

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.369 of 1996

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Against the judgment of conviction and the order of sentence, dated 08.08.1996, passed, by Shri Braj Kishore Thakur, Sessions Judge, Purnea, in Sessions Trial No. 6 of 1993, arising out of Banmankhi Police Station Case No. 237 of 1991

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MAHESHWARI MANDAL @ BACHI MANDAL @ BACHU MANDAL,
son of late Nakchedi Mandal, resident of village Batheli, Tola Bangathighat,
P.S. Barhara, District Purnea

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr Sudhir Kumar Singh Mr. Avnish Kumar Mr. Ambrish Kumar Mr. Saharsh Singh
For the State	:	Mr. Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE ALOK KUMAR

JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 01-07-2026

From going through the Lower Court's Record, it appears that the case diary of the present case has not been annexed with the Lower Court's Record and the absence of the case diary has also not been mentioned in the order sheet of this case. Sine this appeal is very old, I am refraining myself from commenting on this issue.



2. The present appeal has been preferred against the judgment of conviction and the order of sentence, dated 08.08.1996, passed, by learned Sessions Judge, Purnea, in Sessions Trial No. 6 of 1993, arising out of Banmankhi (Janki Nagar) Police Station Case No. 237 of 1991, whereby the appellant was convicted for the offence punishable under Section 396 of the Indian Penal Code and was sentenced to undergo imprisonment for life.

3. The prosecution case, as unfolded in the fardbayan of the informant, Arun Deo Mandal, is that in the preceding night, (17.10.1991), the informant, after taking dinner, was sleeping at the door of his house along with his father and younger brother, Sadanand Mandal. His elder brother, Veer Narayan Mandal, was sleeping inside the house. At about 12:15 A.M., four unknown miscreants entered into the house of the informant and started assaulting the younger brother of the informant by means of lathi after flashing torch. One of the miscreants, who had pockmarks (smallpox or chickenpox) on his face, which the informant saw in the torch light, abused and threatened to remain quiet and told to bring money. Upon this, the informant handed over the keys of the almirah. However, the miscreants broke open the lock and took Rs. 400/-.



4. It has further been alleged in the fardbayan that two to three other miscreants were present outside the house and heard a sound of firing. After the firing, 7-8 miscreants gathered near a papaya tree, who thereafter fled away towards the west. The informant thereafter raised alarm and entered into his house and saw that miscreants have shot his elder brother and his elder brother subsequently died.

5. The informant has claimed in the fardbayan that some of the miscreants had round faces while others had long faces; some were fair-complexioned and others dark-complexioned. They were armed with guns, country-made pistols and lathis. The informant asserted to identify the miscreants.

6. On the basis of the aforesaid fardbayan, Banmankhi (Janki Nagar) Police Station Case No. 237 of 1991, dated 18.10.1991, was registered against 7-8 unknown for the offences punishable under Section 396 of the Indian Penal Code.

7. Upon completion of investigation, the police submitted charge sheet against four accused persons, namely, Dropadi Devi, Kamal @ Kamleshwari Mandal, Kanhaiya Manjhi and the present appellant, on 22.01.1992, for the offences punishable under Sections 396 and 120-B of the Indian Penal Code. Three other accused persons, namely, Achhe Lal Rishideo,



Majhia Manjhi and Mangal Manjhi, were also mentioned in the charge sheet as absconders.

8. After submission of charge sheet, cognizance for the offences punishable under Sections 396 and 120-B of the Indian Penal Code was taken by the learned District Court on 10.02.1992 and the case was committed to the Court of Sessions on 19.12.1992.

9. Upon commitment of the case, charge under Section 396 of the Indian Penal Code was framed against the appellant and the co-accused persons. The charge was read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

10. The prosecution, in order to substantiate its case, has examined nine witnesses and also exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses:

Prosecution witness no.	Name of witness	Description
1.	Abdul Gaffar	Villager
2.	Abdul Mannan	Villager
3.	Sadanand Mandal	Brother of the Informant
4.	Abhinandan Mandal	Villager
5.	Arundeo Mandal	Informant
6.	Dr. Hari Narayan Singh	Doctor



7.	Niranjan Prasad Mandal	Investigating Officer
8.	Satyender Nath Thakur	Judicial Magistrate, Purnea, who conducted TIP
9.	Md. Rizwan	Villager

List of Exhibits on behalf of the prosecution:

Exhibit No.	Description of the Exhibit	Date/attested by
1	Signature of informant in Fardbayan dated 18.10.1991	01.12.1994/ PW5
2	Post Mortem Report	29.06.1995
3	Fardbayan	08.02.1996
4	Endorsement on the Fardbayan	08.02.1996
5	Formal FIR	08.02.1996
6	Signature of the Judicial Officer on the Test Identification Chart	27.03.1996

11. The defence has neither adduced any evidence nor produced any paper in support of their innocence.

12. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure on 24.05.1996. The appellant denied all incriminating circumstances appearing against him in the prosecution evidence and claimed his innocence. However, he admitted that he had been identified by the informant (PW 5) during the Test Identification Parade as one of the dacoits.

