Parade.

16. Having assailed the evidence of the identifying witness (P.W. 6) learned counsel further assailed the Court identification of Accused No. 2 by P.Ws. 5, 6, 8, 12, 13 made for the first time in Court after more than three years of the occurrence

without giving any explanation for not calling the aforesaid witnesses to participate in the Test Identification Parade of Accused No. 2 held on 01.08.2006. In this connection learned counsel categorically asserted that none of the aforesaid prosecution witnesses are the eye-witnesses of the occurrence.

(i). As regards P.W. 5 learned counsel submitted that his presence at the place of occurrence has not been accepted by the informant in the fardbeyan. P.W. 5 in his examination-in-chief states that he was on the ground-floor and could not have been an eye-witness of the occurrence or the killing which took place on the first floor. In paragraph 4 P.W. 5 states that he is not aware how many staff members put their signature on the fardbeyan and that he also does not remember whether he put his signature over the fardbeyan. In paragraph 7 P.W. 5 states that he heard some sound and got to know about the occurrence later.

(ii). As regards P.W. 8 learned counsel with reference to his evidence in paragraphs 16, 17, 18 submitted that he told the Investigating Officer about the distinct identification mark of the accused persons and that accused persons were armed with pistols as also about the manner of attack etc. but the Investigating Officer (P.W. 16) in paragraph 53 has denied the said fact and further stated that no such statement was made by P.W. 8 before him. In the

aforesaid background, it is submitted that P.W. 8 having not deposed about the manner of occurrence before the Investigating Officer in his police statement his evidence in Court about the manner of occurrence recorded for the first time is wholly unreliable.

(iii). Learned counsel challenged the evidence of the informant (P.W. 12) as he stated in his examination-in-chief that he saw Accused No. 2 at the place of occurrence without attributing any specific overt act to him as also on the ground that informant claimed to be injured but in Paragraph 13 of his evidence he said that he did not show his head injury to the Investigating Officer. There is no medical evidence on record to indicate that informant suffered any injury during the occurrence.

(iv). Learned counsel further assailed the evidence of P.W. 13 i.e. identification of Accused No. 2 made in Court by P.W. 13 on the ground that P.W. 13 having not recorded his police statement as has been accepted by P.W. 16 in Paragraph 55, cannot be trusted with his deposition about the occurrence made for the first time in Court and identification of Accused No. 2 made for the first time in Court is not reliable in view of the suggestion given to the witness that the accused persons are appearing in Court on the date fixed and the witnesses were made to identify them during the earlier court hearing before their identification in Court. In this connection



reference is also made to an application dated 20.03.2009 filed by Accused No. 2 stating that while he had come to Court on 18.03.2009 two brothers of the deceased i.e. Ajay Gupta, Binay Gupta got him identified by two witnesses, which fact was informed to the Presiding Officer of the Court concerned and after informing the Presiding Officer of the Court when Accused No. 2 was returning to Hazat he was threatened by the aforesaid two brothers of the deceased that he will be eliminated while coming to Court or returning therefrom to Court hazat/ jail custody.

17. Learned counsel also pointed out that from the trend of cross-examination of the witnesses, it will appear that Accused No. 2 has been falsely implicated and the witnesses are not the eye-witnesses but have deposed falsely because the deceased was their employer and Binay Gupta brother of the deceased is Superintendent of Police. In support of the aforesaid submission learned counsel for the accused persons relied on the judgment of the Supreme Court in the case of **Simon and others Vs. State of Karnataka (2004) 2 Supreme Court Cases 694, Paragraph 12** and submitted that Court identification in case of those known from before is relevant but not in case of others who were not known to the prosecution party from before.

