

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.594 of 2004**

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GOVIND PASWAN S/O Late Lachu Paswan R/O Vill.- Jhariya Danagi, P.S.-
Kochadhaman, Dist.- Kishanganj.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mrs. Sushmita Mishra, learned Amicus Curiae
For the State : Mr. Ramchandra Singh, APP.

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 06-12-2025

None appears on behalf of the appellant. The present matter is pending consideration for near about 21 years.

2. It has been requested and *Mrs. Sushmita Mishra (D/1634/2019)*, learned counsel, has shown her willingness to assist as *Amicus Curiae* in the present matter.

3. Accordingly, learned counsel *Mrs. Sushmita Mishra (D/1634/2019)* has been appointed as *Amicus Curiae* in the present matter.

4. Heard learned *Amicus Curiae* appearing for the appellant and learned A.P.P. for the State.

5. The present appeal has been directed against the judgment of conviction dated 30.07.2004 and order of sentence dated 02.08.2004 passed by learned Additional District and Sessions Judge, Fast Track Court No. 5, Kishanganj in



Sessions Trial No. 433 of 2000, arising out of Kochadhaman P.S. Case No. 46 of 1997 whereby and whereunder the appellant has been convicted for the offence punishable under Section 395 of the IPC and has been sentenced to undergo rigorous imprisonment for seven years under the said section.

6. According to fardbeyan of informant, the prosecution story, in brief, is that on previous night i.e. 04.04.1997 at about 1:00 AM, the informant's younger son Md. Shahid Alam was sleeping on the door. It is alleged that 10-12 persons came and started assaulting his younger son and his hands were tied behind the back. By opening the door, four persons entered into the informant's house and they assaulted the informant and his wife by means of lathi and axe due to which they sustained injury. It is further alleged that the miscreants after breaking the box started taking out the articles. The dacoits who had entered into the house had lathi, axe, torch etc. in their hands and they threatened to kill, if they would make noise. It is further alleged that dacoits after breaking the box took out silver bracelet (6 bhar), silver neckless (16 bhar), silver pajeb (20 bhar), silver jhumka (4 bhar), Rs. 1800/- in cash, Philips radio of informant's son, watch, saree, shirt-pant etc. It is further alleged that robbery was committed for about



30-45 minutes. On the sound of gun taking place in village, miscreants fled away. Dacoits were 10-12 in numbers. Dacoits were wearing lungi and shirt. They were about 25-40 years of age. Some of them are of dark complexion whereas some of them are of fair complexion. They were of ordinary height. Some of them are healthy. The informant claims to identify the dacoit in the light of lantern, and if he will get opportunity, he can identify them. The informant has not seen from where they entered into courtyard. People of nearby came after hearing the sound of alarm. The injured persons were taken to hospital for treatment. It is further alleged that informant's elder son was also assaulted by the dacoits.

7. On the basis of fardbeyan of informant, Kochadhaman P.S. Case No. 46 of 1997 dated 03/04.04.1997 was registered under Sections 395, 397 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant and others under Sections 395, 397, 412 of the IPC. Thereafter, the learned trial court took cognizance under Sections 395, 397, 412 of the IPC. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against



the appellant and others under Section 395 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

8. In order to bring home guilt of accused persons, prosecution has examined altogether twelve witnesses. PW-1 Shahid Alam, PW-2 Izharul Haque, PW-3 Noor Mohammad (informant), PW-4 Noor Saba Begum, PW-5 Nizamuddin, PW-6 Md. Adil, PW-7 Shamim Alam, PW-8 Ziyaur Rahman, PW-9 Halimuddin, PW-10 Naiyar Alam, PW-11 Abul Hasan and PW-12 Md. Kalimuddin. No documentary evidence has been produced on behalf of the prosecution though TIP chart and material exhibit chart are available on record.

9. Defence has produced two witnesses on its behalf i.e. DW-1 Aafat Alam and DW-2 Saidul Rahman. No documentary evidence has been produced on behalf of the defence. However, defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

10. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the fifth paragraph of the judgment.



