

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.382 of 1995**

1. Sham Mohammad Nut son of Babulal Nut. 2. Taslim Nut son of Pusa Nut 3. Batahu Nut son of Babulal Nut All residents of Village-Mustafapur, Police Station-Ahiapur, District-Muzaffarpur.	 Appellants
Versus	
The State of Bihar.	 Respondent

Appearance :

For the Appellant/s	:	Mr. Dinu Kumar, Advocate Mr. Vardaan Mangalam, Advocate Mrs. Ritika Rani, Advocate Ms. Himja Gautam Singh, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

Date : 19-09-2025

1. This Criminal Appeal has been filed by the three appellants, namely, Sham Mohammad Nut, Taslim Nut and Batahu Nut, challenging the judgment of conviction and order of sentence dated 17th November, 1995 passed by the learned 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 387 of 1994 (arising out of Ahiyapur P.S. Case No. 120 of 1993, G.R. No. 1646 of 1993). By the said judgment, each of the appellants was found guilty for the offence punishable under Section 396 IPC (dacoity with murder) and was sentenced to undergo rigorous imprisonment for life.
2. The prosecution story originates from an occurrence of



dacoity coupled with homicide which took place in the intervening night of 12th/13th July, 1993 at about 12:30 a.m. at the residential house of the informant BaijnathSah of village Mustafapur, P.S. Ahiyapur, District Muzaffarpur. During the course of that incident, a minor child aged about 8 years, namely Amod (Amod Kumar) nephew of the informant sustained a grievous head injury caused by a sharp-edged weapon (a Barchi) and succumbed thereafter.

3. On the basis of the Fardbayan of BaijnathSah recorded on 13.07.1993 at 07:00 a.m. at his house by SI Digamber Prasad, O/C Ahiyapur P.S., Ahiyapur P.S. Case No. 120/93 was registered under Section 396 IPC. Investigation was immediately taken up, accused persons were thereafter arrested and, on completion of investigation, a charge-sheet was submitted against the present appellants.

4. The learned Chief Judicial Magistrate, Muzaffarpur committed the case to the Court of Session on 11th July, 1994. The case was subsequently transferred to the learned Additional Sessions Judge-II, Muzaffarpur. Charges under Section 396 IPC were framed against the three accused. They pleaded not guilty and claimed to be tried.

5. The prosecution, in support of its case, examined fifteen



witnesses including the informant, eye-witnesses (family members and villagers), the Investigating Officer and the doctor who conducted the post-mortem. Documentary material placed on record comprised of the Fardbayan (FIR), inquest report, seizure lists, post-mortem report and related papers. Some prosecution witnesses, at various stages, were declared hostile or gave evidence which contained infirmities.

6. The learned trial Judge, after appreciation of the evidence, recorded findings of fact and convicted the appellants under Section 396 IPC and sentenced them to rigorous imprisonment for life. Aggrieved by the conviction and sentence, the appellants preferred the present appeal.

7. The principal grounds urged in the appeal may be summarized as follows:

(a) The identification of the appellants is doubtful, unsafe and inconsistent across various witnesses; identification was said to have been made at night, in partial torchlight only, which were allegedly lit would not be possible to identify the miscreants against the torchlight.

(b) There exist material contradictions and omissions between the Fardbayan, statements recorded under Sections 161/162 Cr.P.C. and the depositions of the witnesses in Court.

(c) Several witnesses either turned hostile or did not support the prosecution in material particulars.



(d) The prosecution evidence contains alleged exaggerations and improvements made in Court, not contained in earlier statements.

(e) The learned trial Court misdirected itself in convicting the appellants without proof beyond reasonable doubt and by over-relying on questionable identification testimony.

8. The prosecution case, in the first instance, is set out in the Fardbayan made by the informant Baijnath (Baij Nath) Sah, recorded on 13.07.1993 at about 07:00 a.m. at his house by SI Digamber Prasad, O/C Ahiyapur Police Station. On the basis of that Fardbayan, Ahiyapur P.S. Case No. 120/93 (registered for commission of offence under Section 396 IPC) was instituted.