18. Learned counsel for Accused No. 4 submitted that



Accused No. 4 was arrested on 18.06.2008 and a gold chain was recovered from his house on the basis of his confessional statement vide seizure-list (Exhibit-1) in presence of seizure witnesses Balram Singh (P.W. 1) and Sadhu Singh (P.W. 2). Accused No. 4 was put on Test Identification Parade on 23.06.2008 in which P.Ws. 7, 8 identified him as one of the miscreants who participated in the occurrence. Test Identification Parade of gold chain was conducted on 11.09.2008 in which Namita Gupta (P.W. 4) wife of the deceased identified the gold chain as that of her husband. Accused No. 4 has been identified in Court by P.Ws. 5, 6, 7, 8, 12, 13. The identification of Accused No. 4 by P.Ws. 7, 8 in the Test Identification Parade conducted after two years of the occurrence is assailed on the ground that identification made by the two witnesses after two years of the occurrence is not safe to be relied upon further on the ground that no description about the physical features of Accused No. 4 was given by the witnesses during their police statement. Reference in this connection is made to the evidence of P.W. 8 in paragraph 16 and Investigating Officer (P.W. 16) in paragraph 57.

19. Recovery of gold chain from the house of Accused No. 4 is being assailed by the counsel for Accused No. 4 on the ground that the recovery of gold chain is said to have been made on the basis of the confessional statement of Accused No. 4 but the

confessional statement is not on record and as the confessional statement is not on record, according to learned counsel, recovery is fabricated and its subsequent identification by P.W. 4 wife of the deceased, is of no material value. In support of the aforesaid submission learned counsel relied on the judgment in the case of **Sadanand Singh & Ors. Vs. State of Bihar (1995) 1 BLJR 706** and submitted that recovery of common article like gold chain from the house should not connect the accused with the crime.

20. Learned counsel for accused persons further submitted that it is settled position of law that all circumstances, adverse to the accused, must be put to the accused while recording his statement under Section 313 Cr.P.C. and the circumstances not put to the accused while recording his statement under Section 313 Cr.P.C. has to be excluded from consideration. If the same is not done the prosecution must fail. It is submitted that in the instant case factum of identification, recovery, motive etc. have not been put to the accused persons while recording their statement under Section 313 Cr.P.C. which has caused prejudice to the accused. According to learned counsel for the accused persons non-examination of M/s Shashi Bhushan Sharma, Ajay Kumar, T.S.I. Binod Kumar Sinha and R.B. Yadav (Inspector-cum-Officer-in-Charge, Danapur Police Station) has prejudiced the case of the defence, as according to the accused

persons the examination of the aforesaid witnesses was necessary to unfold the manner of the prosecution case as also to indicate as to why First Information Report was not exhibited in the present case by examining R.B. Yadav, the then Officer-in-Charge, Danapur P.S. or any other person who was familiar with his handwriting.

21. Learned counsel for Accused No. 3 has assailed his conviction on the ground that he was arrested in connection with the present case on 16.11.2006 and released on bail on 12.09.2007 but during the period of his custody i.e. for more than nine months he was never put on Test Identification Parade as also was not identified in Court by any of the prosecution witness, as such, there is hardly any evidence on the basis of which it can be said that he is also an accomplice of the other accused persons of the present crime. Reference in this connection is also made by the learned counsel to the evidence of P.Ws. 8, 11, 13 in Paragraphs 5, 5, 4 respectively where the witnesses have claimed to have identified other accused persons and not Accused No. 3.

22. Learned counsel for the State, informant opposed the aforesaid submissions with reference to the evidence of Namita Gupta (P.W. 4), Satyendra Singh (P.W. 5), Nav Ratan Lal (P.W. 6), Manoj Kumar (P.W. 7) and Mohan Jha (P.W. 8). They referred to the evidence of P.W. 4 paragraphs 2, 3 and 9. In paragraphs 2, 9 P.W. 4



stated that her husband had informed her few days prior to the occurrence that a person by the name of Sahwaj was demanding ransom. She further stated in paragraph 9 that after the occurrence she was informed about the occurrence by the employees of the office at her residence, who came and told her that her husband has been shot by the miscreants. Learned counsel also referred to paragraph 3 of her evidence where she asserted that she did identify the gold chain of her husband recovered from the house of Accused No. 4 with reference to its broken hook.

23. Learned counsel next referred to the evidence of P.W. 5 in paragraphs 2, 3, 6, 8, 15 and stated that he is an employee of the deceased, eye-witness of the occurrence as at the relevant time he was serving in the office of the deceased i.e. Om Awantika Distributors and that he identified Accused No. 1 in Test Identification Parade held on 17.05.2006 as also in Court. He further identified Accused Nos. 2, 4 in Court.