13. Learned Counsel appearing on behalf of the appellant, at the very outset, has submitted that the judgment of conviction is against the weight of evidence and has been rendered



merely on the presumption of guilt. He further submits that the prosecution has failed to prove its case beyond reasonable doubt inasmuch as the testimonies of the prosecution witnesses suffer from material contradictions and inconsistencies.

14. It is further submitted that the appellant was arrested on 26.10.1991 and he was identified by the informant in the Test Identification Parade conducted on 17.01.1992, i.e., after three months of his arrest, which substantially diminishes its evidentiary value.

15. The witnesses, who participated in the Test Identification Parade, were P.W.1, P.W.3, P.W.5, and P.W.9. but, except P.W.5 (informant), none of the other witnesses identified the appellant during the Test Identification Parade. It is, thus, contended that a Test Identification Parade is not substantive evidence and serves only as an aid to investigation. In the present case, the conviction rests only upon the solitary identification made by P.W. 5 in the Test Identification Parade, and in the absence of any other reliable corroborative evidence, it would be wholly unsafe to sustain the conviction on the basis of such solitary identification.

16. Learned Counsel next submits that the specific allegation of firing has been attributed against co-accused



Kanhaiya Manjhi and not against the present appellant. It is further submitted that the appellant has not been convicted under Section 120-B of the Indian Penal Code. Moreover, no firearm, looted article and/or any other incriminating material, connecting the appellant with the present offence was ever recovered from his possession or at his instance, thereby rendering the prosecution case against him highly doubtful inasmuch as there is land dispute existed between the parties, which furnished a strong motive for the false implication of the appellant in the present case. The appellant is the brother of Kamleshwari Mandal, who is the son-in-law of Draupadi Devi, and are neighbour of the informant. Both of them were made accused in this case and faced the trial, but they were acquitted. Therefore, there is a possibility that the appellant was knowing the appellant from before.

17. In view of the aforesaid facts and circumstances, learned Counsel for the appellant submits that the impugned judgment of conviction is fit to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubts.

18. In support of his submission, learned Counsel for the appellant has placed reliance on the decisions of the Supreme Court, in the cases of **Iqbal and Another v. State of U.P.**,



reported in **2015 (6) SCC 623** and **Siddanki Ram Reddy v. State of A.P.**, reported in **2010 (7) SCC 697**.

19. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State has submitted that the learned Trial Court, after considering entire evidences on record and exhibits has rightly convicted the appellant as the offence alleged against the appellant appears to be serious in nature. It is contended that during the Test Identification Parade, the informant identified the appellant and that the prosecution witnesses examined during trial have also supported the prosecution case.

20. It is, therefore, submitted that the impugned judgment of conviction does not suffer from any legal infirmity, or irregularity, warranting interference of this Court. This appeal is devoid of any merit and fit to be dismissed.

21. I have heard the parties and perused the materials available on records.

22. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidence for just and proper disposal of the present appeal.

23. First of all, I would like to go through the medical evidence. PW-6 is Dr. Hari Narayan Singh, who had conducted



the post mortem on the dead body of deceased Veer Narayan Manjhi on 19.10.1991 at 09:30 AM. The doctor (PW 6) has found following injuries:

“Rigor mortis present in both upper and lower extremities.

Injuries: (i) One small penetrating injury with inverted margin with excoriating of skin around it (small-about $\frac{1}{2}$ cm diameter) on the upper part of left chest near 2nd and 3rd ribs-entry of bullet

(ii) one penetrating injury on the back in left side with everted margins (about $1\frac{1}{2}$ cm in diameter) near 4th -5th ribs-exit, situated between the fourth and sixth ribs. According to the witness, this was the wound of exit.

On dissection, Skull- normal, chest-3rd rib in left side fractured, left lung-torn, right lung-normal, heart-empty-left side of chest cavity with full of blood, Abdomen-Liver, Spleen, Kidney-normal, Stomach contained semi digested food, Small Intestine-contained gas, Bladder was empty.”

24. According to the doctor (PW 6), the death was due to hemorrhage and shock, caused by above mentioned injuries, which has been caused by fire arms.

25. This witness (PW 6) further deposed that the post-mortem report was prepared in his own handwriting and bore his signature. The post-mortem report was marked as Exhibit-2.



26. The findings of the doctor and his opinion, with regard to the injuries have not been in dispute at the trial. I, too, do not notice anything inherently improbable or incorrect in the findings of the doctor or his opinion, with regard to the cause of injuries given by him.

27. Now, coming to the other witnesses, PW 1, Abdul Gaffar, a co-villager of the informant, has simply been tendered for cross-examination, who deposed that his house is situated to the west of the house of the informant to some distance.

28. PW 2, Abdul Mannan, a co-villager of the informant, in his examination-in-chief, has deposed that in the midnight, upon hearing some commotion, he woke up and proceeded towards the house of Veer Narayan Mandal. This witness has also admitted that he had not seen any of the miscreants. He saw the dead body of Veer Narayan Mandal and came to know that dacoity had been committed. This witness had not heard the sound of bomb or gun shot. The deceased was assaulted by the dacoits. He met Arun Deo Mandal, the brother of the deceased, but did not ask anything.

29. In his cross-examination, this witness (PW 2) has stated that he knew Rizwan, who was his neighbour and Rizwan had reached the place of occurrence before him.



