

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 152 of 2004

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Anirudh Kumar Singh, Son of Chamak Lal Singh, Resident of vill-Rampur
Gorihari, PS-Chousa, District -Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (SJ) No. 168 of 2004

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1. Chandeshwari Mandal @ Bindeshwari Mandal S/o Bhaddi Mandal R/o vill - Mahua, P.S.- Bihpur, Distt.- Bhagalpur (Case against the appellant was abated vide Honourable Court order dated 20-02-2025)
2. Md. Ajim @ Md. Ajij S/o Late Md. Hanif R/o vill- Sahuri, P.S.- Bihpur, Distt.- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (SJ) No. 211 of 2004

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1. Bijoy Sharma S/o Popli Sharma R/o vill - Laulagam (Bind Toli), P.S.- Chausa, Distt.- Madhepura
2. Subodh Roy @ Subodh Roy S/o Bhagwan Roy R/o vill - Laulagam (Bind Toli), P.S.- Chausa, Distt.- Madhepura (Case Against the appellant was abated vide Honourable Court order dated 20-02-2025)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (SJ) No. 152 of 2004)
For the Appellant/s : Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mrs.Anita Kumari Singh, APP
(In CRIMINAL APPEAL (SJ) No. 168 of 2004)
For the Appellant/s : Mr.Dr. Sanjay Kumar Singh
For the Respondent/s : Mrs.Anita Kumari Singh, APP
(In CRIMINAL APPEAL (SJ) No. 211 of 2004)
For the Appellant/s : Mr.Praveen Kumar Agrawal, Advocate



For the Respondent/s : Mr.Ritwaj Raman, Amicus Curiae
: Mr.Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 09-10-2025

1. Cr. Appeal (SJ) No. 152 of 2004, Cr. Appeal (SJ) No. 168 of 2004 and Cr. Appeal (SJ) No. 211 of 2004 are arising out of the judgment of conviction and sentence dated 27.02.2004 on the file of the Learned 1st Additional Sessions Judge, Madhepura in Sessions Trial No. 88/2002 whereby the appellants were convicted for the offence punishable under Section 395 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for eight years.

2. Cr. Appeal (SJ) No. 152 of 2004 was preferred by Anirudh Kumar Singh (read as Accused No. 5) whereas Cr. Appeal (SJ) No. 168 of 2004 is preferred by Chandeshwari Mandal alias Bindeshwari Mandal (Accused No. 1) and Md. Ajim.

3. As the appeal is of the year 2004, this Court had called for the report of the Superintendent of Police, Madhepura as the



counsel for the accused No. 1 reported that Chandeshwari Mandal alias Bindeshwari Mandal died long back. The report of the Superintendent of Police, Madhepura clearly disclose about the death of Chandeshwari Mandal i.e. Accused No. 1 and this Court has abated the criminal case against Chandeshwari Mandal on 20.02.2025. However, the report of Superintendent of Police, Madhepura further disclose that Appellant No. 2 in Cr. Appeal No. 168 of 2004 i.e. Md. Ajij alias Md. Ajim (Accused No. 2) is alive. Further, Cr. Appeal (SJ) No. 211 of 2004 was preferred by Bijoy Sharma and Subodh Roy. As per report of the Superintendent of Police, Madhepura, Subodh Roy also died long back and this Court has abated the case against Subodh Roy vide order dated 20.02.2025.

4. Therefore, the appeals have to be appreciated with respect to Anirudh Kumar Singh (Cr. Appeal (SJ) No. 152 of 2004), Md. Ajim alias Md. Ajij (Cr. Appeal (SJ) No. 168 of 2004) and with respect to Bijoy Sharma (Cr. Appeal (SJ) No. 211 of 2004). It is pertinent to mention that Cr. Appeal (SJ)



No. 167 of 2004 was preferred by Dinesh Singh (Accused No. 6) and this Court received the report from the Superintendent of Police, Madhepura that Dinesh Singh is no more and therefore, this Court has abated the criminal appeal of Dinesh Singh on 20.02.2005 itself.

5. There are altogether six accused before the trial Court who have been convicted under Section 395 of Indian Penal Code and were sentenced to undergo rigorous imprisonment for eight years.

6. As none appeared for the appellant/Bijoy Sharma (Cr. App. No. 211 of 2004), this Court was constrained to appoint Amicus Curiae, Mr. Ritwij Raman.