24. Learned counsel also referred to the evidence of P.W. 6 in paragraphs 2, 3, 4, 5, 7 and submitted that P.W. 6 identified Accused No. 2 in Test Identification Parade held on 01.08.2006 as the one whom he had seen from his gate making good his escape. He also stated in paragraph 3 of his evidence that after the occurrence while he was taking his injured son to Hai Hospital on a vehicle his son

informed him that Accused No. 2 had demanded ransom from him on 15.04.2006. P.W. 6 further stated in the same paragraph that the ransom was demanded and threat extended by Accused No. 2 in his presence. P.W. 6 also identified Accused Nos. 2, 4 in Court. In this connection learned counsel also referred to Section 6 of the Evidence Act, Illustration-(a) and submitted that the contents of Paragraph 3 of the evidence of P.W. 6 is admissible.

25. Learned counsel further referred to the evidence of Manoj Kumar (P.W. 7) in paragraphs 1, 2 5 and submitted that he is also an eye-witness of the occurrence, who identified Accused Nos. 1, 4 in Court as also in Test Identification Parade.

26. Learned counsel further referred to the evidence of P.W. 8 injured and another eye-witness of the occurrence in paragraphs 1, 2, 3, 5 and submitted that he identified Accused No. 4 in Test Identification Parade. In Court also P.W. 8 identified Accused Nos. 1, 2, 4.

27. In support of the aforesaid submission(s) learned counsel for the informant relied on the judgment of the Supreme Court in the case of **Ramesh and Others Vs. State of Rajasthan (2011) 3 Supreme Court Cases 685 Paragraphs 20, 21**. He next relied on the judgment of the Supreme Court in the case of **Akil alias Javed Vs. State (NCT of Delhi) (2013) 7 Supreme Court Cases 125**



Paragraphs 23, 25, 26. Learned counsel further relied on the judgment of the Supreme Court in the case of **Myladimmal Surendran and Others Vs. State of Kerala (2010) 11 Supreme Court Cases 129 Paragraph 41** to support the Court identification of Accused No. 2 by P.Ws. 5, 8, 12, 13 even though the Court identification was not preceded by any Test Identification Parade in which P.Ws. 5, 8, 12, 13 had identified Accused No. 2 and referred to Paragraph 42 of the judgment where Supreme Court has quoted Paragraph 21 of the earlier judgment of the Supreme Court in the case of **Ramanbhai Naranbhai Patel Vs. State of Gujarat (2000) 1 Supreme Court Cases 358.**

“21. ... there is direct eyewitness account deposed to by the witness Dhirubhai Mohanbhai (brother of the deceased), witness Dhirubhai Premjibhai, P.W. 5, the tenant residing in the locality and Dilipbhai, the younger brother of the deceased. These witnesses have clearly deposed that they knew the accused. In fact, Dilipbhai was the person who was involved in the incident of the previous day wherein Accused 1 and his accomplices had a quarrel with him and his supporters. That part of the evidence of these eyewitnesses had remained well sustained on record. *So far as witness Niruben was concerned, she is the wife of the deceased Ramanbhai Mohanbhai. The accused mounted an assault on her husband in her bedroom and even though she might not be knowing*

the accused earlier, the faces of the accused mounting such an assault and which caused fatal injuries to her husband can easily be treated to have been imprinted in her mind and when she could identify these accused in the court even in the absence of an identification parade, it could not be said that her deposition was unnatural or she was trying to falsely rope in the present accused by shielding the real assaulters of her husband.”

In this regard learned counsel also relied on the judgment of the Supreme Court in the case of **Deepak alias Wireless Vs. State of Maharashtra (2012) 8 Supreme Court Cases 785 Paragraph 16 to 18.**

28. During hearing of the appeal representative of the informant was also present and produced before us detention order dated 08.11.2006 and the grounds of detention dated 07.09.2006, in terms whereof Accused No. 2 was detained in terms of the provisions of Bihar Control of Crimes Act, 1981 and submitted that besides the present occurrence he also committed other serious offences, which would be evident from the grounds of detention dated 07.09.2006.