9. The Fardbayan describes the incident as having occurred in the intervening night of 12/13 July 1993 at approximately 12:00–12:30 a.m. The informant states that while his family was inside the house after their meal, a band of 10–12 persons entered the premises carrying torches and armed with lathis, bhalas, barchis (long edged weapons) and a jhola containing bomb(s). The intruders shouted, abused and demanded money and valuables.

10. The informant further narrates that the miscreants assaulted the informant and his mother (Dahauri Devi), broke open the kothi/store and began to loot household goods and shop articles. In the commotion the informant's nephew, Amod



(Amod Kumar), aged about eight years, pointed out a person and, in consequence, one of the dacoits struck the child with a barchi on the head. The weapon is alleged to have penetrated the skull and, when it could make not be pulled out, the dacoit allegedly threw the child on a silaut (stone pallet used to make paste of spices), pressed him with foot and extracted the Barchi from his head. The child subsequently died while being taken for treatment.

11. The informant specifically named Taslim Nut as the person who struck the child with the barchi and named Sham Mohammad Nut and Batahu Nut as his associates who participated in the dacoity. The Fardbayan records that the informant recognised the accused by the torchlight and moonlight. It further records that the dacoits threatened the villagers, hurled bombs to create panic, and decamped with goods and cash.

12. The Fardbayan gives details of the loot, viz., a tin/box containing three Sarees, three dhotis and cash approximating Rs. 800/- taken from the house and shop of the informant. The informant also stated that certain personal ornaments were taken.

13. The Fardbayan was recorded in the presence of local



functionaries, Mukhiya Nawal Kishore Prasad and Sarpanch Raktu Sahni and their signatures were appended to the record. The presence of these functionaries is affirmed in the record and was later proved during trial.

14. The investigating officer, on taking up the investigation, prepared the inquest, seized material of relevance (including blood-stained earth/cloth as recorded in the seizure list) and collected the body for post-mortem. The IO's steps as recorded on file include seizure, preparation of inquest, and subsequent filing of charge-sheet against the named accused persons.

15. In short, the prosecution case as reflected in the FIR/Fardbayan is:

- a. a house-dacoity of large scale (10–12 persons) occurred on 12/13.7.1993 at about 12:30 a.m.;
- b. during the dacoity the informant's nephew Amod sustained a grievous head injury by a barchi and died thereafter;
- c. the accused Taslim Nut is alleged to be the assailant who dealt the fatal blow, and Sham Mohammad and Batahu are alleged to have accompanied him;
- d. the dacoits used torches and bomb(s) to terrorise villagers and carried away cloth articles and about Rs. 800/- cash; and
- e. the Fardbayan naming the accused was recorded promptly the following morning and bears the signatures of local



representatives.

16. The prosecution places reliance on this contemporaneous record (the Fardbayan), the inquest and post-mortem papers, seizure documents and the subsequent oral testimony of the informant and other witnesses as the primary foundation of its case.

17. The prosecution, in support of its case, examined in all fifteen witnesses. Their depositions, both in examination-in-chief and cross-examination, are noticed hereunder:

18. PW-1 - Ram Bharos Prasad. This witness stated that on hearing "hulla" alarm he reached the house of the informant and found that a dacoity had taken place. He saw the injured child Amod lying with a bleeding head injury. He put his signature on the inquest report (Ext.1). In cross-examination he admitted that he had not seen the dacoits assaulting the child nor could he identify any of them. He was declared hostile by the prosecution.

19. PW-2 - Ram Vilas Sah. This witness deposed that he went to the place of occurrence on hearing alarm and saw the child in an injured condition. He too signed on the inquest report. He admitted in cross-examination that he did not see the occurrence nor could he identify the accused persons. He was



also declared hostile.

20. PW-3 -Ram Babu Sah. He supported the occurrence of dacoity, proved his signature on the seizure list, but did not identify the dacoits. He was treated hostile on the point of identification.