11. Learned *Amicus Curiae* appearing for the appellant has submitted that during course of trial, 12 prosecution witnesses were examined, out of whom PW-2 and PW-9 are hearsay witness, PWs-5, 6 and 7 have not seen the dacoits, PWs-10 and 11 have been declared hostile. Learned *Amicus Curiae* further submits that investigating officer has not been examined in this case, therefore, the prosecution has failed to prove the place of occurrence. Even the doctor has not been examined to prove the injury of the injured persons. It has been submitted that TIP was not held in proper manner. It has been submitted that appellant is a shopkeeper and on account of selling of ginger altercation took place between the appellant and the informant for which panchayati was held but all went in vain and appellant has been falsely implicated in the instant case and this fact has also been supported by DW-1 and DW-2. Learned *Amicus Curiae* further submits that the informant's son, namely, Shahid Alam/ PW-1 resides adjacent to the house of the appellant and appellant is well know to him before the occurrence. It has also been submitted that in the initial version of prosecution story, informant claims that he identifies the dacoits in the light of lantern but his son PW-1 stated that he identified the dacoits in the light of their torch, which is totally



inconsistent with the initial version of prosecution story. Learned counsel for the appellant has submitted that appellant is also of the same locality. Appellant is not named in the FIR. During the course of investigation on the basis of suspicion his name has come to fore, so-called TIP was conducted but neither B.D.O. nor Magistrate who conducted the TIP has been examined. The very proper procedure followed in conducting TIP has not been proved due to non-examination of Magistrate or B.D.O. The very authenticity of TIP is in question. Apart from that, there are several inconsistencies and discrepancies found in the statements of prosecution witnesses and in the light of aforesaid facts and circumstances of the case, impugned judgment of conviction and order of sentence passed by the concerned court are liable to be set aside.

12. Learned Additional Public Prosecutor appearing for the State has submitted that PW-3/ informant, PW-1 and PW-8 have supported the case of the prosecution and hence, the judgment of conviction and order of sentence passed by the concerned court are justified and legal and no interference is needed.

13. The question which arises for consideration is:-

"Whether offence under Section 395 of



the IPC is made out in the light of given facts and circumstances of the case or not ?"

14. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

15. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

16. PW-1/ Shahid Alam has stated that occurrence took place at 01:00 AM on 04.04.1997 and he was sleeping at Verandah. He has further stated that his father and mother were sleeping in eastern side of room. He has stated that after hearing the voice of 10-15 persons he awoke and some miscreants started assaulting him. PW-1 has also stated that dacoits were carrying lathi, axe, pistol and revolver. At para-2 of examination in chief he has stated that in the torch light of dacoits he claims to see them and dacoits committed loot. He has also stated that his brother Ziyaur Rahman was also slept in Verandah and on raising alarm Ziyaur Rahman came out of the room and he was also assaulted by the dacoits. He further stated that villagers came and fired from gun and dacoits fled away



after arrival of villagers. PW-1 has also stated that dacoits took away watch, radio, torch, cash, silver ornaments, clothes etc. At para-4 he has stated that on the basis of notice sent by police he came to identify the dacoits and in jail he identified the dacoits before the Hakim in the queue of suspected persons. He identified the appellant in *Katghara*. The TIP was conducted 22 days after the occurrence. At para-5 he has stated that second time he identified co-accused Gonu Mahto before the Magistrate in jail and stated that at the time of dacoity, Gonu Mahto was having pistol in his hand but in FIR there is no reference of pistol. At para 6, PW-1 has stated that he identified looted articles, which had been kept along with other articles in Block in presence of B.D.O. During cross-examination, PW-1 has stated that articles, which he identified, were not produced before the court. PW-1 has also stated that he identified the articles after 36 days. At para-9, PW-1 has stated that on the day of dacoity, there was darkness. There was lantern in the room of his father and he had no lantern. He was being caught by the dacoits and his hands were tied behind the back and he was assaulted by lathi. PW-1 has also stated that he identified the dacoits just because they were flashing lights here and there.

During examination in chief and cross



examination, he has not pointed out any physical features of any of the dacoits though he is claiming that he has identified the dacoits including the appellant. But in initial version of prosecution story, only informant is claiming that he identified the dacoits in the light of lantern. PW-1 has stated that he, his father, his mother and his brother sustained injury in the alleged incident but no injury report has been produced and doctor has also not been examined. It is admitted by this witness that there was darkness at the time of dacoity but very source of light i.e. lantern or torch has not been seized to produce before the court and on the said point, I.O. has not been examined. In absence of such seizure, it is difficult to reach out at a particular conclusion that this is the source of light by which the dacoits were identified. The evidentiary value of evidence of PW-1 is quite shaky on that point that he is unable to point out any physical features of the dacoits. Even his version is quite contradictory that in initial version of prosecution story, the informant/PW-3 stated that dacoits were carrying lathi, paina, torch etc. but PW-1 while adducing evidence has stated that dacoits were carrying lathi, axe, pistol and revolver in their hands which is totally inconsistent with the prosecution story. Hence, evidence of PW-1 does not carry authenticity.