29. In view of the rival submissions of the counsel for the parties, as noted in paragraphs 11 to 27 above, we proceed to consider the merit of the rival submissions made on behalf of the parties. Fardbeyan (Exhibit-4/1) of the instant case was lodged by



P.W. 12 on 02.05.2006 at 16.20 hours against unknown, on the basis of which First Information Report of the instant case was drawn on the same day at 17.30 hours but prior thereto seizure-list of incriminating articles seized from the place of occurrence was prepared by the scribe of the fardbeyan (P.W. 16) at 4.00 P.M. indicating the case number of the instant case in Column No. 1 of the seizure-list (Exhibit-7) in the same pen. Formal First Information Report of the instant case having been drawn at 17.30 hours case number of the instant case could have been available only after drawal of the First Information Report at 17.30 hours and not at 4:00 P.M. for being mentioned in the seizure-list at 4:00 P.M. In the aforesaid background, it is not understandable as to how case number of the instant case was mentioned in Column No. 1 of the seizure-list (Exhibit-7) in the same pen at 4:00 P.M. Inclusion of case number in the seizure-list is suggestive of the fact that the case records were generated not on the date, time on which the same is ostensibly shown to have been created and may raise doubt about the fairness of the investigation. In this connection, perusal of First Information Report would further indicate that the same was dispatched from Danapur Police Station to the Court of A.C.J.M., Danapur on 02.05.2006 itself but was received by A.C.J.M., Danapur on 05.05.2006, although the distance between Danapur Police Station and the Court of A.C.J.M.,

Danapur is hardly one kilometer. Delay of three days in receipt of First Information Report in Court is indicative of the fact that First Information Report was not sent on 02.05.2006 as has been ostensibly shown therein.

30. With the aforesaid preface about the manner in which law was set into motion by lodging the fardbeyan and taking up the investigation of the case, we would like to deal with the case of each of the accused hereinafter :

(i) Accused No. 1, Appellant in Criminal Appeal (DB) No. 551 of 2013 was arrested in the present case on 12.05.2006. He also recorded his disclosure statement on the same day and thereafter was produced before the learned A.C.J.M., Danapur on 13.05.2006 and remanded to the custody of Sub-Jail, Danapur. Later, his police remand was obtained for three days on 16.05.2006 for putting him on Test Identification Parade. Accused No. 1, however, was put on Test Identification Parade on 17.05.2006 in Sub-Jail, Danapur. The Test Identification Parade was conducted by the learned Judicial Magistrate (P.W. 18) in which Accused No. 1 was identified by P.Ws. 5, 7 Vide Test Identification Chart (Exhibit-12/2). From the evidence of learned Judicial Magistrate (P.W. 18) in Paragraph 5 it appears that he had put identification mark on the suspect Accused No. 1. In view of the evidence of P.W. 18 referred to above, it may



not be safe for us to rely on the Test Identification Proceedings conducted by P.W. 18 in Sub-Jail, Danapur on 17.05.2006 vide Exhibit-12/2 in which P.Ws. 5, 7 identified Accused No. 1 as one of the miscreants who participated in the occurrence in presence of learned Judicial Magistrate (P.W. 18) as possibility of Accused No. 1 having been identified in the Test Identification Parade by P.Ws. 5, 7 because of special identification mark put on the suspect by P.W. 18 cannot be ruled out.

(ii) Now coming to the identification of the coin, office articles recovered from the house of Accused No. 1 on the date of his arrest i.e. 12.05.2006. It is evident from the search-cum-seizure-list (Exhibit-7/2) that the coin, office articles were seized in presence of M/s Om Pal and Shivji Prasad but none of the two came forward to support the seizure of the coin, office articles from the house of Accused No. 1. In the circumstances, it may not be safe to place reliance on the identification of the coin, office articles on 06.06.2006 by P.Ws. 11, 13 for the reason that the recovery of coin and office article were not made in their presence from the house of Accused No. 1. Court identification of Accused No. 1 made by P.Ws. 8, 11, 13 is not to be relied upon for the failure of the prosecution to explain as to why they did not appear in the Test Identification Parade of Accused No. 1 held on 17.05.2006 and further for the failure of P.Ws.