7. Heard the Learned counsel Sri Dr. Sanjay Kumar Singh for the appellants in Cr. App No. 152 of 2004 and 168 of 2004 and the Learned Amicus Curiae Sri Ritwaj Raman in Cr. App. No. 211 of 2004 and the Learned Additional Public Prosecutors Mrs. Anita Kumari Singh and Mr. Anand Mohan Prasad Mehta.



8. The case of the prosecution as per the fardbeyan of the informant/Md. Salim/PW-2 is that he along with Sheikh Moin/PW-1, Md. Jalaluddin/PW-3 were going to Alamnagar Hat from their village on 14.07.2001 at about 7.00 A.M. for purchase of cattle. At about 8.30 A.M., when they reached a place which is between Terasai village and canal road nearby a jute field, about 9 to 10 unknown miscreants armed with muskets, guns and three nuts, suddenly appeared nearby the field of Jute, surrounded them and threatened to deliver money, otherwise they will be killed. The miscreants snatched an amount of Rs. 33,000/- from PW-2, Rs. 3,500/- from PW-1 and HMT Kohinoor wrist watch from PW-3. Further the miscreants threatened them not to raise alarm or else they will be killed. PW-3 and his companions abided by the command and moved a short distance ahead where they saw the miscreants going to the north-east, between the villages of Aurai and Khero. The informant and his companions raised an alarm of dacoits upon which



the miscreants opened fire towards PWs-1 to 3, however the labours working nearby in the fields started chasing the miscreants towards village Rampur Goriari Tola through Musharia Chap. As the water was logged in the chap, it became difficult for the miscreants to cross it. In the meantime, the people chasing them caught hold of the five miscreants, who disclose their identities as Chandreshwar Mandal, Subodh Roy, Anirudh Kumar Singh, Bijoy Sharma and Md. Ajim. They further disclosed the names of their companions who flee away successfully as that of Dinesh Singh, Hari Singh, Majloom Mian and Hemant Singh. The apprehended miscreants also stated that the money, wrist watch and firearms were taken away by the absconding miscreants. By that time police of Chausa PS and Puraini PS arrived, armed with force who helped in getting the miscreants.

9. Basing on the fardbeyan of PW-2, which was recorded by the Sub-Inspector of Police, Sri U.N. Singh of Chausa PS dated 14.07.2001 at 3.00 PM in village Rampur Goriyari Tola, a criminal case



was registered against the miscreants, on the file of Alamnagar PS Case No. 47 of 2001 dated 14.07.2001, at 6.00 A.M. for the offence punishable under Section 395 of the Indian Penal Code. The FIR further disclose that the Sub-Inspector of Police, Ram Bilas Roy, Puraini Outpost was endorsed for investigation of the case. However, the specific time at which endorsement was made, was not mentioned.

10. It is contended by the Learned Amicus Curiae as well as the Learned counsel for the appellants that, except the investigating officer and a formal witness through whom the FIR and fardbeyan were marked, the rest of the prosecution witnesses have not supported the case of the prosecution. It is also contended by the Learned Amicus Curiae that PWs-1, 3, 4, 5 and 6 were declared hostile and though PW-2 did not support the case of the prosecution, he was not declared hostile. Further, PW-7 to 15 also did not support the case of the prosecution. Further, it is contended that the formal witness is an advocate



clerk through whom Exhibits-3, 4, the fardbeyan and the formal FIR were marked and the trial Court ought not to have marked these documents through the formal witness. It is also contended by the Learned Amicus Curiae as well as the Learned counsel for the appellants that PW-16/the investigating officer, took up the investigation on 14.07.2001 after 9.00 P.M. as per his evidence and he has not caught hold of the appellants at any point of time. The officer who had actually apprehended the appellants were not examined before the Court, which is fatal to the case of the prosecution. He further contended that there are major discrepancies between the fardbeyan and the evidence of PW-2 and therefore, the trial Court could not have relied upon the partial evidence of PW-2 so as to convict the appellants.

11. The prosecution has miserably failed to prove that the appellant have committed the offence under Section 395 of IPC. Hence, the benefit of doubt has to be extended to the appellants. Therefore, prayed to set aside the



judgment of conviction as well as sentence against the appellants.

