

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.275 of 2013**

Arising Out of PS. Case No.-242 Year-2011 Thana- MANIGACHI District- Darbhanga

Ram Sogarath Paswan S/O Late Kirti Paswan Resident Of Village- Bela
Gopalpur, P.S.- Sadar Darbhanga, District- Darbhanga

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kr. Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 21-03-2025

Heard Mr. Ajay Kumar Thakur, learned counsel
for the appellant and Mr. Bipin Kumar, learned APP for the
State.

2. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of conviction dated 22.03.2013 passed in Sessions Trial No. 192 of 2012 in connection with Manigachhi P.S. Case No. 242 of 2011 passed by learned Sessions Judge, Darbhanga, whereby and where-under the appellant has been convicted for the offence under Section 395 of Indian Penal Code (hereinafter referred as 'IPC') and acquitted for charges under Sections 397 and 412 of the IPC and vide order dated 22.03.2013 sentenced to undergo rigorous imprisonment for a period of seven years under Section



395 of IPC with fine of Rs. 5000 and on failure of payment of the fine, the appellant will further be sentenced to simple imprisonment for three months.

3. The brief facts leading to the filing of the present appeal is that, on the night of 19.12.2011 after taking dinner the informant along with his family members were sleeping in the house. At about 1.30 AM in the mid-night on hearing some sound the informant and his wife woke up and suspecting some misshappening raised alarm loudly shouting *Chor-Chor*. In the mean time, the miscreants started knocking the door and out of fear the informant opened the door. 2-3 miscreants entered into the room and firstly they took two mobile phones kept on the trunk and thereafter they asked for the key of Godrej. The miscreants tried to snatch the ear-tops which was worn by the informant's wife and on her protest they assaulted her with fists and slaps and forcibly snatched the ear-tops which caused injury in both the ears. It is further alleged that the miscreants started committing *loot-pat* after breaking the locks of the Almirah, trunk, *attachi* etc. and four other miscreants who were standing in *varandah* also committed *loot-pat* in the nearby room by breaking the locks of room and they locked the door of room from outside. The informant gave the



age and figures of the miscreants. It was alleged that the miscreants after committing dacoity in the house of informant also committed dacoity in the house of one Jagdish Paswan. In the alleged dacoity the miscreants took away mobile phones, cash amount worth Rs.10,000/- and ornaments from the house of informant and also took away golden ornaments and cash amount of Rs. 15000/-and mobile phones from the house of Jagdish Paswan. After committing dacoity the dacoits fled away.

4. On the basis of such *fardbeyan*, a formal F.I.R bearing Manigachhi P.S. Case No. 242 of 2011 dated 20.12. 2011 was filed under Sections 395 and 397 IPC against 12-13 miscreants and the investigation was commenced. On completion of investigation the IO submitted charge-sheet no. 59 of 2012 dated 25.03.2012 for offences under Sections 395, 397 and 412 of IPC against the appellant. Learned Chief Judicial Magistrate took cognizance of the offences under Sections 395, 397 and 412 IPC against the accused/appellant and transferred the case record to the court of Judicial Magistrate Ist Class, Darbhanga for commitment and ultimately the learned Magistrate committed the case to the Court of Session.

5. To prove the charges against the accused



person, prosecution has examined altogether ten witnesses and they are PW-1 Devkant Jha, PW-2 Kapil Kumar, PW-3 Jagdish Paswan, PW-4 Krishnakant Jha, PW-5 Hemkant Jha, PW-6 Chandrakala Devi, PW-7 Gulab Paswan, PW-8 Ram Bilas Paswan, PW-9 Raj Kishore Singh, and PW-10 Hari Shankar Mishra.

6. Beside the above prosecution has produced and proved Ext.1 signature of PW-1 on *fardbeyan*, Ext. 2 endorsement on *fardbeyan*, Ext. 3 carbon copy of T.I.P chart, Ext.4 Seizure list and Ext.5 Formal F.I.R.

