

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.726 of 2004

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Mainuddin Mian, S/O Liyakat Mian, Resident Of Village-Dodwalia, P.S.-
Kuchaikote, District-Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kr. Pandey, Advocate

For the Respondent/s : Mr. M. Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-12-2025

1. Heard learned counsel appearing on behalf of the parties.

2. The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 13.10.2004 and order of sentence dated 14.10.2004 passed by court of learned Additional Sessions Judge presiding the F.T.C. No. II, Gopalganj in Sessions Trial No. 221 of 1994 of 2005, whereby the concerned Trial Court has convicted appellant under Section 395 of the IPC, where appellant sentenced to undergo rigorous imprisonment for ten years



and further pay fine of Rs. 5,000/- and had to go rigorous imprisonment for six months.

3. The brief facts of the prosecution case as per FIR is that on 15.12.1992 at about 11:00 P.M., while the informant was sleeping in his fertilizer shop at Basawanpur Bazar after closing his cloth shop, five to six dacoits entered the fertilizer shop, demanded the keys of the cloth shop at gunpoint, assaulted the informant with sticks and shoes, and threatened him not to raise an alarm. Meanwhile, other dacoits entered into the cloth shop and looted cash and clothes worth about Rs. 60,000/-. After tying up Gujeshwari Sah and Gokul Sah, the dacoits fled eastward with bundles of clothes. The informant later freed the tied persons, raised an alarm, and chased the dacoits with co-villagers, who escaped after throwing away some bundles. The F.I.R. speaks that the dacoits were 5-6 men aged around 25-30 years. Informant claimed to identify them.

4. On the basis of aforesaid information, Gopalpur P.S. Case No. 64 of 1992 was lodged for the offence punishable under Sections 395 and 397 of the Indian Penal



Code.

5. After completion of investigation the charge-sheet was submitted before learned jurisdictional magistrate which upon commitment transfer to the court of the learned Additional Sessions Judge, F.T.C. No. II, Gopalganj who upon the perusal of material collected during investigation framed charges on 25.11.1998 against appellant-accused, who upon explanation pleaded as “not guilty” and claimed trial.

6. To substantiate its case, before learned Trial Court the prosecution has examined altogether 5 witnesses.

None of the witness examined in defense. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Sudama Pradhan-Father of the Informant
P.W. 2	Haridwar Pradhan-Informant
P.W. 3	Rabindra Pradhan
P.W. 4	Ranjit Kumar Rai
P.W. 5	Shri U.B. Mishra, the then Learned Judicial Magistrate who held the T.I.Parade.

7. Apart from the oral evidence, the prosecution has also proved the following documentary evidence in order



to prove the charges:

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Fardbeyan
2.	Exhibit-1/A	Signature on Fardbeyan
3.	Exhibit-2	T.I. Parade Report
4.	Exhibit- 3	Formal F.I.R.

8. The statement of the appellant-accused was recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

9. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under Section 395 of the Indian Penal Code and sentenced him in the manner as stated above.

10. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

11. Hence, the present appeal.

12. It is submitted by learned counsel appearing on behalf of the appellant/accused that the order of conviction



and sentence passed by the learned trial court is bad in the eyes of law and on the facts of the case.

13. It is submitted that the learned trial court has failed to appreciate that the T.I. Parade held in this case has no value in the eyes of law as the accused/appellant is a resident of an adjacent village and is known to all the witnesses. The T.I. Parade is further vitiated by the fact that the witnesses have themselves accepted that the I.O. of this case had identified the appellant to the witnesses in police station.

14. It is further submitted that the exercise of Police dog tracking was a futile exercise as it was conducted after the lapse of two winter nights which is sufficient to disturb the place of occurrence as to connect accused persons. The accused/appellant was arrested during the exercise of dog tracking merely on the ground of suspicion.

15. Mr. Pandey further submitted that the appellant was arrested on 17.12.92 and was remanded on 19.12.92. The appellant was kept in police custody for more than 48 Hours without any relevant and appropriate entry in



the case diary, where no looted articles or any incriminating articles has been recovered from the possession of the appellant.

16. It submitted by Mr. Pandey, that the learned trial Court has totally ignored to consider the statements of the appellant made under section 313 Cr.P.C. which appears recorded in very cryptic and mechanical manner.

17. Learned APP appearing on behalf of State, while opposing the appeal submitted that accused/appellant was identified during TIP.

18. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

19. P.W.-1 is (Sudama Pradhan), who is father of Informant. P.W.2 inform to his father (PW1) that both shops had been looted and they had been beaten a lot.

20. P.W.-2 (Haridwar Pradhan, Informant)- Upon not giving the shop keys as asked by dacoits was beaten with sticks and lathi. He identified the accused persons, including the accused Moinuddin Mian. He supported the alleged prosecution



case of his fardbeyan and has identified the accused.

21. P.W.-3 (Ravindra Pradhan)- testified that around 10-11pm at night when he was home, he heard the shout of PW2 where the cloth shop has been robbed and robbers fled towards Phulwaria Chowk. He also chased them towards that direction along with other villagers and identified the accused during course of T.LP, Bhanta Tiwari and Mainuddin.

22. P.W.-4 is (Ranjit Kumar Rai), who testified that his shop, Sudama Pradhan and Harish Pradhan was robbed at around 11pm. He himself did not see the faces of the dacoits while chasing them, as he and the villagers chased them and robbers had run away towards Phulwaria Chowk.

23. P.W.-5 (Shri U.B. Mishra)- On the basis of identification mentioned in records he identified the suspect accused persons. Prepared the report upon conducting the identification parade on the basis of seeing the suspect Mainuddin Mian who was carrying lathi and Ramesh Tiwari who was running away while carrying country made pistol, witness Ranjit Kumar identified them.

24. C.W.-1- The LO of the case has very reliably supported over the PWs statement. Both the caught accused were put forward to Jail Custody and they were put on TIP and were



identified by the witnesses. The accused were identified at the P.S. by the witnesses before conducting the T.I.P.

25. Upon perusal of records, it appears that the judgment of conviction was recorded only for the reason that during T.I. Parade, this appellant was identified by the prosecution witnesses. It appears from the testimony of the P.W.-1, P.W.-2 (Informant), P.W.-3 and P.W.-4 that they have supported the occurrence but failed to name the appellant while lodging the F.I.R. and therefore same was registered against unknown. It also appears from cross examination that these witnesses categorically deposed that the appellant was shown to them in police custody and being a nearby villages they all known to appellant making T.I.Parade non-relevant as to establish the involvement of appellant with crime in question beyond reasonable doubt.

26. The sole ground on which the appellant was convicted in present crime in question appears apparently non-convincing and thus by prosecution miserably failed to establish guilt of appellant beyond all reasonable doubts.

27. Accordingly, the appeal stands allowed.

28. The impugned judgment of conviction and order of sentence dated conviction dated 13.10.2004 and order of sentence dated 14.10.2004 passed by court of learned



Additional Sessions Judge presiding the F.T.C. No. II, Gopalganj in Sessions Trial No. 221 of 1994 of 2005 is accordingly set aside.

29. The appellant, above-named, is acquitted of the charges levelled against him by giving him the benefit of doubt. Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged. Fine if any paid, be returned to appellant hence forth.

30. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

(Chandra Shekhar Jha, J)

Neha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2025
Transmission Date	