12. On the other hand, the Learned Additional Public Prosecutors appearing in the three criminal appeals contended that the discrepancies pointed out by the defense are minor in nature and do not shake the case of the prosecution in any manner and therefore, prayed to confirm the judgment of the trial Court.

13. On perusal of the record, it is evident that PWs-1, 3, 4, 5 and 6 were declared as hostile. As per the fardbeyan of PW-2, PWs-1 to 3 together travelled to purchase cattle on the date of offence i.e. 14.07.2001 at 7.00 A.M. and the alleged incident, as per the fardbeyan occurred at about 8.30 A.M. There are four major discrepancies that require consideration which are discussed as follows:-

(i) As per the fardbeyan of PW-2, 9-10 miscreants armed with muskets surrounded PWs-1 to 3 and snatched away an amount of Rs. 33,000/- from



PW-2, Rs. 3,500/- from PW-1 and HMT Kohinoor wrist watch from PW-3. But the evidence of PW-2 disclose that only 4-5 miscreants had surrounded them. Thus, the version regarding the number of miscreants surrounded around PWs-1 to 3 is varying from that of the fardbeyan.

(ii) As per the fardbeyan, 9-10 miscreants were armed with muskets, guns and three-nuts, but as per the evidence of PW-2, only 4-5 miscreants were carrying muskets and no mention was made about guns or three-nuts.

(iii) It is testified by PW-2 that he along with PW-3 alone went to purchase the cattle and later they came to know that an amount of Rs. 3,500/- was snatched by the miscreants from PW-1, but the evidence of PW-1 clearly disclose that he was not looted



by the miscreants and later he came to know that PWs-2 and 3 were looted.

(iv) In the fardbeyan, PW-2 categorically mentioned that he raised alarm by shouting “dacoits-dacoits”, but his evidence is very much silent on raising the alarm about the miscreants or about the dacoity.

14. In the fardbeyan of PW-2, the names of the appellants i.e. Chandreshwar mandal, Subodh Roy, Anirudh Kumar, Bijoy Sharma, Md. Azim and as well as the names of four other persons i.e. Dinesh, Majloom Mian, Hemant and Hari Singh were mentioned, but as per the evidence of PW-2 only the names of miscreants as that of Md. Ajim, Anirudh Kumar Singh, Dinesh Singh and Majloom Mian were disclosed.

15. On perusal of evidence of the investigating officer/PW-16, it is evident that he neither recorded the fardbeyan of PW-2 nor registered the FIR, but was handed over the investigation of the case. However, the formal FIR



do not mention the time as to when the investigation was handedover to PW-16. On perusal of the formal FIR, it is evident that the distance between the place of occurrence and the PS is only about 3 Kms. The incident took place at around 8.30 A.M. on 14.07.2001, the fardbeyan was recorded at 3.00 P.M. at the place of occurrence by Sub-Inspector of Police U.N. Singh of Chausa PS and FIR was registered at 6.00 P.M. It is evident from the testimony of PW-16/Investigating Officer that he commenced the investigation at 9.00 P.M. on 14.07.2001 and he proceeded to the residence of PW-2 recorded the statements and visited different villages where the alleged accused were said to be residing. He returned to Police Station at around 5.00 A.M. on 15.07.2001 and further proceeded to the place of occurrence at 6.00 A.M. However, he did not find any incriminating material at the place of occurrence.

16. Admittedly, in the present case nothing was recovered from the appellants so as to connect the appellants with that of the crime.



17. The cardinal principles of criminal law is that:

(1) The burden is on the prosecution to prove the case against the appellants beyond reasonable doubt.

(2) The accused shall be presumed to be innocent until proven guilty. Further, it is for the prosecution to establish a clear link between the accused and the alleged offence.

18. In the present case, except for the evidence of the investigating officer, there is no other material on record to show that these appellants have committed the offence punishable under Section 395 of the Indian Penal Code. PWs-7 to 15 did not support the case of the prosecution who were alleged to have identified the accused, during the course of investigation. None of them, including PW-2 have identified the accused/appellants as the person who looted PWs-1 to 3 on date of occurrence. Furthermore, the



evidence of investigating officer disclose that the miscreants have not only looted PWs-1 to 3, but they have also looted one Lal Mohan Paswan/PW-7. However, PW-7 did not support the case of the prosecution in any manner. In the cross-examination, PW-2 specifically testified that he could not identify the accused persons i.e. Subhash Roy, Md. Azim, Chandeshwar Mandal, Dinesh Singh, Aniruddh Kumar Singh and Bijoy Sharma in the court and further stated that these persons were not involved in the crime. In spite of the specific evidence of PW-2 and of the evidences of the rest of the prosecution witnesses, who did not support the case of the prosecution, the trial Court had relied solely on the evidence of the investigating officer to convict the appellants and sentenced them to rigorous imprisonment for eight years.