30. To the court question, this witness (PW 2) has stated that when he reached the place of occurrence, 100 persons of the mohalla were already there and this witness (PW 2) had named some of them. This witness has further stated that his house was situated four to five houses from the house of Veer Narayan Mandal.

31. PW 4, Abhinandan Mandal, is the co-villager of the informant. He has deposed, in his examination-in-chief, that in the night of the occurrence, he woke up on hearing the sound of gunfire and went to the house of the informant along with others and saw the dacoits standing at the door and were flashing torches. However, he could not see the faces of the dacoits. After committing the loot, the dacoits fled away. Subsequently, he found Veer Narayan dead in the aangan. He had sustained a bullet injury.

32. Nothing specific or relevant has been extracted from the cross-examination of this witness (PW 4).

33. PW 9, Md. Rizwan, a co-villager, in his examination-in-chief, has deposed that he proceeded towards the house of Arun Deo Mandal along with other villagers, who were carrying torches, on hearing the sound of gun shot coming from the house of Arun Deo. He also deposed that in the light of the torches, he saw one person armed with a gun standing near the



door of Arun Deo Mandal. This witness (PW 9) deposed that about ten to eleven other persons were present in the aangan of Arun Deo and started fleeing away. The villagers chased them and during the chase, the torches continued to remain lit. He further deposed that after the miscreants fled away, he entered into the aangan of Arun Deo Mandal and found Veer Narayan Mandal lying dead with a gunshot injury. This witness also heard the women present in the courtyard saying that the dacoits had committed loot and had killed. The witness further deposed that the police came and recorded their statements and of Arun Deo.

34. This witness (PW 9) further deposed that he had identified one person in the Test Identification Parade whom he had seen on the date of occurrence. In Court, he identified accused Kanhaiya Manjhi, present in the dock, as the same person whom he had identified during the Test Identification Parade.

35. In the cross-examination of behalf of Kanhaiya Manjhi, this witness (PW 9), has deposed that the house of Arun Deo Mandal is five to six houses from his house. He further deposed that more than fifty villagers had gathered at the time of occurrence. He admitted that he had no torch, but Md. Mohiuddin and Anant Mandal had torches and several other villagers were also carrying torches, but he could not say their names. This



witness claimed to have identified the dacoits while they were fleeing and some dacoits had wrapped turbans or cloths.

36. This witness (PW 9) has further deposed that the police had recorded his statement and he had not noticed any special mark on anyone. On seeing accused Kanhaiya Manjhi in Court, he stated that the accused appeared to be dark-complexioned and bore pockmarks on his face (this witness was brought closer to the accused Kanhaiya Manjhi).

37. This witness ((PW 9) further deposed that he had participated in the Test Identification Parade approximately three months after the occurrence and he had identified one persons out of them and he had not wrongly identified anyone. He further deposed that other witnesses had also been brought for the Test Identification Parade on the same day. The Darogaji had also come inside the jail and was sitting at the place where the Test Identification Parade was being conducted. However, according to him, the Police did not help him and merely remained seated there. He further stated that he could not say whether there were any other dark-complexioned persons with pockmarks on their faces standing in the identification parade line-up. According to him, the accused was standing along with 22 to 23 other persons. This witness (PW 9) further deposed that he remained inside the



identification parade room for about ten minutes. After he completed the identification process, he was taken out and another witness was called inside. According to him, the witnesses were kept separate and did not meet with each other during the process. He denied the suggestion that accused Kanhaiya Manjhi was not involved in the dacoity and at the instance of Darogaji, he had identified the accused Kanhaiya Manjhi.

38. In his further cross-examination, this witness (PW 9) has deposed that he had been residing in village Dhruv Bilas since his childhood and he knew Draupadi Devi, whose house was situated adjacent to that of Arun Deo Mandal (informant). He also knew her son-in-law, Kamleshwari Mandal, but stated that he did not know Maheshwar Mandal.

39. Now, coming to the depositions of the two eye-witnesses of the occurrence, i.e. PW 3 (Sadanand Mandal) and PW 5 (Arun Deo Mandal, informant of this case).

40. PW 3, Sadanand Mandal is the brother of the informant. This witness, in his examination-in-chief, has deposed that in the night of 17.10.1991 at about 12:00, he was sleeping at the door of his house along with his brother, Arun Deo Mandal and his father. Dacoits came, armed with lathis and guns. They flashed torch and assaulted them. He identified one of the dacoits



and had identified him in the Test Identification Parade, as Kanhaiya Manjhi. This witness has further deposed that dacoits looted cash and other articles from his house. At the time of dacoity, there was sound of gun shot. When the villagers rushed, the dacoits fled away. This witness (PW 3) found his elder brother, Veer Narayan, dead. He was shot.

41. In the cross-examination on behalf of Kanhaiya Manjhi, this witness (PW 3) has deposed that he had described the physical features of the dacoits to the police and that one of the eyes of the accused was defective and there were pockmarks (chickenpox) on his face. This witness (PW 3) has further deposed that he, along with 6 to 7 other persons, participated in the Test identification Parade about 10 to 15 days after the occurrence. The police took him for identification in the jail. This witness (PW 3) further deposed that the Magistrate called the persons. Eight to ten Some had their faces covered while 3-4 had their faces uncovered. The face of the accused was uncovered. Identification was done in ten minutes.