8, 12 to produce their injury report or to show their injury to the Investigating Officer.

31. Learned counsel for Accused No. 2, Appellant in Criminal Appeal (DB) No. 70 of 2014 assailed the identification of Accused No. 2 by the father of the deceased Nav Ratan Lal (P.W. 6) in the Test Identification Parade conducted by the learned Judicial Magistrate (P.W. 18) on 01.08.2006 vide Test Identification Chart (Exhibit-12/1) in view of the contents of Column No. 5 of the Test Identification Chart (Exhibit-12/1) and the admission of learned Judicial Magistrate (P.W. 18) in Paragraph 5 of his deposition that he had put special mark of identification on the suspect Accused No. 2, which according to counsel perhaps made his identification possible by P.W. 6 in the Test Identification Parade. Learned counsel further referred to the evidence of P.W. 18 in Paragraph 11 that on the date learned Magistrate conducted Test Identification Parade i.e. 01.08.2006 he (P.W. 18) had not seen in the records any application of Accused No. 2 in which he asserted that during his subsequent police remand between 13-15.07.2006 while he was confined in the Hazat of Danapur Police Station he was exposed so as to enable/ensure Nav Ratan Lal (P.W. 6) to recognize him and was actually recognized by P.W. 6 in the Hazat of police station. Application of Accused No. 2 asserting that he was exposed in the Hazat of Danapur



Police Station so as to enable/ ensure Nav Ratan Lal (P.W. 6) to recognize him in the Hazat and that he was actually seen by him during his police remand between 13-15.07.2006 in the Hazat of police station is undated, addressed to the A.C.J.M., Danapur through Superintendent, Sub-Jail, Danapur and was forwarded by the Superintendent, Sub-Jail, Danapur to the A.C.J.M., Danapur under Memo No. 721 dated 19.09.2006 is available on the record of the trial Court. In this connection, learned counsel for Accused No. 2 further submitted that the assertion of P.W. 6 in Paragraphs 2, 14, 22, 24, 25 that he heard sound of gun shot from his gate and saw Accused No. 2 running away from the place of occurrence and that he had shown the police the place from where he heard the gun shot and saw Accused No. 2 running away from the place of occurrence is not to be believed as such fact he had not asserted in his previous police statement before the Investigating Officer (P.W. 16), which would appear from the evidence of P.W. 16 in Paragraph 51. It is submitted that as P.W. 6 had not informed the Investigating Officer (P.W. 16) about the place from where he heard the gun shot and saw Accused No. 2 running away from the place of occurrence, prosecution case that P.W. 6 identified Accused No. 2 in the Test Identification Parade held on 01.08.2006 becomes doubtful in view of the admission of P.W. 18 that he put special mark on the suspect Accused No. 2 as also the

contents of the undated application of Accused No. 2 addressed to the A.C.J.M., Danapur through Superintendent, Sub-Jail, Danapur which was forwarded by the Superintendent, Sub-Jail, Danapur to A.C.J.M., Danapur under Memo No. 721 dated 19.09.2006 available on record.

32. Before proceeding to consider the Court identification of Accused No. 2 made by P.Ws. 5, 6, 8, 12 and 13 for the first time after more than three years of the occurrence without giving any explanation for not calling the aforesaid witnesses to participate in the Test Identification Parade of Accused No. 2 held on 01.08.2006, it is necessary to notice the contents of the application of Accused No. 2 dated 19.03.2009 which was numbered as 1127 dated 20.03.2009 by the authorities of Sub-Jail, Danapur and then dispatched to the Court below by the Superintendent, Sub-Jail, Danapur under Memo No. 1613 dated 22.03.2009 which was received by the Presiding Officer of the Court concerned on 23.03.2009 at 3:45 P.M. in which Accused No. 2 asserted that while he had come to Court on 18.03.2009 the two brothers of the deceased M/s Ajay Gupta and Vinay Gupta got him identified by the two witnesses, which fact was informed by Accused No. 2 verbally to the Presiding Officer of the Court concerned immediately and after informing the Presiding Officer about being identified when Accused No. 2 was returning to Hazrat he was threatened by the aforesaid two brothers of the deceased



