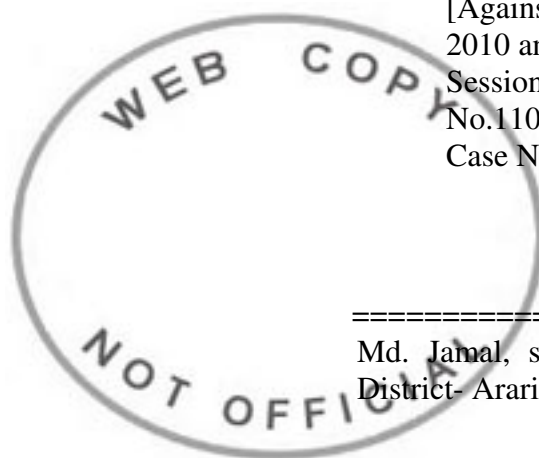




IN THE HIGH COURT OF JUDICATURE AT PATNA

[Against the judgment and order of conviction dated 29th September, 2010 and 30th September, 2010, respectively passed by the Additional Sessions Judge, (Fast Track Court No.6), Purnea, in Sessions Trial No.1101 of 2007/ Trial No.131 of 2007 arising out of Jalalgarh P.S. Case No.07 of 2007]

Criminal Appeal (DB) No.1301 of 2010

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Md. Jamal, son of Maisar Ali, resident of village-Saifulla, P.S.-Mahalgaon,
District- Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 1304 of 2010

=====

Md. Kauser @ Md. Kaushar, son of Md. Nazir, resident of village-Dhangama, P.S.
Jalalgarh, District-Purnea

..... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (DB) No. 1316 of 2010

=====

Ashok Chouhan, son of Sri Lal Chouhan, resident of Chouhan Tola, Harchandpur,
P.S.-Jalalgarh, District-Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 1319 of 2010

=====

Md. Fazlu, S/O Md. Jamshed Ali, R/O Village - Dhangama Jogia Tola, P.S.
Jalalgarh, District - Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (DB) No. 1324 of 2010

=====

Mansoor @ Md. Mansoor Alam, son of Md. Paiskar, resident of village-Dhangama
Jogia Tola, P.S.-Jalalgarh, District- Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (DB) No. 1333 of 2010

=====

Md. Azad, son of Md. Sakim, resident of Dhangama Jogia Tola, P.S.-Jalalgarh,
District- Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 417 of 2011

=====

Md. Saidur Rahman, son of Md. Saifuddin, resident of village-Dhusmar, P.S.-
Jalalgarh, District- Purnia

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

(In CR. APP (DB) No. 1301 of 2010)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate
For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 1304 of 2010)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate
For the Respondent/s : Mr. D. K. Sinha, APP

(In CR. APP (DB) No. 1316 of 2010)

For the Appellant/s : Mr. Kumar Uday Singh, Advocate
For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 1319 of 2010)

For the Appellant/s : Mr. Bijendra Kumar Singh, Advocate
For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 1324 of 2010)

For the Appellant/s : Mr. Bijendra Kumar Singh, Advocate
For the Respondent/s : Mr. D. K. Singh, APP

(In CR. APP (DB) No. 1333 of 2010)

For the Appellant/s : Mr. Bijendra Kumar Singh, advocate
For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 417 of 2011)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate

For the Respondent/s : Mr. D. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-01-2016

1. The Appellants have been convicted under Section 396 Indian Penal Code and sentenced to undergo rigorous imprisonment for life by the Additional Sessions Judge, Fast Track Court No.6, Purnea, in Sessions Trial No.1101 of 2007 / Tr. No.131 of 2007 arising out of Jalalgarh P.S. Case No.07 of 2007 by judgment and order of conviction dated 29th September, 2010 and 30th September, 2010, respectively.