21. PW-4 -Nagina Sah. He is the father of the deceased. He narrated that at about midnight dacoits armed with lathi, bhala, barchi and bombs entered the house. They broke open the kothi and looted household articles. He specifically stated that accused Taslim Nut gave a barchi blow on the head of his son Amod as the latter pointed towards him. He identified Taslim in Court. In cross-examination he admitted that he was weeping when his statement was recorded by the police and might not have stated every detail then. Nevertheless, he was firm in his testimony identifying Taslim as the assailant.

22. PW-5-BaijnathSah (informant).He reiterated the allegations made in the Fardbayan (Ext.2). He stated that 10–12 persons entered his house and committed dacoity. He deposed that his nephew Amod was assaulted by a barchi on his head by accused Taslim Nut, and when the weapon could not be pulled out, Amod was thrown on a silaut and pressed upon to extract the barchi, resulting in his death. He also named Sham



Mohammad Nut and Batahu Nut as among the dacoits. He proved his signature on the Fardbayan. In cross-examination he admitted that he was weeping at the time of lodging Fardbayan but denied the suggestion of false implication.

23. PW-6 - Ram Babu Sah. He came to the house of the informant on alarm and found that a dacoity had been committed. He proved his signature on the seizure list but did not identify the dacoits. He was declared hostile.

24. PW-7-Rangilal Bhagat. He deposed that on hearing alarm he rushed towards the informant's house and found the dacoits fleeing. He chased them and during the chase he heard the voice of accused Taslim abusing the villagers. He stated that a bomb was hurled during the escape. He identified Taslim in Court. In cross-examination he admitted that it was dark and identification was partly by voice.

25. PW-8 -Nunu Devi. She is the wife of the informant. She stated that dacoits entered the house and looted away ornaments and clothes. She identified Taslim Nut as being among them, stating she knew him from before as he used to visit their house. She too named Sham Mohammad and Batahu as associates. In cross-examination she admitted prior acquaintance with Taslim.



26. PW-9 -Sikilia Devi. She also supported the occurrence of dacoity and identified the accused persons. In cross-examination she admitted that there was darkness and some confusion but denied false implication.

27. PW-10- Vinod Shah was tendered by the prosecution for cross examination.

28. PW-10 –Indradeo Shah. He narrated that on hearing the alarm, he awoke and went to the door of Baijnath's house. He saw about 10–12 dacoits carrying torches. When the villagers advanced towards them, the dacoits chased and hurled bombs. Thereafter they fled away. He further deposed that he identified one of the dacoits as Taslim Nut. He also stated that he saw the son of Nagina Sah had been struck on the temple with a spear, which pierced through. The injured child was being taken to a doctor, but he succumbed on the way. He identified accused Taslim Nut in Court.

29. PW-12-RaktuSahni (Sarpanch).He proved his signature on the Fardbayan and supported the fact that it was recorded in his presence.

30. PW-13 - Nawal Kishore Prasad (Mukhiya).He too proved his signature on the Fardbayan and confirmed its contemporaneous recording.



31. PW-14 - Digamber Prasad (Investigating Officer).He stated that he recorded the Fardbayan of BaijnathSah on 13.07.1993 at about 07:00 a.m. in presence of Mukhiya and Sarpanch, prepared the inquest, seized bloodstained earth and articles, and later submitted the charge-sheet. In cross-examination he denied the suggestion that the case was fabricated after consultation.

32. PW-15 - Dr. Pankaj (Medical Officer).He conducted the post-mortem on the dead body of Amod and found a penetrating wound on the scalp, fracturing the skull bone and causing brain injury. He opined that the injury was sufficient in the ordinary course of nature to cause death. He proved the post-mortem report (Ext.5).

33. Several witnesses (notably Ram Bharos, Ram Vilas) were declared hostile on certain points and did not support some earlier contentions at trial; nevertheless, crucially the informant (PW-5), Nagina (PW-4), Nunu (PW-8) and Rangilal (PW-7) gave consistent accounts on the central event (dacoity, barchi-blow to the child, bombs thrown) and either identified or associated Taslim with the fatal blow and named Sham Mohammad and Batahu as associates.

