

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.183 of 2006

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1. Lal Bahadur Choudhary, son of Radha Choudhary, resident of village Deodaha, P.S. Dinara, District- Rohtas.
 2. Pramod Kumar Nonia @ Pramod Kumar Choudhary, son of Late Ram Lakhan Choudhary, resident of village Surtapur Milki, P.S.- Dinara, District- Rohtas.

... .. Appellant/s

Versus

State Of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravi Shankar, Advocate. Mr. Binod Kumar, Advocate.
For the Respondent/s	:	Mr. Anand Mohan Prasad Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 27-08-2025

1. The present appeal has been filed on behalf of appellants, namely, Lal Bahadur Choudhary and Pramod Kumar Nonia @ Pramod Kumar Choudhary against the judgment of conviction and sentence dated 22.02.2006 passed by learned Additional District & Sessions Judge, F.T.C.-2, Buxar (hereinafter referred to as 'Trial Court') arising out of Dhansoin P.S. Case No.87 of 1987 in S.T. No. 315 of 1988 whereby appellant no. 1 (Lal Bahadur Chaudhary) and appellant no. 2 (Pramod Kumar Chaudhary) both have been awarded sentence for ten years R.I. for offence under Section 399 Indian Penal Code, seven years R.I. for offence u/s 402 Indian Penal Code and seven years R.I. for offence u/s 307/34 Indian Penal Code.



Appellant No. 2, Pramod Kumar Chaudhary was awarded further three years R.I. for offence u/s 27 Arms Act. The sentences are to run concurrently.

2. Appellant No. 2 Pramod Kumar Nonia @ Pramod Kumar Choudhary died on 15.05.2024, accordingly, his appeal has been **abated** vide order dated 04.08.2025 and appeal of Appellant no. 1 continued.

3. Heard learned counsel for the appellant no.1 and learned APP for the State.

4. The prosecution case as per the written report of Indra Bhushan Prasad Singh, Inspector of Police, Buxar (Sadar), Officer in-charge, Dhansoin Police Station is that on 09.11.1987, on receiving secret information that some notorious criminals were assembled at village Rampur with intention to commit dacoity, he along with D.S.P., Buxar O.P. Kher (PW-2) and with several other police personnel, proceeded to Rampur at about 12:30 A.M., and reached at 1:30 A.M. near the village Rampur, Nonia Tola. There, in the moonlight, they saw 8 to 10 persons sitting and talking in nearby sugarcane field. Out of them it was heard saying that Durjanwa had gone to watch dance, he should be called back otherwise it would be too late for committing dacoity. At that point, one person, from the



group proceeded towards the dance venue to call him. On seeing the police party he asked them who they were, when the police party replied that they are police, then someone from who were sitting in the sugarcane field opened fire on the police party. The police party apprehended five persons while other managed to flee. On personal search of apprehended persons, in presence of two witnesses, namely, Sheobachan Singh and Bans Ropan Singh, who had come from near Tola on hearing of the firing. A country made Rifle with loaded one cartridge was recovered from Harbansh Bhar @ Sokha, one D.B.B.L. Gun with one loaded cartridge from Harbansh Noniya, 16 cartridges from Pramod Kumar Chaudhary, three wrist watches from Rambali Chaudhary and nothing was recovered from Lal Bahadur Chaudhary (Appellant No. 1) on their personal search. The seizure list was prepared. The apprehended persons disclosed that they were assembled for commission of dacoity and with intention to cause death they opened fire on the police party.

5. On the basis of the written application, F.I.R. was registered bearing Dhansoin P.S. Case No. 87 of 1987 and Sudhir Kumar Verma, Officer In-charge entrusted investigation. After investigation, charge-sheet was submitted against the accused persons. On 06.02.1988, cognizance of offence was



taken under Sections 399, 402, 307, 414 of the Indian Penal Code and Section 25(b) Arms Act and case was committed to the Court of Sessions on 23.06.1988. The aforesaid charges were framed against accused persons on 18.12.1989 who pleaded not guilty and claimed to be tried.

6. Haribansh Bhar, Haribansh Nonia and Rambali Chaudhary were declared absconder and their case was separated from the appellants herein.