17. PW-2/ Izharul Haque has stated that occurrence took place five years ago at 01:00 AM. He stated that he was sleeping in the room and his father was also sleeping in another room. He awoke when dacoits tried to break the gate. He did not open the gate where he slept. PW-2 has stated that when dacoits fled away villagers came. When the firing was made by the villagers, he opened the gate and came outside and found that his father sustained injury on head by means of axe and his father stated that he did not identify anyone. He has also stated that his younger brother Shahid Alam was crying at Verandah as he had sustained injury by means of lathi and Shahid Alam has stated that he claims to identify the dacoits in the light of torch and he also claims to identify two persons by face.

PW-2 has himself admitted that he came outside the room after departure of dacoits. In this way, he is not eye witness of the occurrence and his version that his father has not identified anyone is totally inconsistent with the initial version of prosecution story as his father/ informant claims to identify the dacoits in the light of lantern and he also stated that dacoits were about 25-40 years of age and some of them are of dark complexion whereas some of them are of fair complexion and



they were of ordinary height. In this way, statement of PW-2 is totally inconsistent with the initial version of prosecution story. PW-1 in para-1 of examination in chief stated that on the voice of 10-15 persons he awoke but in para-8 of cross examination he has stated that when he was caught by the dacoits, he awoke. No physical features of dacoits have been pointed out by the PW-1 but PW-2 molded the story of prosecution that his brother is claiming to identify two persons by face. In this way, his evidence does not carry authenticity.

18. PW-3/ Noor Mohammad being informant of the case has narrated the story of prosecution. He has stated that occurrence took place five years ago. He has also stated that he was sleeping in his house and his son Shahid was sleeping at Verandah. When his son was being assaulted by the dacoits, he awoke. He stated that dacoits broke the gate and assaulted him as well as his wife. He did not identify any of the dacoits. Dacoits had looted the articles. He did not raise alarm and after arrival of villagers dacoits fled away. He has stated that his wife, his elder son and he himself sustained injury. He has stated that his son claims to identify two persons. He did not identify anyone in TIP and his son identified the articles. At para-3 he has stated that he came to know that looted items were



recovered from the house of Bakar Maria, Annu @ Anwar, Abdur Rahman and he did not identify the above stated persons. In cross examination, he has stated that he did not tell from where the name of accused persons heard. He did not know the father name and village name of accused. He has not given the list of looted articles and he has not seen the things again but PW-1 at para 11 has stated that his father has given the list of looted articles to the police after 2 days of the occurrence. In this way, version of PW-1 and PW-3 are quite divergent on the issue of list of looted articles which was given to the police. PW-3 has never stated in initial version of prosecution story that he awoke at the time of assaulting of his son by the dacoits but during course of examination in chief he stated that when his son Shahid Alam was assaulted by the dacoits, he awoke. In this way, evidence of PW-3 does not inspire confidence.

19. PW-4/ Noor Saba Begum has stated that occurrence took place six years ago at 01:00 AM and she as well as her husband were sleeping. 10-15 dacoits had entered into the house. Dacoits had looted away box, silver ornaments, Rs. 1800/- in cash, clothes, radio etc. She has stated that dacoits assaulted her husband, herself and her son. She has not identified any of the dacoits and her son identified the dacoits.



20. PW-5/ Nizam Uddin has stated that dacoity was committed in the house of informant six years ago and he has not seen the dacoits.

21. PW-6/ Md. Adil has stated that dacoity was committed in the house of informant six years ago and he reached there after hearing hulla. He has also stated that he has not seen the dacoits as dacoits had fled away when he reached there.

22. PW-7/ Shamim Alam has stated that dacoity was committed in the house of informant six years ago and when he reached there dacoits had already fled away. He has also stated that he has not seen the dacoits.