19. At this juncture, it is relevant to rely on the judgment passed by this Bench in the case of **Noor Hassan Ansari & Ors. v. The State of**



Bihar passed in Cr. Appeal (SJ) No. 68 of 2004

which reads as follows:-

“15. It is pertinent to mention that followings are criteria for marking a document:- In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:- “It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :

(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on



some other legal ground (e.g. irrelevance, privilege, non-registration) and

(e) The document has been appropriately stamped, if so required by law.

16. (i). In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.

(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. The mere production of a document is not sufficient for the document to be marked as an exhibit.

(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements,



then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.

(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents.”

17. Furthermore, Rule 58 of the Criminal Rules Of Practice and Circular Orders, 1990 envisages about marking of exhibits which reads as follows:-

“58 Marking of exhibits:- (1) Exhibits admitted in evidence shall be marked as follows:-

(i) if filed by the prosecution with the capital letter ‘P’ followed by a numeral, P1, P2,P3 and the like;



(ii) if filed by defence with the capital letter 'D' followed by a numeral, D1, D2, D3 and the like;

(iii) in case of Court exhibits with the capital letter 'C' followed by a numeral C1, C2, C3 and the like;

(2) All the exhibits filed by the several accused shall be marked consecutively.

All material objects shall be marked in Arabic numbers in continuous series as M.O. 1, M.O.2 and M.O.3 and the like, whether exhibited by the prosecution or the defence or the Court."

18. This Court is unable to understand as to why the trial Court has not followed the procedure, while marking the Exhibits as per Rule 58 of Criminal Rules of Practice. Admittedly, the documents was said to be marked in 'X' series through P.W.-4.

19. At this juncture, it is relevant to rely on the judgments of Hon'ble Division Bench of this Court in the case of Sukhi Yadav v. The State of Bihar reported in 2014 SCC OnLine Pat 5721 wherein their Lordships have held as follows:-



“9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as “Sankat Mochan witness”. What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of section 172(2) of the Code of Criminal Procedure (for short ‘Cr.P.C.’), which clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. What the trial court has done is using it as evidence, making it as



evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under section 145 of the Evidence Act is to apply but that does not mean that diary can become evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under section 161 of the Cr.P.C. are proved as evidences or other materials in the casediary are proved as evidence and marked as exhibits. This is a practice that should



end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate, who has nothing to do in the case, has been permitted by the trial court to prove the entire case-diary and mark it as exhibit. This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, which absence has to be explained, a person familiar with the handwriting of the author can only prove the document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."

20. The above citation squarely applies to the facts of the present case. Their Lordships have held that a person who is author of the document, or in absence of the author, (whose absence has to be explained), a person familiar with the hand-writing of author can prove the documents. Their Lordships



have further held that the procedures adopted by the trial Court are unknown to law, and such practices have to be ended.

21. Admittedly, P.W.-4 has no knowledge about the facts of the incident or of the treatment allegedly provided by the Dr. Bipin Bihari Sinha. However, through P.W.-4, the Exhibit-X and X/1 were marked. In the crossexamination, P.W.-4 specifically admitted that he had been working under Dr. Bipin Bihari Sinha since 1993. The alleged offence in this case occurred on 03.06.1983. Dr. Bipin Bihari Sinha did not examine the injured i.e. Serajul Haque and Asgar Ali, in this case. Therefore, the evidence of P.W.-4 is not helpful to the prosecution."

20. In the present case, PW-17 who is an advocate's clerk had no personal knowledge about the facts of the incident, the recording of the fardbeyan by the Sub-Inspector of Police, U.N.Singh or about registration of the case. Despite this, Exhibits-3 and 4 were got marked through him, which the trial Court ought not to have done.



21. It is apt at this stage to rely on the judgment reported in **AIR 1973 SC 501** in the case of **Thulia Kali vs. The State of Tamil Nadu** wherein it was held as follows:-

“That the delay in lodging the report would raise considerable doubt regarding the veracity of the evidence of two witnesses and point to an infirmity in that evidence and would render it unsafe to base the conviction of the appellant.