7. Prosecution has examined altogether seven witnesses (who are police personnel) in this case.

PWs	Names
PW-1	Kameshwar Prasad (Officer-in-charge of Indra Puri P.S.)
PW-2	O.P. Kher (then D.S.P. Buxar)
PW-3	Raj Bansh Singh, Officer-in-charge of Rajpur P.S.
PW-4	Grijesh Kumar (officer-in-charge of P.S. Karakat, Rohtas)
PW-5	Madan Pandey (Formal witness who proved formal F.I.R., Exhibit-1)
PW-6	Lalita Singh (retired Dafadar)
PW-7	Sheo Narain Singh, (Chaukidar)

As documentary evidence, only formal F.I.R. was exhibited as Exhibit-1.

8. After prosecution evidence, the statement of the accused persons were taken u/s 313 Cr.P.C. on 19.11.2005 who denied the same and stated that they are innocent and committed



no offence.

9. PW-1, Kameshwar Prasad, Officer-in-charge of Indrapuri P.S., PW-2, O.P. Kher was then D.S.P., Buxar and PW-4, Grijesh Kumar, Officer-in-charge of Karakat P.S. are police personnel who claimed in their deposition before the Trial Court that they were members of the raiding party, apprehended the accused persons on spot and were eye-witnesses. The informant and I.O. in the case as well as the seizure list witnesses have not been examined by the prosecution.

10. The learned Trial Court on considering the evidence on record given findings that:

(i) PW-1, PW-2 and PW-4 are police personnel and government servants who are not inimical to the accused persons, hence there is no reason to doubt at their testimony. They claimed that they were members of the raiding party and apprehended the accused persons on the spot, hence, their testimony are trustworthy and there is no reason to disbelieve them.

(ii) It is well established that on 10.11.1987 a raid was conducted at village Rampur, Nonia Tola, P.S. Dhansoin in the leadership of PW-2 at about 1.30 A.M.

(iii) In spite of all efforts, rest witnesses did not turn up for evidence. It is a very common practice this days that the Government servants who were transferred, they did not come to adduce their evidence and independent witnesses did not want to come to adduce their evidence, against the accused persons.

(iv) The evidence of prosecution fully established that accused persons were arrested from the



spot and recovery of arms were made from their possession and conversation made in between them, which was heard by the police party shows that they had assembled for committing dacoity and in furtherance of that they opened fire on the raiding party which did not hit any members of the police party.

11. The learned Trial Court on the basis of aforesaid findings came to the conclusion that prosecution is able to bring home charges which is levelled against accused persons beyond all reasonable doubt, hence the appellants were found guilty and sentenced them as stated above.

12. Being aggrieved by the said judgment of conviction and sentence, appellants preferred the present appeal.

13. Sh. Ravi Shankar, learned counsel for the appellant no.1, Lal Bahadur Chaudhary, submitted that the conviction and sentence passed against the appellant no.1 is bad in law and facts. There are serious contradictions between the evidence of prosecution witnesses. The learned Trial Court failed to consider that no any independent witnesses of the case has supported the prosecution case. Further, it is submitted that in absence of station house entry regarding alleged receiving secret information, formation of raiding party and their departure from police station creates serious room of doubt of the prosecution case. Non-production of articles seized and seizure-list prepared with regard to them in the Trial Court and



absence to prove the same by independent seizure list witnesses creates serious doubt in prosecution case. Learned counsel for appellant no.1 further submitted that informant who is also I.O. of the case having personal grudge to show the arrest of fake criminals in a fake manner on the basis of local influential men, who, having personal grudge against the appellant no.1, has not been examined without any plausible reason also creates doubt in prosecution case. It is further submitted that none of the independent witnesses as well as material witnesses have come forward to support the prosecution case and the witnesses who are police personnels whose status have been held to be interested witnesses. He further submitted that no injury was sustained by any one and there is no report on record with respect to any firing by any arms/gun by any expert person or Forensic test office, and in absence thereof, the prosecution failed to prove the case against appellant no.1 either under Sections 399, 402 or 307 I.P.C.

14. Learned counsel for the appellant relied on the judgment of this Court delivered in *Shridhar Koeri v. State of Bihar* reported in (2000) 3 PLJR 295 to support his argument that mere fact that accused-appellant was arrested on spot and some articles including firearms were recovered from his



possession would not be sufficient to prove the charge that he had assembled for making preparation for commission of dacoity.