2. The case of the Informant, Nand Lal Rishi, (PW 10) is that in the night between 14/15.08.2007 at about 1.15 AM 10-12 unknown accused persons came variously armed came into the house and committed *dacoity* in course of which he was tied by them and they attempted to outrage the modesty of Sumita Kumari (PW8). When she started screaming, his wife Shakuntala Devi and son Sujit Kumar went to save her but both of them were shot dead by the miscreants. When his younger son Sumit Kumar (PW 4) tried to intervene, he was also assaulted with lathis due to which he was injured. Several house hold articles were removed from their house. He stated that accused persons were aged between 30-35 years, and



while some were fat and one of them was of medium height wearing blue T shirt and white clothes. They were speaking in Hindi and local language and were aged about 25 years. Rest of them were about 25-30 years and were wearing Lungi and shorts and were speaking Hindi and Bengali. All the miscreants had uncovered faces and he and his family members had the occasion to see their faces in the light of electricity and were in a position to identify them. This information was given to the Officer-in-Charge, Jalalgarh P.S. on the same night of 15.08.2007 at 1.15 hours. As we have noticed, none of the accused was named in the First Information Report.

3. During trial, the prosecution examined thirteen witnesses. PW 1 (Surendra Rishi) is a hearsay witness on the point of *dacoity* and has been declared hostile on the point of identification of Ashok Chouhan, Md. Azad, Md. Mansoor, Kaisar, Fazlu and Saidur Rahman that it was they who had got the *dacoity* committed.

4. PW 2 (Pawan Rishi) stated that the Informant was his brother-in-law and a *dacoity* was committed in his house and on hearing about the same he reached there and found two persons have been murdered. He signed on the Inquest Report and is formal in nature.

5. PW 3 (Most. Ramsati Devi) is the mother-in-law



of the Informant and an inmate of the house. She stated that on the night of occurrence in course of *dacoity* she identified Appellant Ashok Chouhan, Saidul Banagali, but she did not recognize rest of the accused persons. She stated that Ashok Chouhan had shot dead his grand son Sujit. She further stated that Ashok Chouhan used to threaten the accused persons and she identified him and Saidul in the dock. Her attention was drawn to the earlier statement that she had not stated that she had identified Ashok Chouhan and Saidul Bangali in the light of the bulb. She also stated that the miscreants had attempted to outrage modesty of her grand-daughter. Strangely, she admitted that she had not stated earlier that Ashok Chouhan was one amongst the dacoits. She further stated that she did not know Saidur Rahman from before and it was only that day she had learnt about him. Even though she stated that she had not conferred with the Informant after miscreants ran away, but at the same time she stated that she was seated in her room by the dacoits and the entire family had met after the occurrence and she had disclosed the name of Saidur Rahman to them.

6. PW 4 (Sumit Kumar) is the son of the Informant and inmate of the house. He stated that he suddenly woke up on hearing sound of firing and had seen his mother and brother Sujit Kumar dead in the courtyard. The dacoits also tried to chase him but



he fled away. He saw the dacoits in the light of bulb and identified Ashok Chauhan as also rest by faces. He stated in his examination-in-chief that there was some dispute between his family and Ashok Chauhan and they had been threatened by him. He further stated that some miscreants had been caught at which he had gone to the jail premises for identification and had identified three accused persons, namely, Azad, Mansoor, and Fazlu. In cross-examination, he stated that his father was a PDS Dealer and that Ashok Chauhan was previously known to him. In cross-examination on behalf of Azad, Mansoor, Fazlu and Kausar, he stated that Dhangaon Tola was west to his house about 2 KM away. His village and Dhangaon belonged to the same Gram Panchayat Dhansar and his father was a PDS dealer even of Dhangaon. Jalalgarh was the main market which was east to his house and his house was on the main road. It would be inevitable to cross the road by the persons from Dhangaon village. He further stated that three accused persons whom he had identified in the Test Identification Parade belonged to Dhangaon village and they had been arrested next day of the occurrence about 2-3 PM from their house. He himself had not gone to their house with the police. He had gone to participate in the Test Identification Parade on 16th itself. However, he had not disclosed any particular identification mark on the miscreants. It was suggested to him that

these accused persons were well known to him and that he had conferred with PW 3 after the *dacoity*.