7. PW-1 Devkant Jha has stated in his examination-in-chief that dacoity was committed in his house on 19.12.2011 at 1.30 AM in the mid-night and at that relevant time he was sleeping along with his wife inside the house. Three miscreants entered into the house by breaking the door and 2-4 miscreants who were standing outside snatched the ear-tops of his wife and two other miscreants who entered into room broke the lock of Godrej and they also broke the locks of other room and threw the house-hold articles in the courtyard. The dacoits committed dacoity of golden as well as silver ornaments, two mobile phones and two torches and cash worth Rs. 10,000/-. PW-1 further stated that the miscreants were twenty in numbers



and they were armed with *chaku* in their hands. PW-1 further stated that the dacoits also committed dacoity in the house of Jagdish Paswan (PW-3). He identified his mobile phone at the police station which was looted away from his house. The police had recorded his *fardbeyan* and the contents were read over to him and after understanding the same he put his signature over the same. This witness proved his signature on the *fardbeyan* which is as marked Ext. 1. This witness claimed to identify the accused present in court.

7.i. In his cross-examination PW-1 has stated that he identified the accused by face but he did not go to jail in order to identify the accused. The police had come to his house in order to make him participate in T.I.P but just after the alleged incident PW-1 had gone to Kolkata for 10-15 days so he could not go to jail to identify the accused in T.I.P. He further stated that there was just one person in the dock and hence, he identified him as the accused/appellant. He further stated that he was not eye-witness to the dacoity that took place at the other place of occurrence.

8. PW-2 Kapil Kumar is the son of Jagdish Paswan, (PW-3) in whose house dacoity was committed on the alleged night of occurrence. He stated in his examination-in-



chief that the dacoity took place in his house at 1.30 AM. in the night and at that time he was in the cattle-shed. The dacoits were 14-15 in number and they committed dacoity in the house and looted away ornaments, cash, mobile phones and other household articles. He further stated that he had participated in T.I.P in which he identified the accused. The dacoits were armed with pistol, *chaku* and bamboo stick. PW-2 claimed to identify the accused present in the dock at court.

8.i. In his cross-examination PW-2 stated that some of the accused had covered their faces. In para-8 of his cross-examination PW-2 stated that he did not receive notice from the jail in order to identify the accused but he has supported with regard to fact that he had identified the accused in jail among 10-12 persons who were lodged in jail.

9. PW-3 Jagdish Paswan stated in his examination-in-chief that dacoity was committed in his house at 1.30 AM in the night. The dacoits entered into the house and locked the inmates of the house in a room and then they committed dacoity of ornaments, cash amount worth Rs. 15,000/- and they also damaged the household articles. He further stated that he did not remember the faces of the accused.

9.i. In his cross-examination PW-3 stated that on



the alleged night it was very cold and when the accused entered into his house, he along with others out of fear remained beneath the blanket and kept silent and because of this he could not see and identify any of the accused.

10. PW-4 Krishnakant Jha and PW-5 Hemkant Jha have been declared hostile by the prosecution.

11. PW-6 Chandrakala Devi is the wife of the informant. She stated in her examination-in-chief that the occurrence took place on the night of 19.12.2011. The dacoits broke into her house with arms and weapons and snatched the ear-tops which she was wearing. It resulted in injury to her ears. In her cross-examination she stated that she could not identify the accused dacoits as they had concealed their faces.

12. PW-7 Gulab Paswan stated in his examination-in-chief that 20-25 dacoits were there and occurrence took place at night. PW-8 Ram Bilas Pawan stated in his examination-in-chief that he did not know how many accused committed dacoity at the house of PW-1 and PW-3.