15. Learned counsel further submitted that adverse inference ought to have been drawn against the prosecution as admittedly, the persons who were caught on the spot were caught without any resistance or struggle from their side. On this point, he relied upon the judgment of Hon'ble Supreme Court in case of *State of U.P. v. Punni & Others* reported in *AIR 2008 SC 932; (2008) 11 SCC 153*.

16. On the other hand, learned A.P.P. for the State supported the impugned judgment of conviction and sentence and submitted that the prosecution has proved charges against the appellant and learned Trial Court has rightly passed the impugned judgment of conviction and sentence and are not liable to be interfered by this Court in this appeal. It is further submitted that some minor discrepancies are bound to occur in the evidence of witnesses examined by the prosecution. Further, the prosecution witnesses are all official witnesses who are reliable witnesses having no material contradictions appearing in their evidence. The facts proved by prosecution witnesses give rise to a reasonable inference of the fact that the appellant



no.1 and other accused persons had assembled for the purpose of committing dacoity and that in preparation for the same, they had brought arms with them and the said inference does not appear to have been rebutted by the appellant no.1. If the appellant no.1 had assembled there for any other purpose, it was within his knowledge which he could have explained, but the appellant no.1 has not adduced any evidence to show that it was his lawful assemblage at that place. The appellant no.1 did not show that the object for which he had assembled was not that of committing dacoity and therefore, his appeal should be dismissed.

17. I have carefully perused the record and considered the submissions advanced by the learned counsel for the parties. At this stage, I would like to appreciate the relevant extract of entire evidence led by the parties before the learned Trial Court.

(i) PW-1 Kameshwar Prasad is Officer-in-Charge of Indrapuri P.S. He deposed that, on instruction of the Inspector, on 10.11.1987 he was present at Dhansoin P.S. and they alongwith the armed force ASI Mudrika Singh, ASI Girjendra Kumar Singh, they went for a raid and reached at sugarcane field at about 1.30 AM. There, were 7 to 8 persons



murmuring. The police party had taken position in paddy field and heard that one person was saying that “*Durjanwa had gone to watch the dance and the time for dacoity is passing, therefore send someone to bring back Durjan*”. When one person came out, and asked, the Inspector stated that they are police personnel. On hearing the same gun fire had been discharged from the sugarcane field but no bullet hit anyone. In the meantime, many people of the village came there and five people from the sugarcane field were apprehended. The apprehended people disclosed their name. From Haribansh Bhar, a rifle and a cartridges, were seized. From Haribansh Nonia one DBBL gun, from barrel, one fired cartridge, and one live cartridge were recovered. From Pramod Chaudhary 16 cartridges of 12 bore were recovered. From Raj Bali Chaudhary, 3 wristwatch were recovered. A seizure list was prepared. In his cross-examination he has stated that he had no knowledge about the accused persons and no TIP was conducted. He further stated that the police party had encircled the sugarcane field and taken position five minutes earlier from the firing. He was present at 10-15 yards and from there after some distance the DSP was present. After, the villagers arrived, the accused persons were apprehended. He further stated that in the process



of apprehending the accused persons, the police party has not got any injury. The simple injury was sustained by the accused persons. He cannot say who was talking about the dacoity, he had no knowledge about to whom the accused had to make dacoity.

(ii) PW-2 is O.P. Kher who was the S.D.P.O. on 09.11.1987 and has deposed that he received a secret information from the then Inspector Indu Bhushan Prasad that some miscreants with the intention to commit some crime are meeting near Rampur Nonia Tola and they conducted raid with the armed force. They reach Dhansoi P.S. at about 12.30 hour at night and after taking *Chaukidar* and local officer they went to Rampur village on foot and at about 01.30 AM they reached at sugarcane field and beside the same there was paddy field. Some sound was heard from the sugarcane field, thereafter torch was flashed and a sound was heard that Durjanwa had gone to watch the dance and the time for dacoity is passing, therefore, send someone to bring back Durjan. He asked the Inspector about their identity who said that they are Police, then the said person fled away from the field, they encircled, one gunfire was discharged on the police party. On search, five persons were apprehended, while 8 to 9 peoples fled. The apprehended