42. This witness (PW 3) has denied the suggestion that he had identified wrong person and he knew from before.

43. In the cross-examination on behalf of rest of the accused persons, this witness (PW 3) has deposed that Draupadi



Devi was the sister-in-law of his co-sharer (Gotiya) and her house was adjacent to his house. This witness was not aware of the fact that Kamleshwawri was the son-in-law of Draupadi Devi. Draupadi Devi had a girl, but he did not know her name.

44. PW 5, Arun Deo Mandal is the informant of this case and the brother of the deceased. This witness, in his examination-in-chief, has deposed that on 17.10.1991, at about 12:15 A.M., a dacoity took place in his house when he was sleeping at the door of his house, while his elder brother, Veer Narayan Mandal, was sleeping inside the house. Upon hearing commotion in the courtyard, he woke up and entered into the courtyard, where he saw 7–8 persons armed with lathis, bhalas, guns, torches and other weapons. The miscreants were flashing their torches. They abused him, threatened him to remain silent and demanded money. Thereafter, they broke open the almirah and removed cash Rs. 400/-, one Philips radio and other articles. He further deposed that in the light of the torches held by the dacoits, he identified two of them by face. During the occurrence, the dacoits shot dead his elder brother, Veer Narayan Mandal, at the spot. After committing the dacoity and looting the articles, the dacoits fled towards the western direction.



45. This witness (PW 5) has further deposed that he had identified the two dacoits during the Test Identification Parade. In Court, he identified accused Kanhaiya Manjhi. He also stated that he will identify the second accused, Maheshwari Mandal, who was absent on that day. He further deposed that in the morning of next date, he went to the police station where his fardbayan was recorded by Darogaji, on which he put his signature. This witness (PW 5) proved his signature on the fardbayan, which was marked as Exhibit-1. He further deposed that the Darogaji had taken his restatement.

46. In the cross-examination on behalf of all the accused except Kanhaiya Manjhi, this witness (PW 5) has deposed that Draupadi Devi was not related to him and that he did not know the name of her husband. He further deposed that it is not correct that Draupadi Devi's husband was Bhumi Mandal, who is the son of Bhagan Mandal and Bhagan Mandal was the son of Siya Mandal. He deposed that the house of Draupadi Devi was situated in the same village, about 200–300 yards west of his house. He further deposed that two or three days after the occurrence, he had gone to her house along with the police and she is of different caste. He admitted that his father had purchased a land from Draupadi Devi one or two years prior to the



occurrence and further clarified that no money remained due. He further deposed that Draupadi Devi had one son and one daughter, though he did not know their names. He stated that both daughters were married but he could not say where they had been married. He further deposed that there were two groups of the caste of the informant (PW 5) and Draupadi Devi belonged to a different group. When he visited her house along with the Darogaji, none of her relatives were present there. He could not state after how many months from the occurrence, the Test Identification Parade was conducted, but stated that it was held in Purnea Jail. He stated that he had informed the police that he identified the dacoits by their faces in the light of torches they were carrying. He further deposed that the place of occurrence is on the way to the aangan and there is a door and no other way to go into the aangan. He further deposed that when he entered the courtyard, he saw some of the dacoits were wearing towels (gamchas). According to him, no dacoits had caught him. The dacoits had also assaulted his younger brother and his father. He further deposed that villagers arrived there only after the dacoits had left. He deposed that on seeing his brother and father being assaulted, he hid himself beneath a bed, and when the dacoits continuously assaulting them, he came out and requested them not to beat them. He further



stated that villagers, including Abhinandan Mandal, had assembled there. According to him, three or four dacoits were assaulting his brother and father, and thereafter they entered into the courtyard.

47. This witness (PW 5) further deposed that his elder brother and sister-in-law were hidden in another room. He deposed that he identified two of the dacoits by face while they were assaulting his father and during the Test Identification Parade, he had told that he had identified those two dacoits when they were assaulting his father. He further deposed that they had no arms.

48. This witness (PW 5) has denied the suggestion that Draupadi Devi was his cousin sister-in-law and Kamleshwari Mandal was her son-in-law. He deposed that he did not know whether Maheshwari Mandal was the brother of Kamleshwari Mandal. This witness (PW 5) has admitted that he knew Kamleshwari Mandal but he did not know his brother, Maheshwari Mandal. He further denied the suggestion that he had falsely implicated Draupadi Devi, her son-in-law and others in the present case.

49. In the cross-examination on behalf of accused Kanhaiya Manjhi, this witness (PW 5) has deposed that he went to



the aangan after two to three minutes of hearing the sound of gun shot. This witness (PW 5) has further deposed that he had given the details of the dacoits whom he had identified by face. While identifying accused Kanhaiya Manjhi in Court, he stated that the accused was blind in one eye and had pockmarks on his face. He further deposed that during the Test Identification Parade, the suspects were mixed with 12–13 other persons and all of them had their faces uncovered. He also stated that Draupadi Devi and his father did not have the same khatian and this witness (PW 5) has denied that he has falsely implicated accused Kanhaiya Manjhi.