7. PW 5 (Amit Kumar) is the other son of the Informant and inmate of the house. He stated that in course of *dacoity* he had identified Ashok Chauhan in electric light and had seen 2-3 other miscreants. He, however, identified only Ashok Chauhan in dock. In cross-examination, he admitted that Ashok Chauhan was well known to him and his attention was drawn to the earlier statement that he had not stated that Ashok Chauhan had fired. He also admitted that there was enmity between Ashok Chauhan and his family. In cross-examination on behalf of Azad, Mansoor, Kausar and Fazlu, he stated that his house was in Dhansar Panchayat in Ward No.4, whereas, Dhangaon tola was in Ward No.3 and that his father, Nand Lal Rishi had contested the election of Mukhiya in 2005 but despite his honest efforts he had lost. He stated that Shakim, Paishkar, Jamshed, Nazir and one other had worked in favour of other candidate. It appears that Appellant Mansoor is the son of Paishkar, whereas, Jamshed is the father of Appellant Md. Fazlu and Shakim is the father of Appellant Md. Azad.

8. PW 7 (Asha Kumari) is the next inmate of the house, who stated that on the night of occurrence when she was sleeping the dacoits claiming themselves to be the police personnel



asked her to get up and brought her to the courtyard. The dacoits had covered their faces but she saw their faces in light of torch. She stated that her mother and brother were killed by them and she had gone to Test Identification Parade in the jail where she had identified Mansoor Alam, Fazlu Rahman, Md. Azad, Md. Jamal, whom she identified in the dock. She identified Ashok Chauhan and stated that he had some dispute with his brother and had earlier meted out threat to them. In cross-examination, she stated that only two accused had covered their faces, whereas, rest were uncovered and conceded that she had not stated in her earlier statement that she had identified Ashok Chauhan whom she knew from childhood. She stated that she had gone to participate in the Test Identification Parade 4-5 days after the occurrence. She did not know those persons from before whom she had identified in the Test Identification Parade whereafter they were only seen in the dock. She stated that the two dacoits, who had covered their faces, were standing at the door and none of the inmates of the room had gone out from there and they had crouched in the room itself. It was suggested to her that she knew the accused persons from before and had implicated them on account of election dispute with her father.

9. PW 8 (Sumita Kumari Devi) is the daughter of the Informant who stated that on the night of occurrence the



miscreants entered into her room and tied her husband and assaulted her at which she screamed. When Shakuntala Devi, her mother came, 4-5 dacoits caught her and assaulted her with *Chura* on account of which she died. Thereafter, her brother Sujit Kumar, who had locked himself in the room was pulled from there and shot dead. She had seen the accused persons in the light of bulb and identified Ashok Chauhan by name. She also describes the earlier dispute between Ashok Chauhan and her mother and the threat having been meted out to him. She also stated that she had gone to participate in the Test Identification Parade where she identified the miscreants of which Appellants Mansoor Alam/ Md. Azad/ Md. Kausar were in the dock. She stated that she knew Ashok Chauhan from childhood and she stated that the dacoits had not come to loot away the articles nor to sexually harass her, rather, they had come to commit murder. Her attention was drawn to the earlier statement that she had not stated that Ashok Chauhan had assaulted her mother with *Chura*.

10. PW 9 (Anita Devi) is the daughter-in-law of the Informant and widow of deceased Sujit Kumar. She stated that the dacoits had committed *dacoity* and assaulted her mother-in-law and husband on account of which they died. She had also participated in the Test Identification Parade and she stated that she had identified



the miscreants. She identified Appellants Ashok Chauhan /Md. Jamal/ Saidur Rahman in the dock. She participated in the Test Identification Parade twice; once which was held five days later and the other a month later. She stated that her house was located about 10-15 minutes away from Jalalgarh and Dhangaon and she had not stated about identifying any miscreants to the Investigating Officer. She also stated that she knew Ashok Chauhan from before who had not come to her room and it was only after they all fled away she came out of the room. She stated that dacoits had uncovered their faces and she had come out of room 10-15 minutes after the occurrence.