23. PW-8/ Ziyaur Rahman has stated that occurrence of dacoity took place six years ago in his house. At that time he was sleeping. He has stated that he awoke when the dacoits were breaking the door. He opened the gate and dacoits entered into the house and started assaulting. Dacoits started assaulting his younger brother who was sleeping at Verandah. Dacoits assaulted his father. He stated that dacaoits stayed at the house for one hour and dacoits were 10-15 in numbers. He has also stated that dacoits assaulted his father by means of axe due to which he became faint. Dacoits also assaulted his mother.



Dacoits had looted away clothes, silver ornaments, Rs. 1800 in cash etc. At para-6 of examination in chief he has stated that he identified two dacoits in TIP, one is appellant and another is Gonu Mahto. He did not identify the others. He went to Block to identify the articles which was looted in dacoity and he identified saree, sweater, muffler, shawl etc. In para-8 he stated that he identified the dacoits in the light of torch. At para-9 of cross examination he has stated that his father has given the list of looted articles to the police. He has stated that father has provided colour of articles. He had gone to Block to identify the articles after 25 days of the occurrence and Daroga was not present there but the B.D.O. was present. He is unable to tell regarding the dress of dacoits. He has not pointed out any physical features of the dacoits though he is claiming to identify the dacoits in the light of torch of the dacoits. In this way, his evidence is not trustworthy.

24. PW-9/ Haleem Uddin has stated that he heard regarding commission of dacoity in the house of informant and he did not go to the house of informant. In this way, he is a hearsay witness.

25. PW-10/ Naiyar Alam has stated that he does not know anything regarding the occurrence. He has been



declared hostile.

26. PW-11/ Abul Hasan has stated that he does not know anything regarding the occurrence. He has been declared hostile.

27. PW-12/ Md. Kalimuddin has stated that nothing was recovered before him and he has also not put signature on the seizure list.

28. DW-1/ Md. Aafat Alam has stated that on account of selling of ginger altercation took place between the appellant and the informant for which panchayati was held and on account of previous enmity, appellant has been falsely implicated in the instant case by the informant. From the evidence of DW-1 it is clear that the appellant and co-accused Gonu Mahto are acquainted with the informant and his family members.

29. DW-2/ Saidul Rahman has also asserted the same fact which has been narrated by DW-1.

30. From perusal of the FIR itself, it is clear that informant is claiming to identify the miscreants in the light of lantern. Source of identification as per version of the informant is lantern but I.O. has not been examined in the present case. Hence, source of identification has not been seized and the



informant is claiming that he and his family members have sustained injury and they have been treated in the hospital but injury report is not available on record to authenticate that they are sufferer of the alleged incident. Neither injury report has been exhibited nor the doctor has been examined. The very assertion of injury is merely a bald statement without support of any injury report. From the FIR, it is also clear that only the informant is claiming to identify the dacoits. None of the family members is claiming to identify the miscreants in the FIR. During TIP, two sons of informant i.e. PW-1 and PW-8 claimed to identify the appellant and other. The authenticity of these two witnesses are quite shaky on the point of source of identification as they are claiming to identify the dacoits in the light of torch of miscreants and informant, who is claiming to be eye witness of the occurrence, has not identified anyone but subsequently, in TIP PW-1 and PW-8 claimed to identify the appellant and others. On the point of source of identification neither lantern nor torch was seized by the investigating officer and even I.O. has not been examined on the said point which caused prejudice to the defence.

31. In the present case, the prosecution has not offered any explanation as to why the Magistrate/B.D.O., who



conducted TI Parade was not examined to prove the report, inasmuch as many things the defence could have brought out by way of cross examination of the Magistrate regarding the irregularities or procedural infirmities, if any, made during conduct of TI parade. Recently, in the case of ***Umesh Chandra & Ors. vs. State of Uttarakhand*** reported in ***(2021) 17 SCC 616***, the Hon'ble Supreme Court has expressed concern about non-examination of Magistrates to prove the sanctity of the TI parade and observed as follows:-

"But more important than that, the test identification parade being a part of the investigation, has to be proved by the prosecution as having been held in accordance with law. The onus lies on the prosecution to establish that the TIP was held in accordance with law. It is only after the prosecution prima facie establishes a valid TIP having been held, the question of considering any objection to the same arises. If the prosecution has failed to establish that a TIP was properly held by examining the witnesses to the same, there is nothing for the accused to disprove."