that he would be eliminated. From the order-sheet of the Court, it is quite evident that the aforesaid application dated 19.03.2009 was received by the Court on 23.03.2009 at 3:45 P.M. and the Court having noticed the contents of the application in the order-sheet kept the same on record. It, however, does not appear from the subsequent order-sheet of the Court below that it considered the said application. Application having been received by the Court below on 23.03.2009 i.e. within five days of 18.03.2009 the date on which Accused No. 2 claims that he was made to be recognized by the two witnesses at the instance of two brothers of the deceased and thereafter information to that effect was verbally conveyed to the Presiding Officer of the Court concerned on the same day i.e. 18.03.2009, the Presiding Officer of the Court, in our opinion, should have either made enquiry into the assertion of Accused No. 2 or in any case dealt with the application dated 19.03.2009. Failure of the Presiding Officer of the Court concerned to even deal with the application received on 23.03.2009 at 3:45 P.M. is indicative of the fact that information about the contents of the said application was verbally given to the Presiding Officer of the Court concerned on 18.03.2009 and enquiry in the matter was necessary.

33. Besides close perusal of the evidence of the aforesaid eye-witnesses (P.Ws. 5, 6, 12 and 13), who identified



Accused Nos. 1, 4 in Court alone will itself indicate that they are not the eye-witnesses of the occurrence. In this connection, reference be made to the examination-in-chief of P.W. 5 wherefrom it appears that at the time of occurrence P.W. 5 was at the ground-floor and he had no opportunity to see the occurrence, at best, he could have had a fleeting glance of the miscreants while they were climbing the stairs for going to the first-floor or were retreating and the Court identification made by P.W. 5 after three years of the occurrence appears to be doubtful. Similarly, P.W. 6 stated in Paragraph 3 that after the occurrence while he was taking his injured son to Hai Hospital on a vehicle his son informed him that Accused No. 2 had demanded ransom from him on 15.04.2006. P.W. 6 further stated in the same paragraph that the ransom was demanded and threat extended by Accused No. 2 in his presence. In Paragraphs 14, 22, 24, 25 of his evidence P.W. 6 stated that that he heard sound of gun shot from his gate and he saw Accused No. 2 running away from the place of occurrence and that he had shown the police the place from where he heard the gun shot and saw Accused No. 2 running away from the place of occurrence. Neither of the aforesaid two statements was made by P.W. 6 in his police statement, as would appear from the evidence of Investigating Officer (P.W. 16) in Paragraph 51. Court identification of the miscreants made by the informant (P.W. 12) is



further doubtful for the reason that P.W. 12 in the fardbeyan, evidence claimed that he suffered injury during the occurrence but he never produced any injury report either before the Investigating Officer (P.W. 16) or in the Court, as such, it is difficult to accept that he suffered injury during the occurrence. In this connection, evidence of P.W. 12 Paragraph 13 is relevant where he has stated that he did not show his head injury to the Investigating Officer. Court identification of the miscreants made by P.W. 13 is also not reliable for the reason that he did not record his police statement, which fact would appear from the evidence of Investigating Officer (P.W. 16) in Paragraph 55 and thus his evidence about the occurrence recorded for the first time in Court is not worthy of credence. Court identification of Accused No. 2 made by P.Ws. 5, 8, 12, 13 is not to be relied upon for their failure to explain as to why they did not appear in the Test Identification Parade of Accused No. 2 held on 01.08.2006 and further for the failure of P.Ws. 8, 12 to produce their injury report or to show their injury to the Investigating Officer.

34. Learned counsel for Accused No. 3 submitted that he was arrested in connection with the present case on 16.11.2006 and released on bail 12.09.2007 but during the period of his custody i.e. for more than nine months he was never put on Test Identification Parade as also was not identified in Court by any of the prosecution

witnesses, as such, there is hardly any evidence on the basis of which it can be said that Accused No. 3 is also an accomplice of Accused Nos. 1, 2, 4. Accused No. 3 having not been identified by any of the prosecution witnesses either in Test Identification Parade or in Court and there has never been any claim that if Accused No. 3 is produced in Court the witnesses may identify him as one of the miscreants who participated in the occurrence, there is no material on record on the basis of which his conviction can be maintained.