34. The depositions on record show a body of corroborative



material: (a) prompt Fardbayan recorded the morning after the incident naming the accused; (b) family members and some villagers gave evidence in Court identifying Taslim and naming the associates; (c) post-mortem supported homicidal head injury; (d) some independent villagers corroborated events like bomb-throwing and the chase; and (e) certain villagers and signatories (Mukhiya, Sarpanch) proved presence during the Fardbayan recording. All of the above particulars appear in the trial record and depositions.

35. The accused consistently pleaded not guilty. The Appellants case before the trial court and on this appeal is one of total denial and false implication. The Appellants denies involvement in the dacoity and positively contests that the present appellants were part of the raiding party.

36. The Learned counsel for the Appellants submits that identification is the cornerstone of the prosecution case and that identification at night during a panic-like dacoity is inherently unsafe. The accused are said to have had faces partially covered, the lighting being only torchlight and moonlight, and therefore accurate recognition was improbable.

37. It is further submitted that several witnesses admitted in cross-examination that they could not see clearly, or that they



gave names only later, Rangilal Bhagat admitted identifying by voice rather than clear ocular observation.

38. The Appellants points to material omissions and differences between what is said to have been told to the chowkidar / police at the earliest moment and the later in-court testimony. Several witnesses either did not name the accused at the police station or their statements recorded earlier (if any) do not contain the same identification particulars later produced in Court. The appeal papers record this grievance as central. The Appellants urges that improvements made on oath in Court weaken the reliability of the identification evidence.

39. A number of prosecution witnesses were declared hostile or did not support earlier contentions, the Appellants relies upon this to suggest that ocular testimony is fractured and unreliable.

40. Learned counsel for the Appellants submits that several independent villagers who were present at or around the scene did not give consistent identification, some did not identify the accused at trial, and that family testimony alone cannot be the exclusive basis for a capital conviction.

41. The Appellants notes and relies upon apparent discrepancies about who went to the police station and when



(for instance whether informant's brother or others reached the police earlier) and the sequence of reporting; it is argued that such gaps point to consultation among witnesses before the names were finalised, which undermines contemporaneity of identification.

42. The Learned counsel for the Appellants draws attention to admissions by certain witnesses (for example PW-8 Nunu Devi) that they knew Taslim previously (he used to visit), asserting that prior acquaintance creates a risk of mistaken confident identification or motivated naming. The Appellants submits that knowledge of a person from before does not equate to reliable identification in a dark, confused scene and may introduce bias.

43. While the prosecution relies on the Fardbayan recorded the next morning, the Appellants contends that the circumstances of recording (weeping witnesses, multiple family members speaking, presence of village leaders) could have affected exact narration and that discrepancies between Fardbayan and oral testimony reduce its probative value as an unimpeachable contemporaneous record.

44. In criminal trials the prosecution must prove guilt beyond reasonable doubt. That standard is not a formula but a qualitative test: a reasonable Tribunal must be satisfied of the



accused's guilt on the basis of acceptable evidence and not on conjecture. On appeal this Court will not lightly disturb concurrent findings of fact unless the trial Court's appreciation is perverse, ignores material evidence, or amounts to drawing impermissible inferences.

45. Identification evidence occupies a special place because mistaken identity is one of the most potent causes of wrongful conviction. Courts therefore examine (a) whether the witness had a fair opportunity to see the assailant, (b) the lighting and distance, (c) whether the witness knew the accused earlier, (d) delay between incident and naming, and (e) whether any test-identification parade (TIP) was conducted and if so its result. If a witness has failed to identify the accused in a TIP and later identifies him in Court, that fact adversely affects credibility (Hare Kishan Singh v. State of Bihar treatment of TIP and court-identification).