32. In ***Baikuntha Bhoi & Anr. vs. State of Odisha*** reported in ***2024 SCC Online Ori 1264*** in which it has been held that "mere marking of TI parade report is not enough inasmuch as the person who conducted the TI parade could only highlight what precautions he took, what procedure he followed during such TI parade. Lapses, if any, on the Magistrate's part



during the proceedings of the TI parade which strikes at the root of the identification evidence, can be brought out by the defence counsel in the cross-examination.

33. In the present case, even the Magistrate/B.D.O. who conducted TI parade has not been examined to prove the report. No explanation is forthcoming why the Magistrate or B.D.O. was not examined. It is undisputed that the Public Prosecutor has a duty to examine the Magistrate who conducts the T.I. parade so that the legal sanctity of the T.I. parade report can be ascertained during the trial. Non-examination of the Magistrate strikes a severe blow not only to the prosecution case but also to the cause of justice as irregularities, if any, committed in such T.I. parade cannot be canvassed and discussed by the trial court in his absence from the witness box.

34. It is pertinent to mention that appellant is not named in the FIR and FIR is lodged against unknown and the TIP was not held in proper manner. The informant's son i.e. PW-1 and PW-8 have not pointed out any physical features of the miscreants prior to identification parade and same is not mentioned in the FIR that both witnesses were also claiming to identify the miscreants. Their source of identification is



inconsistent with the source of identification disclosed by the informant. From perusal of the FIR, it is clear that they are not claiming to identify the appellant and others and they have not given any physical features of the miscreants rather the informant has given the physical features of the miscreants but PWs-1 and 8 abruptly identified the miscreants in TIP. From perusal of the record it is crystal clear that nothing was recovered at the instance of the appellant. Only two witnesses have identified the appellant in TI parade who has not claimed in the initial version of prosecution story, though they have abruptly identified the miscreants in TIP without disclosing physical features prior to TIP. They have also stated that in the light of torch they claimed to identify the dacoits. The informant is claiming to identify the dacoits in the light of lantern which is quite inconsistent with the evidence of two prosecution witnesses. On the said point, I.O. has not been examined who has conducted the investigation and prosecution has not taken pain to produce the I.O. and there is no seizure list of torch or any light. In absence of such seizure list, there is question mark on the source of identification.

35. It is necessary to cite the judgment delivered by Hon'ble Supreme Court in the case of ***Wakil Singh and Ors.***



Vs. State of Bihar reported in ***1981 (Supp) SCC 28***, the Hon'ble Supreme Court, in paragraph 2 of the aforesaid judgment has held as follows:-

“In the instant case we may mention that none of the witnesses in their earlier statements or in oral evidence gave any description of the dacoits whom they have alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz., stature of the accused or whether they were fat or thin or of a fair colour or of black colour. In absence of any such description, it will be impossible for us to convict any accused on the basis of a single identification, in which case the reasonable possibility of mistake in identification cannot be excluded. For these reasons, therefore, the trial court was right in not relying on the evidence of witnesses and not convicting the accused who are identified by only one witness, apart from the reasons that were given by the trial court. The High Court, however has chosen to rely on the evidence of a single witness, completely over-looking the facts and circumstances mentioned above. The High Court also ignored the fact that the identification was made at the T.I. parade about 3 months after the dacoity and in view of such a long lapse of time it is not possible for any human being to remember, the features of the accused and he is, therefore, very likely to commit mistakes. In these



circumstances, unless the evidence is absolutely clear, it would be unsafe to convict an accused for such a serious offence on the testimony of a single witness."

36. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.

37. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have



been released on bail should be taken into custody to serve out the sentence."

38. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of ***Syed Ibrahim versus State of Andhra Pradesh***, reported in ***(2008) 10 SCC 601***, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."

39. Apart from that, doctor, who is an expert witness, has not been examined in the present case and injury sustained by the injured has not been brought on record. In absence of examination of doctor, it is difficult to prove the injury of injured who are claiming that they have sustained injury and injured persons have been treated in the hospital.