persons disclosed their names. On search, from Haribansh Bhar a loaded country made rifle and the cartridges were recovered. From Haribansh Nonia, one DBBL gun was recovered and from barrel one fired cartridge and one live cartridge were found. One accused person who named himself as Pramod Chaudhary from whose belt 16 bullets of 12 bore were recovered. From Raj Bali Chaudhary 3 HMT watches were found and from Lal Bahadur Chaudhary (Appellant No. 1) nothing was recovered. In the meantime villagers came there. In the presence of two witnesses namely Bansh Ropan Singh and Shiv Bachan Singh Inspector had made the seizure list. In his cross-examination he has stated that Nonia Tola was situated at about 150-200 yards from the place of occurrence near the sugarcane field. In the west side there was open field where the dance was organized. He further stated that Rampur and Nonia Tola is situated nearby. He had no knowledge on which particular place the accused had assembled. He has not asked from any person of the Rampur Village that where the dance was organized. He has not made *sanha* entry of the secret information. He further stated that after arrest of the accused persons, the villagers came there. He denied the suggestion that the accused persons were not arrested on the spot and nothing was recovered from them and only for



getting the promotion the said case was registered.

(iii) PW-3 Raj Bansh Singh has been tendered for cross-examination.

(iv) PW-4 Girijesh Kumar also supported the prosecution case in his deposition. In his cross-examination he has stated that a dance program was held at about 150 yard from the place of occurrence and 100-200 people were present there. He further deposed that some people were arrested from the sugarcane field and some arrested from outside. From the accused conversation they came to know that they were assembled for committing dacoity. He also deposed that the sugarcane was of about 4 feet height and the accused persons had not thrown their arms at the time of chasing them. He denied that they have apprehended the people who were seeing the dance.

(v) PW-5 Madan Pandey who is an Advocate Clerk is a formal witness who exhibited Exhibit 1 (Formal F.I.R.)

(vi) PW-6 Lalita Singh who is retired Dafadar deposed that he does not know about the incident and he has not given any statement before the Police.

(vii) PW-7 Sheo Narain Singh who is Chaukidar



also deposed that he does not know anything about the case.

18. It is pertinent to note that PW-3 has been tendered by the prosecution for cross-examination by the defence without his examination-in-chief by the prosecution. The procedure of tendering witness has been deprecated by the Hon'ble Supreme Court in ***Sukhwant Singh v. State of Punjab*** reported in ***(1995) 3 SCC 367*** wherein it was held that after amendment in Cr.P.C. tendering of witness for cross-examination is not permissible.

19. In this appeal the issue which comes up for consideration is “*whether on the basis of available materials on record the prosecution has proved the charged against the appellant no. 1 beyond reasonable doubt or not?*”

20. In the present case, the informant Indra Bhushan Prasad Singh, Inspector of Police, Buxar (Sadar) on whose written report the case has been registered and who had received the information on 09.11.1987 with respect to assembly of criminal with intention to commit dacoity has not been examined by the prosecution without any satisfactory explanation. He was the most material witness who proceeded to place of occurrence, arrested the accused persons on spot and prepared the seizure-list. None examination of the informant is



fatal for the prosecution case. The informant who led the foundation on which the prosecution case is based and was the architect of the facts of the case has not been examined. This is a great laches on the part of the prosecution.

21. It is also relevant to note that I.O. of the case has also not been examined. It is well settled that mere non-examination of I.O. does not discredit the prosecution version. However, the right of bringing on record, the contradictions in the statement of witnesses made before I.O. is a very valuable right of the accused and by showing that, the witnesses have made improvements or have given evidence, which contradicts their earlier statement, the accused is able to satisfy the Court that the witness is not a reliable witness. The I.O., in the facts and circumstances of the case, is a material witness and his non-examination has prejudiced Appellant no. 1.

22. The seizure-list witnesses, namely, Bans Ropan Singh and Shiv Bachan Singh and other persons were assembled at the place of occurrence who were the independent witnesses have been withheld from the Trial Court and were not examined by the prosecution and the Trial Court would draw adverse inference against the prosecution case. The prosecution failed to prove the seizure-list which creates doubt in the



prosecution case. The seized material objects have not been brought before the Trial Court for identification and the prosecution failed to prove the recovery from the accused persons.