50. PW-7, Niranjan Prasad Mandal, at the relevant time, was posted in Jankinagar Police Station and was Incharge of that Police Station. This witness, in his examination-in-chief, has deposed that that on 18.10.1991, at village Dhruv Bilas, under Jankinagar Police Station, he had recorded the fardbeyan of Arun Deo Mandal (PW 5). He further deposed that the formal First Information Report was also drawn by K.D.M. Azad, the Officer-in-Charge of Banmankhi Police Station. The witness identified the handwriting and signature of K.D.M. Azad on the formal First Information Report (Exhibit-4). He further deposed that during the investigation, he took the restatement of the informant (PW 5) and proceeded to inspect the place of occurrence. He found that the



informant's thatched house consisted of two rooms, one room was east-facing while the other was in the east-west direction. There was a veranda in front of the room and another veranda towards the east. A courtyard was situated in the middle of the house and a kitchen was located to the north of the courtyard. The witness further deposed that the dead body of Veer Narayan Mandal was lying inside the room facing the entrance of the east-facing room. He found a firearm entry wound in the back of the deceased and a corresponding exit wound on the chest. Outside the residential portion of the house, there was a sitting room containing a wooden almirah, the lock of which was found broken. To the west of the informant's house, the thatched house of Draupadi Devi was there. He also found the latch of the door of the informant's sitting room broken. Thereafter, he prepared the inquest report of the deceased in the presence of witnesses and thereafter sent the body for its post-mortem. He also recorded the statements of other witnesses during the investigation.

51. This witness (PW 7) further stated that during investigation, evidence surfaced regarding the involvement of accused Maheshwar Mandal @ Bachchi Mandal (present appellant), Kanhaiya Manjhi and Draupadi Devi in the commission of the offence. Maheshwar Mandal was arrested,



while Kanhaiya Manjhi, who was in judicial custody in connection with some other case, was remanded in this case. The said suspects were sent up for Test Identification Parade, who were identified by the witnesses during the Test Identification Parade.

52. In the cross-examination on behalf of accused Maheshwar Mandal, Kamleshwari Mandal and Draupadi Devi, this witness (PW 7) has deposed that during investigation, no torch was produced before him. He found blood-stained soil was present at the place where he had prepared inquest report, but he had not seized the blood-stained soil.

53. In his cross-examination on behalf of accused Kanhaiya Manjhi, this witness (PW 7) has deposed that the inquest report had not been incorporated in the case diary.

54. PW-8, Satyendra Nath Thakur, at the relevant time, was posted in the Civil Court, Purnea, as Judicial Magistrate and the Officer had conducted the Test Identification Parade on 17.01.1992. He deposed that the learned Chief Judicial Magistrate, Purnea, vide order, dated 14.07.1992, deputed him to conduct the Test Identification Parade in connection with Banmankhi Police Station Case No. 237 of 1991 and pursuant thereto, he conducted the Test Identification Parade of accused Maheshwar Mandal @



Bachchi Mandal and Kanhaiya Manjhi @ Sukhu Manjhi in Purnea Jail, on 17.01.1992 in accordance with the prescribed procedure. He further deposed that the witnesses, who participated in the Test Identification Parade, were Arun Deo Mandal (PW 5), Sadanand Mandal (PW 3), Tarani Mandal (not examined), Abdul Gaffar (PW 1), Mohammad Rizwan (PW 9) and Abhinandan Mandal (PW 4) and before commencing the identification parade, the suspects were mixed with nine other persons of similar appearance.

55. This witness (PW 8) has further deposed that Arun Deo Mandal (PW 5) identified the appellant who was assaulting the younger brother of the informant (PW 5) by means of lathi. He further deposed that Arun Deo Mandal (PW 5) also identified accused Kanhaiya Manjhi, who had fired bullet which hit the elder brother of the informant and his brother died. PW 3, Sadanand Mandal, identified Kanhaiya Manjhi, who had assaulted him and his brother, Arun Deo Mandal. However, PW 3, Sadanand Mandal, did not identify the appellant. Tarani Mandal (not examined) failed to identify either of the suspects during the Test Identification Parade. Similarly, PW 1, Abdul Gaffar, did not identify any of the suspects. Mohammad Rizwan (PW 9) identified accused Kanhaiya Manjhi and stated that he had seen him fleeing from the place of occurrence, but he failed to identify



the appellant. PW 4, Abhinandan Mandal, also did not identify any of the suspects. After completion of the Test Identification Parade, this witness (PW 8) prepared the identification parade report in his own handwriting and signed the same (Exhibit-6).

56. In the cross-examination on behalf of accused Maheshwar Mandal, Kamleshwari Mandal and Draupadi Devi, this witness (PW 8) has deposed that the Investigating Officer had not personally produced the identifying witnesses before him. He deposed that the relevant records had been forwarded to him through the office of the Chief Judicial Magistrate and this witness instructed the staffs to call the witnesses. When this witness proceeded to jail, the witnesses were waiting outside the jail premises and were called one by one for the purpose of identification. He further stated that each suspect was made to stand with nine other persons during the identification parade. This witness (PW 8) further deposed that accused Maheshwar Mandal was firstly put up for identification. He also deposed that signatures of the identifying witnesses were not obtained on the identification parade chart. He further denied the suggestion that Maheshwar Mandal was not kept with the persons having similar appearance during the Test Identification Parade.



