

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.137 of 2004

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Pappu Kumar Ojha, S/o Chandrashekhar Ojha, R/o Village-Batraulia, P.S.-
Saraia, District- Muzaffarpur

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Amit Anand, Advocate
For the State : Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 20-09-2025

The present appeal has been preferred by the sole appellant against the impugned judgment and order of sentence dated 05.02.2004 and 06.02.2004, respectively, as per which the appellant has been found guilty under Sections 392 and 398 of the Indian Penal Code and sentenced to rigorous imprisonment for 5 years and rigorous imprisonment for 7 years under Sections 392 and 398 of the Indian Penal Code, respectively and both the sentences have been directed to run concurrently.

2. The prosecution case, as emerging from the F.I.R., is that the informant (P.W.2)/Nematullah was coming from Muzaffarpur on 06.11.1992 on his motorcycle bearing No. BR-06A-0370 to his home and when he reached near Madhopur Chhapra kachi Road Kabristan at 5:10 pm, three persons came in the middle of the road and intercepted his motorcycle. As per



further case of the prosecution, one of the accused persons pointed his revolver to his chest and second accused pushed him down from the motorcycle. Consequently, informant fell down in the paddy field and raised alarm. The third accused started motorcycle and on his hulla, the people came to the place of occurrence and the accused persons fled away towards Village-Harchandra and Fulkahan.

3. During the trial, charge under Sections 392 and 398 of the Indian Penal Code was framed against the appellant and three witnesses were examined. The informant/Nematullah was examined as P.W.2, whereas one Md. Mojibbul and one Md. Islam were examined as P.W.1 and P.W.3, respectively.

4. After prosecution evidence, the appellant was examined under Section 313 Cr.PC, in which the appellant claimed to be innocent. However, no evidence was adduced by the appellant in his defence.

5. After perusal of the prosecution evidence, I find that P.W.1 is a hearsay witness, whereas P.W.3 knows nothing about the case and he has been declared hostile. Informant (P.W.2) is the only witness in support of the prosecution. He has deposed that three persons had committed the offence of robbery having pistol in their hands. Two of them had covered



their face. However, the face of the third accused was uncovered. He has further deposed that even the person, who had not covered his face, was unknown to him before the occurrence. He has further deposed that he was taken to the jail for identifying the accused in the T.I.P. and Daroga Ji had told him that one Pappu Ojha had been arrested and he should identify him.

6. There is no evidence whether the alleged arms was seized, sealed and produced before the Court or whether there was any efficacy test conducted in regard to the arms.

7. I heard learned counsel for the appellant and learned APP for the State.

8. Learned counsel for the appellant submits that the petitioner is innocent and has been falsely implicated in this case. He further submits that the prosecution has badly failed to prove the case against the appellant beyond all reasonable doubts. The appellant was identified by the informant in the T.I.P. at the instance of the Daroga and hence, T.I.P. was vitiated and there is no statement in the evidence of the informant (P.W.2) before the Trial Court that he recognized the appellant in the dock. As such, the identity of the accused could not be established beyond reasonable doubts, nor any arms seized from



the accused was proved by the prosecution during the trial. Hence, charge under Sections 392 and 398 of the Indian Penal Code has badly failed and the appellant is entitled to get acquitted of the charge.

9. However, learned APP for the State supports the impugned judgment and order of sentence submitting that the prosecution has proved its case beyond all reasonable doubts and there is no scope of any interference of this Court in the impugned judgment and order of sentence.

10. I considered the rival submissions of the parties and perused the material on record.

11. I find that only three witnesses have been examined by the prosecution during the trial. One of them, P.W.1, is a hearsay witness, whereas P.W.3 is a hostile witness. The prosecution case is based only on the evidence of the informant (P.W.2). Even the informant (P.W.2) has not proved the prosecution case against the appellant beyond all reasonable doubts. The identification of the appellant is not established. The informant had seen the appellant for the first time at the time of occurrence and only with the help of Daroga, the appellant was recognized in the T.I.P. Moreover, in his examination in the Court during trial, the informant has not



uttered a single word that he recognized the accused standing in the dock, nor the informant has stated any word about the seizure and production of arms allegedly possessed by the appellant at the time of occurrence, nor there is any other witness or documentary or material evidence to show that any arms were recovered from the appellant.

12. Hence, in my considered opinion, the prosecution has badly failed to prove its case against the appellant beyond all reasonable doubts. The impugned judgment and order of sentence are liable to be set aside.

13. Accordingly, the present appeal is allowed setting aside the impugned judgment and order of sentence acquitting the appellant of all charges.

14. Bail bond of the appellant stands discharged.
L.C.R. be sent back to the Court concerned forthwith.

15. Interlocutory applications, if pending, stand disposed of.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.09.2025.
Transmission Date	22.09.2025.