23. It is pertinent to note that Section 399 of the Indian Penal Code deals with making preparation to commit dacoity and Section 402 of the Indian Penal Code deals with assembling for purpose of committing dacoity. The offence under Section 402 of the Indian Penal Code is complete as soon as five or more persons assemble together for the purpose of committing a dacoity. Preparation to commit dacoity may take place before or after the dacoits assemble together. Preparation consists in devising or arranging the means necessary for the commission of an offence. Though, offence falling under Section 399 and 402 of the Indian Penal Code involve almost similar ingredients, the difference is that under Section 402 of the Indian Penal Code mere assembly without any preparation is enough to attract the offence, whereas Section 399 of the Indian Penal Code is attracted only if some additional steps are taken in the course of preparation.

24. As per the prosecution evidence, the place of occurrence was quite close to the place where dance program



was going on. It is difficult to believe that appellant no. 1 with other accused persons would have assembled at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. The statement of accused persons before the police, who were caught hold by the police party that they were going to commit a dacoity being clearly inadmissible has to be excluded from consideration. The possibility that accused persons may have collected for the purpose of committing some other offence cannot be safely eliminated. It cannot be said that the articles seized from possession of the co-accused persons can be utilized only for the purpose of committing dacoity and for no other offence. The prosecution must have proved from the evidence directly or indirectly or from attending circumstances that the accused persons had assembled for no other purpose than to make preparation for commission of dacoity.

25. Though, merely because independent witnesses were not examined, the evidence of the official witnesses cannot be discarded. Even if the prosecution has successfully established that the appellant along with four other persons assembled in a lonely place i.e. sugarcane field in the odd hours of night i.e. around 1.30 A.M. on 09.11.1987 and



from possession of co-accused persons arms were seized, in my humble view, that by itself cannot be sufficient to hold that the appellant no. 1, from whom no arms were recovered, had assembled there for the purpose of committing dacoity or was making preparation to accomplish that object. It cannot be said that the articles seized from the possession of the co-accused persons can be utilized only for the purpose of committing dacoity and for no other offence. As stated above, neither seizure-list was prepared nor seized material objects were produced in the Trial Court by the prosecution and seizure-list witnesses were also withheld by the prosecution. The aid of Section 106 of the Evidence Act can be taken in criminal trial only when the prosecution has led evidence which, if believed, will sustain conviction or which makes out a *prima facie* case. Unless this is done, no burden of proving anything would lie on the accused. If there is any fallacy in explaining his position on the part of the appellant no. 1, that would not absolve the prosecution from its primary obligation to make out a *prima facie* case under Sections 399, 402 and 307/34 of the Indian Penal Code against the appellant no. 1.

26. The prosecution witnesses deposed that the accused persons were positioned at a distance of 20-30 yards.



From such distance, it was difficult for the police party to have heard the conversation going on amongst the dacoits. It is nobody's case that the dacoits were shouting. After all they had to remain silent, conceal themselves and watch the passersby in order to commit dacoity. Therefore, they would not have shouted, otherwise that will frustrate the very purpose of assembly. The result is that this part of the prosecution story is not acceptable that conversation going on amongst the dacoits could have been audible to police party. This way, the very basis of the prosecution story falls.

27. In a criminal trial, the burden lies heavily on the prosecution to prove its case beyond reasonable doubt. The evidence on record falls short of this standard. The prosecution case is riddled with material contradictions, procedural irregularities, and lack of substantive evidence linking the accused directly with the alleged offence.

28. In view of the above, this Court is of the considered opinion that the prosecution has failed to bring home the charge against the accused. The benefit of doubt must, therefore, go with the accused as the prosecution failed to establish the guilt of appellant no. 1 by adducing clear, cogent, trustworthy and clinching evidence.



29. Accordingly, the judgment/order of conviction and sentence dated 22.02.2006 passed by the learned Trial Court in S.T. No. 315 of 1988 arising out of Dhansoin P.S. Case No.87 of 1987 against appellant no. 1, Lal Bahadur Choudhary is set aside. The accused, Lal Bahadur Choudhary is hereby acquitted of the charge. He is on bail and his bail bonds, if any, shall stand discharged.

30. The appeal of appellant no. 1 is **allowed** accordingly.

31. Let the Trial Court record be returned to the Court concerned.

(Sunil Dutta Mishra, J)

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CAV DATE	05.08.2025
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