57. In the cross-examination on behalf of accused Kanhaiya Manjhi, this witness (PW 8) has deposed that Kanhaiya Manjhi presently had pockmarks on his face and was blind by one eye. He further admitted that he had not recorded in the identification parade chart whether the accused produced before him had pockmarks on his face. He admitted that apart from the Test Identification Parade report (Exhibit-6), he had not prepared any separate document in relation to the proceedings. He also deposed that the identification parade chart did not disclose as to how many other persons in the jail possessed similar pockmarks or facial features.

58. Having carefully examined the entire evidence available on record, this Court finds that a dacoity had taken place in the house of the informant during the intervening night of 17/18.10.1991 and Veer Narayan Mandal, brother of the informant (PW 5) died as a result of a firearm injury allegedly sustained during the said dacoity.

59. However, the crucial question for determination is as to whether the prosecution has been able to prove beyond reasonable doubt that the present appellant was one of the miscreants, who participated in the said dacoity so as to attract criminal liability under Section 396 of the Indian Penal Code.



60. It is an admitted position that the First Information Report was instituted against unknown. The name of the present appellant does not find place either in the First Information Report or in the restatement of the informant (PW 5). The entire case of the prosecution against the appellant, therefore, rests upon his identification made by the informant (PW 5).

61. From the materials available on record, it transpires that the appellant was arrested on 26.10.1991; whereas the Test Identification Parade was conducted on 17.01.1992, i.e. after nearly three months of his arrest. after a delay of nearly three months. The Test Identification Parade was conducted on the application of the Investigation Officer made before the learned Chief Judicial Magistrate, on 14.01.1992, but the prosecution has not furnished any explanation for such delay. Though delay in holding a Test Identification Parade may not by itself be fatal in every case, it is equally well settled that unexplained delay substantially reduces the evidentiary value of such identification and obliges the Court to scrutinize the evidence with greater caution.

62. The evidence of PW 8, the learned Judicial Magistrate, Purnea, who had conducted the Test Identification Parade, assumes considerable significance. His testimony reveals



that among all the identifying witnesses who participated in the Test Identification Parade, only PW 5 (the informant), eye-witness of the occurrence, identified the appellant. PW 3, brother of the informant, eye-witness of the occurrence, who was admittedly present at the place of occurrence and was allegedly beaten by the dacoits, failed to identify the appellant. Likewise, PW 9, who claimed to have seen the miscreants fleeing, participated in the Test Identification Parade, also failed to identify the appellant. Abdul Gaffar (PW 1) and Abhinandan Mandal (PW 4) similarly failed to identify the appellant. Thus, the prosecution seeks to sustain the conviction of the appellant solely on the basis of the identification made by PW 5.

63. This Court is conscious of the fact that conviction can, in an appropriate case, be founded on the testimony of a solitary witness if the same is wholly reliable and inspires confidence. However, where the witness identifies a previously unknown accused for the first time in a delayed Test Identification Parade and such identification remains uncorroborated by any independent circumstance, the Court is required to seek assurance from other evidence on record.

64. In the present case, no such corroboration exists. No looted article was recovered from the possession of the



appellant. No weapon was recovered at his instance. The prosecution has also failed to establish any circumstance showing the appellant's presence at or near the place of occurrence except the solitary identification made by PW 5. Consequently, there is a complete absence of independent corroborative evidence connecting the appellant with the commission of the alleged offence.

65. The evidence relating to identification also does not inspire complete confidence. The occurrence admittedly took place at about midnight. The prosecution case itself is that the miscreants were unknown persons, who entered into the house carrying torches. The only source of illumination available was the torch allegedly flashed by the miscreants themselves.

66. The informant (PW 5) has stated that some of the dacoits had covered themselves with *gamchhas* and that several persons were involved in the occurrence. The description furnished by the witnesses regarding the assailants was general in nature, referring merely to differences in complexion, facial structure and physical appearance. Such broad and vague descriptions do not provide adequate assurance regarding the correctness of identification after a considerable lapse of time.



67. A significant contradiction is also apparent in the testimony of PW 5, the informant, with regard to the identification of the accused persons. In the fardbeyan, PW 5 merely stated that in the torchlight, he had noticed one of the miscreants having pockmarks (smallpox/chickenpox marks) on his face. However, while deposing before the Trial Court, PW 5 went on to improve his version by stating in his examination-in-chief that in the light of the torches carried by the dacoits, he had identified two of the miscreants by their faces. The said material improvement appears to be an afterthought intended to strengthen the prosecution case and, therefore, considerably diminishes the evidentiary value of the identification of the appellant made by him (PW 5).

68. PW 8 has deposed that the identifying witnesses were called by him, but from the evidence of the identifying witnesses, it is crystal clear that they were summoned by the police, who accompanied them to the jail. Not only this, one of the witnesses, namely, PW 9, has deposed that the Darogaji had accompanied them inside the jail premises and was sitting while the Test Identification Parade was going on.