The First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence.



Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

22. It is also relevant to rely on the judgment of the Hon’ble Supreme Court in the case of **Tulshidas Kanolkar. Vs. State of Goa** reported in **2003 SCC OnLine SC 1162**, wherein the Hon’ble Apex Court held that in cases involving accusations of rape the delay in lodging the report is not a mitigating circumstance, if such delay is satisfactorily explained is not fatal. However, if the delay remains un-explained, there is a possibility of embellishment or exaggeration in the prosecution



version, then such delay becomes fatal to the prosecution case.

23. The above citations squarely applies to the present facts and circumstances. In the present case, the alleged offence took place on 14.07.2001 at about 8.30 A.M. As per the contents of the fardbeyan, the police personnel of Chausa PS, Purnia PS came to the place of occurrence with police force. In spite of it, SI, U.N. Singh of Chausa PS recorded the statement of PW-2 at about 3.00 P.M. at the place of occurrence and later FIR was registered at 6.00 P.M. Further, the Police Station is about 3 Kms far away from the place of occurrence and the investigation was handed over to PW-16 during the night. Neither the delay in lodging the report nor the delay in registering the case was explained by the prosecution.

24. Furthermore, the fardbeyan itself disclose that the miscreants/appellants were arrested by the police, at the place of occurrence which indicates that investigation commenced even prior to the receipt of the fardbeyan of PW-2.



It is a settled principle of law that the First Information Report is the basis for setting the criminal law into motion. However, in this case investigation appears to have commenced prior to the registering of the FIR which was not duly appreciated by the trial Court. On perusal of the record, it appears that the appellants were apprehended by the Police personnel of Chausa PS and Purnia PS on 14.07.2001 by 9.00 P.M. However, the record reveals that they were produced before the concerned Court only on 16.07.2001.

25. Section 57 of Cr.P.C. reads as follows:-

“No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.”



26. In the present case, the investigating office has not followed the provisions of Section 57 Cr.P.C. Furthermore, the formal FIR also disclose that it was forwarded to the Court on 16.07.2001 indicating procedural lapses on part of the prosecution.

27. The Learned Amicus Curiae relied upon the judgment of the Apex Court in **Arjun Marik and Ors Vs. State of Bihar** reported in **1994 Supp.(2) SCC 372** wherein their Lordships have held at para 24 which reads as follows:-

“The matter does not stop here.

There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of



Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is



indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word “forthwith” occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.”

28. The above citations also squarely applies to the present case. The trial Court has lost sight of the said aspect. The material on record clearly disclose that FIR reached the Court on 16.07.2001 i.e., after about 48 hours of the



occurrence. The evidence of the investigating officer is completely silent as to why there is delay either in producing the accused before the Court as contemplated under Section 57 of the Cr.P.C or in forwarding the FIR to the Court as contemplated under Section 156 and 159 of the Cr.P.C. Therefore, this Court is of the considerable opinion that there is no material on record to connect the appellants with the crime which was alleged to have occurred on 14.07.2001. Moreover, the record reveals that three of the alleged dacoits were absconding on the date of the offence and had fled away with the group. In the present case, no recovery of any amount has been made for the amount allegedly snatched from PW-3. Therefore, the Court finds that it is a fit case to set aside the judgment and conviction passed by the trial Court as referred above.

29. In result, the criminal appeal Nos. 152/2004, 168/2004 and 211 of 2004 are hereby allowed, setting aside the judgment dated



27.02.2004 passed by Ist Additional Sessions Judge, Madhepura in Sessions Trial No. 88 of 2002.

30. Record reveals that criminal case was abated against Dinesh Singh (Cr. App. 167/2004), against Subodh Roy (Cr. App. 211 of 2004), against Chandeshwari Mandal @ Bindeshwari Mandal in Cr. App. No. 168/2004 on 20.02.2025. The record also reveals that the appellant in Cr. App. No. 152 of 2004 Anirudh Kumar Singh (A-5), Md. Ajim @ Md. Azim in Cr. App. No. 168/2004 (A-2) and Bijoy Sharma in Cr. App. No. 211 of 2004 were released on bail during pendency of their appeals. Therefore, their bail bonds shall stand cancelled.

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2025
Transmission Date	13.11.2025