46. The Learned counsel for the Appellants states that identification by voice or identification in darkness/solely by torchlight are inherently less reliable and must be scrutinized closely. Voice-identification, while admissible, is a particularly risky mode of identification and cannot normally be the sole basis for conviction without strong corroboration. Likewise,



testimony that merely speaks of “seeing in torchlight” without particulars (distance, duration, source of light) has limited probative value unless supported by other corroboration. The Hon’ble Supreme Courts held in **Umesh Kamat v. State of Bihar (2005) 9 SCC 200** that identification by torch light in a panic stricken group, even if the witness knew the accused earlier, can mislead and the same view has been reinforced in **State of Rajasthan v. Kashi Ram (2006) 12 SCC 254** where court held that prior acquaintance is not determinative, the circumstances of the incident must be scrutinized.

47. The Fardbayan was given the morning after the incident (13.07.1993 at 07:00 a.m.) and contains names (Taslim, Sham Mohammad, Batahu) assertedly spoken by the informant. The promptness of this contemporaneous statement is a strong factor favouring the prosecution, it was recorded within hours and signed by village functionaries (Mukhiya, Sarpanch) who later proved their signatures. Prompt contemporaneous narration is valuable in assessing identification reliability.

48. The ocular witnesses describe torchlight and moonlight and partial face-coverage by assailants; some witnesses (e.g., Rangilal) relied partly on voice identification. Those features rightly invite caution: voice-ID and night-time torch-ID are



lawfully questionable unless corroborated. On the record before this Court that corroboration appears in (i) the prompt Fardbayan, (ii) multiple family members' consistent testimony on the core fact (which person struck the child), (iii) independent testimony of a villager who chased the raiders (giving evidence on bomb-throwing and hearing the voice), and (iv) neutral medical evidence of homicidal head injury. Taken together, the cumulative picture is sturdier than isolated dock-identification on trial day.

49. It is well settled that TIP is only corroborative and not substantive evidence the Supreme Court has held in **Vinod @ Nasmulls v. State of Chhattisgarh 2025 INSC 220** that if a witness who identifies an accused in a TIP is not examined during trial, the evidentiary value of that TIP significantly diminishes, and subsequent identification becomes doubtful. 'A test identification parade under Section 9 of the Evidence Act, 1872 is not substantive evidence in a criminal prosecution but is only corroborative evidence'.

50. The absence of a TIP does not in itself fatally undermine the prosecution case, particularly where there was prompt naming in a contemporaneous record (Fardbayan), as in the present case, which accords greater reliability than a sole court-



dock identification.

51. A contemporaneous statement made very soon after the incident, like a fardbayan recorded at the informant's house early the next morning and signed by local functionaries is ordinarily an important piece of evidence. It shows the state of mind and immediate attribution by the injured party and can be strong corroboration of later viva voce testimony. However, a fardbayan recorded under obvious agitation or with possible prior consultation must be tested against surrounding facts, mere presence of agitation does not ipso facto nullify contemporaneity.

52. The Fardbayan here names the three accused and bears the signatures of Mukhiya and Sarpanch who proved their signatures. The presence of these functionaries and the immediacy of recording weigh in favour of the prosecution. The Appellants contention that weeping and agitation caused imprecision is borne out by cross-examination but does not, without more, erase the contemporaneity or value of the record. The Court must therefore balance the Fardbayan's immediacy against the admitted agitation when assessing overall credibility.

53. A witness who turns hostile does not become a non-



entity, The Supreme Court in **Gura Singh v. State of Rajasthan 2001 (2) SCC 205** has explained that hostile testimony is not to be rejected in toto, rather, the Court must examine whether any part of that testimony finds independent corroboration and whether the hostility goes to the core or only to peripheral matters.

54. Several villagers were declared hostile or gave inconsistent evidence. The trial Court recorded this but nevertheless relied on other witnesses (informant, Nagina, Nunu, Rangilal) whose evidence on core points (dacoity, barchi-blow, identity in the Fardbayan) remained consistent. Under established law a conviction can safely rest on evidence of a witness who has turned hostile if independent corroboration exists, here corroboration is provided by the Fardbayan, the signatures of village functionaries, independent testimony of a pursuer (Rangilal) and the post-mortem report.