69. The Supreme Court, in the case of **Umesh Chandra and Others v. State of Uttarakhand**, reported in (2021) 17 SCC 616, in paragraphs 9 and 10, has held as under:



“9. A Test Identification Parade under Section 9 of the Evidence Act, is not a substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a Test Identification Parade during the stage of investigation is only to ensure that the Investigating Agency prima facie was proceeding in the right direction where the accused may be unknown or there was a fleeting glance of the accused. *Mere identification in the test identification parade therefore cannot form the substantive basis for conviction, unless there are other facts and circumstances corroborating the identification.*

10. But more important than that, the test identification parade being a part of the investigation, has to be proved by the prosecution as having been held in accordance with law. The onus lies on the prosecution to establish that the TIP was held in accordance with law. It is only after the prosecution prima facie establishes a valid TIP having been held, the question of considering any objection to the same arises. If the prosecution has failed to establish that a TIP was properly held by examining the witnesses to the same, there is nothing for the accused to disprove.

(Emphasis added by me)

70. The identification of the accused persons, including the appellant, is also doubtful inasmuch as the occurrence had taken place in the midnight and the only source of



light was the torches allegedly carried by the miscreants themselves. The informant has also admitted that some of the miscreants had covered their faces with *gamchhas*. Further, the description of the 7–8 accused given by the informant was vague and general, referring only to differences in height, complexion and facial appearance. Such broad descriptions are insufficient to inspire confidence regarding the correct identification of unknown persons.

71. After having discussed several lacunae in the case of the prosecution, it remains an admitted position that the prosecution case against the appellants rests primarily on the sanctity of the Test Identification Parade.

72. The delay caused in conducting the Test Identification Parade adversely affects the sanctity of the same and benefit of doubt with regard to the same would lie in favour of the appellants, as has been laid down in the case of **State of U.P. v. Wasif Haider**, reported in **2019 (2) SCC 303**, wherein it has been indicated that in a case where out of seven witnesses, the T.I.P. was held after an inordinate delay of 55 days and although the involvement of the accused was brought to light on an earlier day itself, the prosecution did not take any effort to arrest or interrogate him for a substantial period of time for which no



reasonable explanation was provided, such T.I.P would be susceptible to doubt. The defense had pleaded in the said case that an inordinate delay was caused by the prosecution witnesses to mark their identification.

73. In the present case also, although the names of the appellants had figured much earlier inasmuch as the appellant was arrested just five days after the registration of the First information Report on 26.10.1991, and the Test Identification Parade was conducted on 17.01.1992. The inordinate delay in the conduct of the T.I.P, making the entire procedure meaningless in the absence of any explanation for the same.

74. In such a situation, the benefit of doubt arising out of such inefficient investigation must be bestowed upon the accused persons, as has been held in the case of **Wasif Haider** (supra). The T.I.P. also loses its sanctity on the ground as discussed earlier that the accused may already be known to the witness.

75. This Court would gainfully refer to the case of **Mulla and Another v. State of U.P.**, reported in **2010 (3) SCC 508**, wherein it has been clearly held that the necessity of holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The said judgment has



also taken into consideration the fact that T.I.P. does not constitute a substantial evidence and that it is desirable that T.I.P. should be conducted as soon as possible in order to eliminate the possibility of the accused persons being known to the witnesses.

76. Paragraph Nos. 43, 44, and 45 of **Mulla** (supra) is quoted herein below:

(43) As was observed by this Court in *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .)

(44) The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether



all or any of them could be cited as eyewitnesses of the crime.

(45) The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.”

77. Applying the aforesaid principles to the facts of the present case, this Court is of the considered view that the identification of the appellant by PW5 alone, in a delayed Test Identification Parade, without any independent corroboration, is insufficient to sustain a conviction for a grave offence punishable under Section 396 of the Indian Penal Code. The evidentiary value of the Test Identification Parade stands considerably weakened by the unexplained delay and by the fact that none of the other identifying witnesses could identify the appellant.



78. After coming to the conclusion that the appellant's conviction cannot be based on the identification made by the sole witness, i.e. the informant (PW 5) in the Test Identification Parade, conducted three months after the arrest of the appellant, I would like to go through the depositions of the witnesses.

79. PW 1 (Abdul Gaffar) has not uttered a word about the occurrence in his deposition.

80. It is the consistent case of the prosecution that the dacoits fired upon the elder brother of the informant, due to which he died; though PW 2, who is a hearsay witness, has deposed that he had not heard the sound of bomb or bullet. PW 2, though deposed that the deceased was assaulted by the dacoits, but he has not disclosed the fact that from whom, he got this information inasmuch as he has deposed that he met with the informant, but he did not ask anything from him.

81. The informant has stated in the First Information Report that the dacoits fired upon his elder brother, who was in the room, but PW 4, who is a co-villager and came to the place of occurrence on hearing the sound of firing, has claimed to see the dacoits standing at the door and flashing torches.

82. The deposition of this witness (PW 4) is not reliable inasmuch as the informant has alleged that soon after



firing, the dacoits fled away, yet this witness, who came to the place of occurrence on hearing the sound of firing from some distance, claimed to have seen the dacoits standing at the door of the house of the informant.

83. PW 9, who claimed himself to be a chance eye-witness, has deposed that on hearing the sound of firing from the house of the informant, he reached the place of occurrence which is five to six houses away and saw one dacoit, armed with a gun, near the door of the house of the informant. He further claimed that the villagers chased the dacoits, but they fled away. It is not the case of the prosecution that anybody chased the dacoits or even tried to catch them. This witness has identified accused Kanhaiya Manjhi in the Test Identification Parade, but did not identify this appellant. PW 9, in his deposition, has also deposed that some dacoits had wrapped turbans or clothes, which is contrary to the version of the informant in the First Information Report.