11. PW 10 (Nand Lal Rishi) is the Informant, who gave *fard-e-bayan*, which he has proved as Ext.3. He elaborates on the dispute between his wife and Ashok Chauhan. He further stated that Investigating Officer had caught some miscreants from Dhangaon and he had gone to participate in the Test Identification Parade. He identified Appellants Saidur Rahman/ Ashok Chauhan in the dock and that he identified Appellant Saidur Rahman in the Test Identification Parade as also that he knew Appellant Ashok Chauhan from before. He stated that the PDS shop was previously with Nasir and then two portions had been carved out from the dealership; one in Ward No.3 and the other in Ward No.4. He, however, admitted

that Appellant Azad son of Shakim/ Appellant Kausar son of Nazir,/ Appellant Mansoor, son of Paishkar Alam/ Appellant Fazlu, son of Jamshed Ali were his BPL consumers.

12. PW 12 (Amar Biswas) is the Investigating Officer, who took up investigation after recording the *fard-e-bayan* which he identifies (Ext.3). He proved the writing and signature of SI Jamuna Prasad Singh on the *fard-e-bayan* as Ext.3/1 and 5. He stated that he had seen ample electricity at the place of occurrence. He stated that he had put the dog squad into action and the dog had entered in the village Dhangaon and then into the house of Appellant Md. Azad, who was arrested. Three persons trying to flee away from the village after the arrest of Md. Azad, were also apprehended, who disclosed their names as Appellants Md. Mansoor/ Md. Kausar/ Md. Fazlu. During investigation, it transpired that Appellant Ashok Chauhan was on inimical terms with Sujit Kumar, one of the deceased. He also stated that he had conducted the Test Identification Parade in course of which PW 3 (Most. Ramsati Devi) did not identify any one, whereas, PW 4 (Sumit Kumar) identified Appellants Mansoor Alam/ Md. Azad / Md. Fazlu, PW 7(Asha Kumari) identified Appellants Mansoor Alam/ Md. Azad/ Md. Fazlu/ Md. Jamal, PW 8 (Sumita Kumari Devi) is said to have identified Appellants Mansoor Alam/ Md. Azad/ Md. Fazlu and PW



10 (Nand Lal Rishi) identified Appellant Md. Azad. He proves the Test Identification chart as Ext.6 series. He stated that on 16.09.2007, Appellants Md. Saidur Rahman and Md. Jamal, wanted in the present case, were arrested and remanded in the present case as well. Some articles were recovered which were subject matter of another case. On 27.09.2007, Sumita Kumari Devi (PW 8) and Anita Devi (PW9) participated in the Test Identification Parade where both of them identified the two accused persons.

13. PW 6 (Dilip Kumar Verma) was a Judicial Magistrate, who recorded the statement of PW 8 and 9 under Section 164 Cr. P.C. and proved the same as Ext.1 and 1/1. On 27.09.2007, he got conducted the Test Identification Parade of Appellants Saidur Rahman and Md. Jamal. PW 10 (Nand Lal Rishi) is said to have identified Appellant Saidur Rahman, whereas, PW 8 (Sumita Kumari Devi) and PW 9 (Anita Devi) also identified Appellants Saidur Rahman and Md. Jalam. There is nothing relevant in the cross-examination of this witness.

14. The next Judicial Magistrate, who had conducted the Test Identification Parade is PW 13 (Birendra Kumar Mishra), stated that on 17.02.2007 he got conducted the Test Identification Parade of Appellants Md. Azad/ Md. Mansoor Alam/ Md. Kausar/ Md. Fazlu in course of which PW 10 (Nand Lal Rishi) identified

Appellant Md. Azad, whereas, Sumita Devi (PW 8) identified Appellants Mansoor Alam/ Md. Azad/ Md. Fazlu. PW 7(Asha Kumari) also identified Appellants Md. Azad/ Mansoor/ Kausar and Fazlu, whereas, Ramsati Devi did not identify any one. Anita Devi (PW 9) identified Appellant Fazlu and Sumit Kumar (PW 4) identified Appellants Mansoor Alam/ Md. Azad and Md. Fazlu. He proved the Test Identification Chart (Ext.7 series).