40. It is pertinent to mention here that PW-1, the son of the informant, has deposed that he purportedly identified the alleged dacoits in the light of the torch said to have been held by one of the dacoits. However, the person holding the torch could not have been identified by others, as the beam of the torch was directed towards a specific individual and not



diffused over the entire area. Significantly, the alleged source of light was neither seized by the investigating officer nor produced during trial, thereby rendering the very basis of identification doubtful and unclear. Furthermore, source of light is proof of identification in case occurrence has taken place in darkness of night. In the present case, dacoity has taken place in intervening night of 03/04.04.1997 at 01:00 AM. FIR reveals that miscreants entered into house and they assaulted informant, informant's wife and informant's sons and also took away several house hold articles. Informant claims to identify the dacoits in the light of lantern. He has pointed out age group of dacoits and has given details of physical complexion. PW-1 has pointed out that he claims to identify dacoits in light of torch of dacoits. Prudently and pragmatically, holder of torch light could not have been identified by others as the beam of torch was directed towards specific individual and not diffused over entire area. The claim of PW-1 was merely projection of identification as his evidentiary value is without having authenticity in light of aforesaid discussion. On issue of source of identification, informant is said to have claimed that he identified the dacoits in light of lantern. On said aspect witnesses of prosecution have divergent view. Informant/PW-3 did not identify appellant



despite being his source of identification is based on the light of lantern. He pointed out age-group and physical complexion of dacoits. Other two witnesses, who claimed to identify through torch of light of dacoits. Said aspects did not find place in the FIR. It is a matter of common sense that the beam of torch light can be directed towards particular thing or individuals and not diffused over entire area. Their claim of identification is merely projection. They have not claimed that their physical features were of certain kind. The manner in which identification claimed was purely projection and afterthought of two witnesses as they have not revealed any physical features of any miscreants. FIR reveals that dacoits were armed with axe, lathi but not with revolver and pistol. During adducing evidence before the court PW-1 found that miscreants with revolver and pistol. The views of prosecution witnesses regarding holding of pistol and revolver by dacoit was totally divergent from initial version of prosecution story.

41. From perusal of evidence of PW-3, who is star witness of the occurrence and informant of the case, he has stated that dacoity has taken place in his house and he, his wife and his son sustained injury in the alleged incident. He also stated that during dacoity he did not identify anyone even during



TIP. He is the person who is claiming to identify the dacoits in the light of lantern. In initial version of prosecution story he has pointed out physical features of the dacoits, age group and complexion of the dacoits but despite revealing all physical features he is unable to identify the dacoits but he has also improvised his statement regarding identification by his son during examination in chief. Though in earlier version of prosecution story same is totally missing. The persons who are identifying the appellant and others have not pointed out any physical features either at the time of initial version of prosecution story or at the time of adducing evidence. The informant has not given any list of looted articles to the police though the witnesses, who identified the looted articles, have stated that informant has given the list of looted articles to the police and even colour of the things have been pointed out by the informant but on the said point informant has stated that he has not given any list of looted articles to police. In this way, whole prosecution story is doubtful as there are two divergent views on providing list of looted articles to police. The star witness/informant has categorically denied that he has given list of looted articles to the police at the time of adducing evidence before the court and even the source of light by which



identification made as claimed by the informant, is not seized and I.O. has not been examined on the said point. Examination of I.O. is very crucial to prove the place of occurrence and contradiction of other prosecution witnesses cannot be taken if I.O. is not examined. In this way, the whole prosecution story has become doubtful in non-examination of Doctor, Investigating Officer and the Magistrate/B.D.O. who conducted the TIP. There are several inconsistencies and discrepancies found in the evidence of prosecution witnesses i.e. PW-1, PW-3/informant and PW-8. Hence, the contention of learned amicus curiae is quite convincing. It is the cardinal principle of law that prosecution has to prove the case beyond reasonable doubt and benefit of doubt goes in favour of the accused/appellant.

42. Keeping in view all the infirmities and discrepancies, I find the judgment of conviction and order of sentence passed by the concerned court are not justified and legal and same is fit to be set aside.

43. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence.



Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of his bail bonds.

44. The interlocutory application, if any, also stands disposed of.

45. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

46. The records of this case be also returned to the concerned trial court forthwith.

47. Before parting with the judgment, I appreciate the legal assistance rendered by *Mrs. Sushmita Mishra*, learned *Amicus Curiae*. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5000/- (five thousand) to *Mrs. Sushmita Mishra*, learned *Amicus Curiae*, as consolidated fee for the legal assistance rendered by her within four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12.12.2025
Transmission Date	12.12.2025