35. Now coming to the case of Accused No. 4/ Appellant in Criminal Appeal (DB) No. 1055 of 2013. It is evident that Accused No. 4 remained absconding and was arrested on 18.06.2008 and a gold chain was recovered from his house vide seizure-list (Exhibit-1) in presence of Balram Singh (P.W. 1) and Sadhu Singh (P.W. 2). Accused No. 4 was put on Test Identification Parade on 23.06.2008. Test Identification Parade was conducted by learned Judicial Magistrate, Danapur Sri Lalta Prasad (P.W. 17) in the premises of Beur Jail, Patna. In the Test Identification Parade Accused No. 4 was identified by P.Ws. 7, 8 vide Test Identification Chart (Exhibit-12) scribed by the clerk of the prison house on the dictation of P.W. 17. Perusal of Test Identification Chart (Exhibit-12) indicates that the suspect was mixed up with other nine prisoners. It also appears from the Test Identification Chart that the identifying



witnesses disclosed that the suspect at the time of occurrence was armed with pistol, has come to the place of occurrence, office premises on the first-floor and was identified while making good his escape. In view of the evidence of Test Identification Magistrate (P.W. 17) and the contents of the Test Identification Chart (Exhibit-12) it may not be possible for us to doubt the identification of Accused No. 4 made by P.Ws. 7, 8 in the Test Identification Proceedings held on 23.06.2008 and further corroborated by the Court identification of Accused No. 4 by P.Ws. 7, 8 while recording their evidence in Court. In the circumstances, the conviction of Accused No. 4 is maintained. In this connection, we may also mention that the gold chain recovered from the house of Accused No. 4 on the date of his arrest pursuant to his confession was also put for identification on 11.09.2008 before Circle Officer, Danapur (P.W. 14) and the gold chain was identified by Namita Gupta (P.W. 4) the wife of the deceased with reference to its broken hook vide Test Identification Chart (Exhibit-5).

36. Before parting with this judgment, we may like to observe that in the case of **Ramanbhai Naranbhai Patel (supra)** Supreme Court relied on the Court identification of Niruben, the wife of the deceased even though she did not participate in Test Identification Parade as she had occasion to witness the assault which



was mounted by the accused persons on her husband in her bed-room though she might not be knowing the accused earlier, the faces of the accused mounting assault causing fatal injuries to her husband in the bed-room can easily be treated to have been imprinted in her mind. Besides, the evidence of Niruben in the reported case there was dying declaration of the deceased and the evidence of two injured who also deposed that the deceased was done to death by the convicts. In the instant case, we have not relied on the Test Identification of Accused Nos. 1, 2 by P.Ws. 5, 7, 6 respectively because of the conduct of the Test Identification Magistrate (P.W. 18) as he put special mark on the suspect Accused Nos. 1, 2 before holding the Test Identification Parade on 17.05.2006, 01.08.2006 and the possibility of the witnesses having identified the two suspect because of the special mark put on them by P.W. 18 cannot be ruled out.

37. In view of appraisal of evidence on record made by us in Paragraphs 28 to 35 above, Appeals filed by Accused No. 1 Amit Kumar @ Amit Kumar Sinha @ Amit Singh, Accused No. 2 Ashutosh Sharma @ Santosh Sharma @ Shawaz Ahmad @ Shawaz @ Kalu and Accused No. 3 Pawan Paswan deserve to be allowed as charge against Accused Nos. 1, 2, 3 has not been proved beyond reasonable doubt and they deserve grant of benefit of doubt. Accused Nos. 1, 2 are in jail custody. They are directed to be released from jail

custody forthwith, if not wanted in any other case. Accused No. 3 is on bail. He is discharged from the liability of his bail bond. Appeal filed by Accused No. 4 is dismissed.

(V.N. Sinha, J)

I agree.
Jitendra Mohan Sharma, J :

(Jitendra Mohan Sharma, J)

A.F.R./
Rajesh/P.K.P./Arjun

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