13. PW-10 Hari Shankar Mishra is the Investigating officer of the case. In his examination-in-chief he stated that on 20.12.2011 he was posted as S.H.O. of Manigachhi Police Station and he recorded *fardbeyan* of the



informant at 4:30 PM which is in his pen and signature and endorsement over the same is marked Ext. 2. He stated that he carried out investigation of the case, recorded statements of the informant and other witnesses and visited place of occurrence which is the house of informant Devkant Jha. PW-10 gave the description of house and during the inspection he stated that he found that the household articles were scattered and the locks of *almirah*, and trunk were damaged. PW-10 stated that he also visited the second place of occurrence which is house of Jagdish Paswan and found the trunk and *almirah* to be badly damaged. PW-10 stated that the T.I.P was conducted in the jail in the presence of judicial Magistrate wherein. He further stated that during investigation he recovered a Nokia Mobile Set No. 6310 which was looted in the alleged dacoity from the possession of accused/appellant and prepared a seizure list which was in his pen and signature and marked as Ext. 4 with objection. During course of investigation he recorded confessional statement of accused and obtained injury report of the wife of informant.

13.i. In his cross-examination, the I.O stated that he did not seize damaged articles and further he did not send the seized mobile for scientific examination.

14. PW-9 Raj Kishore Singh is the second I.O of



the case, who took up investigation of the case on transfer of PW-10 and submitted charge-sheet against the accused/appellant and kept supplementary investigation pending against the other accused persons. In his cross-examination he stated that he did not record the statement of any witness and only submitted charge-sheet.

15. Learned counsel for the appellant has submitted that when the incident took place, it was late in the night and there was no source of light at the place of occurrence mentioned in the F.I.R. The occurrence took place at 1:30 AM on a winter night and there was no source of light at the place of occurrence. He further submitted that the FIR was registered against unknown persons. He further submitted that out of 10 prosecution witnesses, only two witnesses identified the accused/appellant. The counsel further submitted that the T.I.P conducted was not legal as the Magistrate in whose presence the identification was conducted was not examined. The counsel further submitted that PW-1 identified the appellant for the first time in the Court as he did not participate in the T.I.P conducted at the jail premises. The counsel further submitted that PW-10, the I.O did not state when and where the accused/appellant was arrested. He further submitted that the learned trial Court failed



to appreciate the evidence in its right perspective and the impugned judgment of conviction is bad in law as well as on fact and such to set aside.

16. Learned counsel for the appellant has relied upon the judgment of *Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra (1998) 5 SCC 103* where it was held that if identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless. Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (*Chunthuram v. State of Chhattisgarh (2020) 10 SCC 733 and Ramkishan Mithanlal Sharma v. State of Bombay (1955) 1SCR 903*).

17. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submits that there is direct allegation against the present appellant, for dacoity. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

18. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and



defence before the Trial Court. I have thoroughly perused the materials on record and aforesaid judgments referred by the appellant as well as given thoughtful consideration to the submissions advanced by both the parties.

19. Having deeply studied and scrutinized the facts and the material on record of the present case, it is evident to note that there was no description of source of light mentioned in the FIR and neither did the investigating officer mention about the source of light when he reached at the two places of occurrence. The statements of PW-3 and PW-6 who were the eye-witnesses to the alleged occurrences clearly reveal that they did not see the faces of the accused. PW-3, Jagdish Paswan stated that out of fear, he did not get out of his blanket whereas PW-6, wife of informant stated that the dacoits had their faces covered. It is also noted that the I.O did not state the time and place of arrest of the appellant. The credibility of the T.I.P is also doubtful as the Magistrate in whose presence it was conducted was not examined. Further, as per the statements of the informant, PW-1 the I.O had come to the informant's house to tell him to come to the police station to identify the appellant as one of the accused. The statement of PW-1 also reveal that he identified the appellant for the first time in the Court itself.



20. The prosecution has not established its case beyond all shadow of reasonable doubt. Apart from the TIP, I find no other evidence put forth by the prosecution to prove the guilt of the accused for the offences punishable under Section 395 of the Indian Penal Code. Since the prosecution has not been able to prove its case, the accused/appellant is hereby given the benefit of doubt and accordingly, the appeal is allowed.

21. Hence, the Judgment of conviction dated 22.03.2013 passed in Sessions Trial No. 192 of 2012 arising out of Manigachhi P.S. Case No. 242 of 2011, passed by learned Sessions Judge, Darbhanga is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	N/A
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