

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.317 of 2004

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Balo @ Ranjan Manjhi, son of Munshi Manjhi, Resident of Village-Shripur,
P.S.-Balalganj, District-Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Surya Prakash Vishwas, *Amicus Curiae*

For the Respondent/s : Mr. Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-12-2025

As learned counsel appearing for appellant/convict has failed to appear when this matter was taken on Board for final hearing, therefore, this Court appointed Mr. Surya Prakash Vishwas, learned Advocate as an *Amicus Curiae* to assist in disposal of appeals.

2. This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') challenging the impugned judgment of conviction and order of sentenced dated 25.03.2004 passed by learned Additional Sessions Judge, Gaya in S.Tr. No.4 of 2003/47 of 2003 arising out of Khizar Sarai P.S. Case No.36 of 2002, whereby the concerned Trial Court has convicted the appellant/convict



for the offence punishable under Section 395 of the Indian Penal Code (for short 'I.P.C.') and sentenced to undergo rigorous imprisonment for seven years.

3. The brief case of prosecution, as per *fardbeyan* of informant, namely, Jalim Manjhi (PW-3), which was recorded by Gandhi Bhagat, S.I., Khizar Sarai Police Station on 17.03.2002 at 1.30 hours, alleging therein that in the night of 16.03.2002, he was sleeping along with the family members in his house situated at village-Degaun Bhuin Toli P.S.-Khizar Sarai, District-Gaya, at about 12.30 A.M. in the night, he awoke on hearing the sound of *khar-kharahat* and on seeing in torch light, he found some of the miscreants armed with pistol and guns had entered in his house. It was further alleged in the *fardbeyan* that those miscreants pointed their guns and asked him that they were the members of the party's men and if the he (informant) would raise any alarm, his life and lives of his family members would be taken away. Therefore, the informant and his family members remained silent out of fear of their lives. It was further alleged that other miscreants also entered inside the house and taken



away certain belongings from the house. It was further alleged that in the light of '*Dhibri*' the informant identified the appellant Balo Manjhi and one other accused Mithlesh Paswan. It is further alleged that the other miscreants who were 20-25 in numbers were armed with country-made guns, revolver, *lathi* and *danda* etc. and were using local languages. The informant has given the description of the miscreants and alleged that after stay of one and half hours in his house, the miscreants disappeared towards west of the village in falgu river. It is further alleged that after departure of miscreants, when the informant came out of his house, he came to know that another dacoity was also committed in the said night in the houses of Kuleshwar Manjhi (PW-2), Ram Brikash Manjhi and Ashok Manjhi (PW-1) and others.

4. On the basis of aforesaid *fardebayan* of the informant (PW-3), the police registered F.I.R., being Khizar Sarai P.S. Case No.36 of 2002 dated 17.03.2002 for the offence punishable under Section 395 of the IPC against the Mithilesh Pawan and other unknown accused persons.

5. After completion of investigation and on the



basis of materials collected during investigation, the Investigating Officer of this case submitted charge-sheet No.74 of 2002 dated 16.06.2002 under Section 395 of the IPC against the appellant before the learned Trial Court.

6. The learned trial court after perusal of materials collected during investigation and hearing the accused/appellant framed charges under Section 395 of the IPC against the appellant-convict, which were explained to the appellant/convict, to which, he pleaded not guilty and claimed to be tried.

7. To substantiate its case, the prosecution has examined altogether three witnesses. They are:-(i) **PW-1 Ashok Manjhi** (ii) **PW-2 Kaleshwar Manjhi**; (iii) **PW-3 Jalim Manjhi**, who is informant of the case.

8. Apart from the oral evidence, the prosecution has also relied upon following exhibits/documentary evidences, which are:-

Sl. No.	No. of exhibits	Name of documents exhibited
1.	Exhibit-1	Formal FIR.
2.	Exhibit-2	<i>Fardbeyan</i> of the informant.



9. No witness was examined on behalf of defence.

10. On the basis of evidences/circumstances as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the CrPC, where he completely denied the evidences surfaced during the trial and claimed his complete innocence.

11. Taking note of the evidence as surfaced during the trial and after considering the arguments as advanced by both the parties, the learned Trial Court has convicted the appellant/convict/accused for the offences under Section 395 of the IPC and sentenced him in the manner as indicated above.

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

13. Hence, the present appeal.

14. I have considered the rival submissions canvassed by the learned counsel appearing for the parties and also perused the deposition of the witnesses examined during trial before learned trial court.



15. It appears from perusal of record that I.O. of this case could not be examined during trial. The *fardbeyan*, which was authored by informant namely, Jalim Manjhi, who was examined before learned trial court as PW-3, while deposing through his examination-in-chief itself stated that he came to know later i.e. after the occurrence that this appellant along with Ram Sagar, Kuleshwar were involved in present case, which is completely falsifying the version of FIR (Exhibit-2), where he claimed that he identified the appellant while committing dacoity.

16. It also appears from the perusal of record that on the same night, the alleged dacoity took place in the house of **Ashok Manjhi** (PW-1) and also **Kaleshwar Manjhi** (PW-2) but, none of them made any police report regarding the occurrence.

17. PW-2 stated in his examination-in-chief that on the night of occurrence, the dacoity took place in the house of Jalim Manjhi (informant)/PW-3, Ashok Manjhi (PW-1) and Ram Briksh Manjhi, whereas PW-1 categorically stated in his examination-in-chief that dacoity took place in the house of



informant/PW-3, Jalim Manjhi and in the house of Kuleshwar Manjhi only. It also transpires from the deposition that the appellant is the resident of nearby village and was working a wood-cutter in the village of informant.

18. From perusal of record, it appears that the Investigating Officer of this case has not been examined during the trial. In this context, it would be apt to reproduce relevant paragraph of the legal report of Hon'ble Supreme Court as available through **Munna Lal v. State of Uttar Pradesh [(2023) SCC Online SC 80]**.

"38. First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out".

19. The statement of the accused/appellant under Section 313 of the CrPC appears recorded in very cryptic and mechanical manner. In this context, it would also be apt to



reproduce relevant para of legal report of Hon'ble Supreme Court as available through **Sukhjit Singh v. State of Punjab, [(2014) 10 SCC 270]**, which are as under:-

“**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in



the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily



appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and



impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in



the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

20. In view of aforesaid factual and legal discussions and upon re-appreciation of evidence, as informant (PW-3) deposed through his examination-in-chief suggesting that he identified the appellant only after the occurrence contrary to the FIR (Exhibit-2), which authored by him only, a serious doubt arises, which appears unanswered by prosecution during trial, the benefit of which must be extended to the appellant.

21. Accordingly, the present appeal stands allowed.

22. The impugned judgment of conviction and order of sentenced dated 25.03.2004 passed by learned Additional Sessions Judge, Gaya in S.Tr. No.4 of 2003/47 of 2003 arising out of Khizar Sarai P.S. Case No.36 of 2002, is hereby quashed and set aside. Consequently, the above-named appellant is acquitted from the charges levelled against him.

23. Since the appellant is on bail, he is being discharged from his liabilities of bail bonds and sureties.

24. Fine, if any, deposited by the appellant be



returned to him immediately.

25. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Mr. Surya Prakash Vishwas, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

26. Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09-12-2025
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