84. One of the two main eye-witness to the occurrence is PW 3, Sadanand Manjhi, the younger brother of the informant. He, in his deposition, has stated that the dacoits were flashing torches and have assaulted him. The prosecution has not brought on record any injury caused to this witness as alleged in the First Information Report and also in his testimony. Like PW 9, this



witness has also identified accused Kanhaiya Manjhi in the Test Identification Parade, but did not identify this appellant.

85. PW 5, who is the informant of this case, has claimed in the First Information Report, that he saw only one miscreant in the light of torch, but in the Test Identification parade, he has identified two persons and in his deposition also, he has claimed to have seen two miscreants. PW 3 has claimed in his deposition that Draupadi Devi was the sister-in-law of his co-sharer (gotiya), however, the informant refused any such relation and deposed that Draupadi Devi was not related to him. This witness has also deposed that three or four dacoits were assaulting PW 3 and his father, yet no injury has been alleged to have caused to them.

86. Significantly, there is no recovery of any looted property or weapon from the appellant nor there is any independent evidence corroborating his alleged involvement in the occurrence. In these circumstances, it would be unsafe to sustain the conviction solely on the basis of the identification made by PW 5. The cumulative effect of the infirmities in the prosecution case creates a reasonable doubt regarding the appellant's participation in the alleged dacoity.



87. Because of the nature of evidence, which is available on record, the least, which ought to have been done by the learned Trial Court, was to accord benefit of reasonable doubt to the appellant inasmuch as I am clearly of the view that in the light of the evidence on record, which I have discussed above, it was too hazardous to convict the appellant. The benefit of such a situation ought to have been given to the appellant.

88. In the backdrop of what have been discussed and pointed out above, I am of the considered view that the prosecution had failed, in the present case, to bring home the charge against the appellant beyond reasonable doubt and that the appellant was entitled to be accorded benefit of doubt.

89. In the result, this appeal succeeds. The impugned conviction of the appellant by the judgment, under appeal, and the consequential sentence, passed under the impugned order, are hereby set aside. The appellant is held not guilty of the offence, which he stand convicted of, and is acquitted of the same under benefit of doubt.

90. The appellant is in custody. He is directed to be released forthwith from custody unless he is required to be detained in connection with any other criminal case.



91. The Registry is directed to return the Lower Court's Record forthwith along with a copy of this judgment.

(Anil Kumar Sinha, J.)

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR)

1. I am in respectful agreement with all the conclusions reached by Senior brother, Anil Kumar Sinha, J. This concurring note is to express my view on two of the most important facets of the case. The first is in respect to TIP (Test Identification Parade). A Test Identification Parade is only a corroborative evidence. Hence, mere identification cannot form the substantive basis for conviction. It is quite clear that delay in conducting a TIP has great and serious bearing on the credibility of the identification process, it is imperative to hold the TIP at the earliest. Delay alone does not automatically destroy the prosecution case but unexplained delay weakens the evidentiary value of identification.

2. The Supreme Court in the case of **Gireesan Nair and Others v. State of Kerala (2022 INSC 1197)** in para 46 has held that,

"Undue delay in conducting a TIP has a serious bearing on the credibility of the identification process. Though there is no fixed timeline within which the TIP must be conducted and the consequence of the delay would depend upon the facts



and circumstances of the case, it is imperative to hold the TIP at the earliest.”

3. The second aspect is in respect to the infirmities in prosecution case which leads to reasonable doubt. The infirmities in a prosecution case are flaws that fail to meet the "beyond a reasonable doubt" standard. "Beyond a reasonable doubt" is the ultimate standard of proof in the legal system. It explains that the prosecution must prove the guilt conclusively so that no reasonable/rational person could come up with another explanation based on evidence.

4. The ultimate benchmark of "beyond a reasonable doubt" upholds the presumption of innocence in a legal system which we follow. The presumption of innocence is the absolute bedrock of a fair criminal justice system. It protects individuals from wrongful, arbitrary imprisonment by demanding the state to bear the burden of proof and to establish guilt beyond a reasonable doubt, rather than burdening the accused to prove they are innocent. The most celebrated landmark judgement on the "benefit of doubt" and the "presumption of innocence" in Indian Legal history is of three Judge Bench of the Hon'ble Apex Court in **Kali Ram vs. State of Himachal Pradesh (1972) 2 SCC 808**, in para 25, the Apex Court held that,



"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh 1974 3 SCC 227 a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the



trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures".

5. The Hon'ble Supreme Court, in **Goverdhan and Another v. State of Chhattisgarh (2025 INSC 47)**, has reiterated that reasonable doubt must not be an abstract or speculative doubt but one based on reason, logic and the totality of the evidence on record. The relevant portion as stated in para 21 of the aforesaid judgement is reproduced as below:

"21. It will be relevant to discuss, at this juncture, what is meant by "reasonable doubt". It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt



based upon reason and common sense as observed in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395, wherein it was observed as under:

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

6. In view of the above, I must conclude that the prosecution has failed, in the present case, to bring home the charge against the appellant beyond reasonable doubt.

(Alok Kumar, J.)

Prabhakar Anand/-

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