55. When identification is partly by voice and night-light, and when some villagers are hostile, the proper judicial response is not to isolate a single infirmity but to weigh the entire evidentiary matrix. The Supreme Court's classic enunciation on circumstantial proof (**Sharad Birdhichand Sarda v. State of Maharashtra**) explains that when a case rests on interlocking



circumstances, each circumstance must be proved and together they must lead only to the conclusion of guilt.

56. The trial court examined the infractions pointed out by the Appellants, omissions in some police statements, hostility of certain villagers, voice-ID or prior acquaintance in some witnesses, and the darkness/torchlight conditions. It nevertheless accepted the Fardbayan as a prompt contemporaneous narration and relied upon the testimony of key witnesses who were consistent on essential points. On appellate review the question is whether the trial court's conclusion was perverse or unsupportable; given the cumulative corroboration (discussed above), this Court is not persuaded that the trial court's approach amounted to a failure of judicial method or a perverse conclusion. The infirmities are real and reduce the force of some testimony but, cumulatively, do not cast reasonable doubt upon the core of the prosecution case. The trial court's conviction therefore cannot be set aside on the limited record before this Court.

57. While the Appellants have highlighted genuine weaknesses (voice-ID, partial face-coverage, hostility of certain villagers and emotional disturbance at the time of the Fardbayan), these do not, in the considered view of this Court,



create a reasonable doubt of the kind that mandates acquittal. The Fardbayan (recorded promptly), the consistent core testimony of immediate family members, the independent corroborative testimony of an active pursuer, and the post-mortem, together form a body of evidence sufficiently cogent to sustain conviction under Section 396 IPC as found by the trial court. The trial court's conclusion is therefore not interferable on appellate review.

58. It is not in dispute that on 12/13.07.1993, a dacoity took place in the house of the informant. While committing dacoity, a little boy of 08 years was murdered. These two facts were proved beyond any shadow of doubt from the deposition of the witnesses on behalf of the prosecution. Even the hostile witnesses did not deny the incident of dacoity and death of a little child aged about 08 years, being struck on his head with the help of 'Barchi'. It is necessary to explain that 'Barchi' is spear like weapon the end of which is pointed and sharp having a sharp hook like object fitted with the pointed part of the spear, so when it strikes anybody it is very difficult to pull it out because the hook strikes on the body causing second injury.

59. The above observation of this Court is proved from the postmortem report of the autopsy surgeon (PW-15), who found



two injuries on the head of the deceased, eg.-

(i) incised and punctured wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep found on the right side of the scalp with clotted blood.

(ii) incised and punctured wound measuring $\frac{1}{2}$ " x $\frac{1}{2}$ " x bone deep was found on the left side of the scalp bone.

60. It is ascertained from the evidence on record that at the time of occurrence, the said child was sitting with her mother Sikliya Devi. The said little child was murdered in close proximity of PW-9. In her evidence, she stated that the dacoit, who committed murder of his son was Taslim Nut. This piece of evidence was not even challenged by the defence during cross examination of PW-9. On the contrary it was taken in affirmative from PW-9 that she knew Taslim Nut from before the commission of dacoity. In course of his evidence, he identified appellant-Taslim Nut pointing at him on dock.

61. Prosecution case was criticized in the instant appeal on the ground that the prosecution has failed to give any explanation as to how they could identify the appellants as their faces were covered by clothes and there was no source of light inside the house of the de facto complainant. The witnesses on behalf of the prosecution said that the appellants are their co-villagers. They came to identify them from their voice. They



were also able to identify them through the torchlight of the dacoits. On careful perusal of the cross examination of the witnesses, we find that the defence did not deny the incident which had happened on 12/13.07.1993. It appears from the record that 10-12 miscreants came to the house of the de facto complainant. Therefore, it is not impossible to identify three of the dacoits from the torchlight of other miscreants. Moreover, in a small village, the villagers are well accustomed with the voice of co-villager in the darkness of night. Co-villagers can be identified by his voice. When we examine the evidence of PW-8, we find that in her cross examination she stated that appellant-Taslim Nut used to visit their house to her mother-in-law.

62. Under such circumstance, identification of the appellants by the witnesses on behalf of the prosecution cannot be found to be suspicious.