15. On going through the evidence of the witnesses, we find that even while Appellant Ashok Chauhan was a co-villager and known to the Informant and rest of the family members, he is not named as one of the perpetrators of the crime. No doubt, there is a mention in the *fard-e-bayan* with regard to complicity of him having got committed this occurrence but not that he had himself participated in the same. In such circumstances, we would hold that his implication is not worth reliance and hence, we acquit Appellant Ashok Chauhan (Cr. Appeal (DB) No.1316 of 2010) of the charge leveled against him.

16. As for Appellants Md. Kausar/ Md. Fazlu/ Md. Mansoor Alam/ Md. Azad, we find that the Informant himself conceded that they were the consumers of his PDS shop and also belonged to an adjacent tola which is about 15 minutes away from his house and yet they have not been named in the *fard-e-bayan* by



any of the witnesses. In such circumstances, we hold that the identification in Test Identification Parade have no meaning and hence, we acquit Appellants Md. Kauser @ Md. Kaushar (Cr. Appeal (DB) No.1304 of 2010)/ Md. Fazlu (Cr. Appeal (DB) No.1319 of 2010) / Mansoor @ Md. Mansoor Alam (Cr. Appeal (DB) No.1324 of 2010) / Md. Azad (Cr. Appeal (DB) No.1333 of 2010) of the charge leveled against them.

17. As for Appellant Md. Jamal, we find that PW 7 (Asha Kumari) had identified him in Test Identification Parade, PW 8 (Sumita Kumari Devi) had also identified him in the Test Identification Parade and PW 9 (Anita Devi) had identified him both in the Test Identification Parade as well as in Court. Whereas the evidence of Asha Kumari Devi is concerned, we find that she had stated that two persons had covered their faces and the rest had not covered their faces. Those who had covered their faces were standing at the door and she had not come out during the course of *dacoity*. In such circumstances, evidently her identification of this Appellant has no meaning. We find that PW 8 (Sunita Kumari Devi) did not identify Md. Jamal in Court. Hence, there is no substantive evidence in regard to his identification. Thus PW 9 (Anita Devi), who had attended the Test Identification Parade one month after the occurrence is the sole witness. In the facts of the case, we would not

be inclined to maintain the conviction of Appellant Md. Jamal on her identification alone. Accordingly, Appellant Md. Jamal (Cr. Appeal (DB) No.1301 of 2010) is acquitted of the charge leveled against him.

18. As for Appellant Md. Saidur Rahman, we find that PW 8 (Sumita Kumari Devi) had identified him in the Test Identification Parade but did not identify in Court and hence, there does not appear any substantive evidence in regard to his identification. We find that, no doubt, Appellant Saidur Rahman has been identified by PW 9 and 10 but the Test Identification Parade having been held after one month, we would not like to place absolute reliance upon them. For the aforesaid reason, we also acquit Appellant Md. Saidur Rahman (Cr. Appeal (DB) No.417 of 2011 of the charge leveled against him.

19. Accordingly, the impugned judgment and order of conviction dated 29th September, 2010 and 30th September, 2010, respectively passed by the Additional Sessions Judge, (Fast Track Court No.6), Purnea, in Sessions Trial No.1101 of 2007/ Trial No.131 of 2007 arising out of Jalalgarh P.S. Case No.07 of 2007 is hereby set aside.

20. The Appellants, Md. Kauser @ Md. Kaushar (Cr. Appeal (DB) No.1304 of 2010), Ashok Chauhan (Cr. Appeal

(DB) No.1316 of 2010), who are on bail, are discharged from the liabilities of their respective bail bonds.

21. The Appellants, Md. Jamal (Cr. Appeal No.1301 of 2010), Md. Fazlu (Cr. Appeal No.1319 of 2010), Mansoor @ Md. Mansoor Alam (Cr. Appeal No.1324 of 2010), Md. Azad (Cr. Appeal No.1333 of 2010), Md. Saidur Rahman (Cr. Appeal No.417 of 2011), who are in custody, are directed to be released forthwith, if not required in any other case.

22. In the result, all the appeals are **allowed**.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

NAFR
J.Alam/-

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