63. In the instant case, prosecution did not try to exaggerate its case. Had it been the fact, the de facto complainant and the witnesses could have implicated some other persons stating their names falsely. Amongst 10-12 miscreants they could identify only three persons and they were named in the F.I.R. as well as identified by the prosecution.



64. It is true that the Investigating Officer failed to recover any stolen property from the possession of the appellants. Though, recovery of stolen property is an important circumstance to prove dacoity, it is not always essential for the prosecution to recover stolen property in order to prove dacoity and murder under Section 396 of the I.P.C. In order to prove the charge under section 396 of IPC essential ingredients of section 411 of the IPC are not a pre-requisite.

65. The learned Advocate for the appellant laid stress on the failure to hold Test Identification Parade (TIP) of the accused persons. Test Identification Parade is necessary only when the accused persons are not known previously to the witnesses. In *Tahir Mohammad Vs. State of M.P.*, reported in *1993 SCC (Cri) 760*, there was a dacoity in a running bus by a group of armed men who covered their face during night time. The prosecution witnesses identified the accused during T.I.P. and there was recovery of stolen property, but the Hon'ble Supreme Court was pleased to set aside the conviction under Sections 395 to 397 of IPC while holding one of the accused guilty under Section 412 of IPC on the ground that during T.I.P., the accused were placed with fetters on their legs.

66. Similar was the situation in *Umesh Kamat Vs. State of*



Bihar, reported in *(2005) 9 SCC 200*. In the instant case T.I.P. is not at all necessary, because the accused persons are residents of the same village and they are even known to each other by their voices.

67. For the reasons stated above, the instant appeal is dismissed.

68. Now comes the question of sentence. We have already held that the appellants and 8-9 persons jointly came to the house of the de facto complainant and committed dacoity. While committing dacoity, appellant-Taslim Nut committed murder of a little child, named, Amod. There is no evidence that other two appellants had common intention with appellant-Taslim Nut to commit murder of the said child. They committed theft of house hold articles, goods stored in the shop and a sum of Rs.800/-. However, the evidence against them is consistent that they were in the group of 10-12 persons. Therefore, charge under Section 395 of the IPC is found to be proved.

69. For the reasons stated above, we are of the view that the appellants, namely, Sham Mohammad Nut and Batahu Nut ought not to be sentenced to imprisonment for life under Section 396 of the IPC.

70. The specific Act committed by them was dacoity



punishable under section 395 of the I.P.C.

71. Section 395 of the IPC states, whoever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment which may extend to 10 years and shall also be liable to fine.

72. We have taken into consideration that the incident took place in the month of November, 1995. The appellants have been facing trial for the offence committed by them for last 20 years, during this period they have experienced lots of trauma and mental agony.

73. Considering the facts and circumstances of the case, we are of the view that rigorous imprisonment for five years would be just and proper punishment for appellants-Sham Mohammad Nut and Batahu Nut, under the facts and circumstances of the case.

74. The sentence passed by the Trial Court against appellant-Taslim Nut is affirmed. Sentence for imprisonment of life passed against appellants-Sham Mohammad Nut and Batahu Nut is set aside.

75. The above-named two accused persons are convicted under Section 395 of the IPC and sentenced to suffer rigorous imprisonment for five years with fine of Rs.5,000/- each, in



default, to suffer further simple imprisonment for six months each.

76. Period of imprisonment undergone by the above-named two accused persons shall be set off against the period of punishment.

77. The appellants are directed to surrender before the Court below to suffer sentence, if they are on bail, within two weeks from the date of communication of this order, failing which the Trial Court shall issue warrant of arrest against them to be executed by or on behalf of the Superintendent of Police, Muzaffarpur.

78. Let, a copy of this order alongwith the Lower Court Record be returned to the Court below.

(Bibek Chaudhuri, J.)

Dr. Anshuman, J: I agree.

(Dr. Anshuman, J.)

mdrashid/-

AFR/NAFR	NAFR
CAV DATE	15.09.2025
Uploading Date	19.09.2025
Transmission Date	

