

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.267 of 2014**

Arising Out of PS. Case No.-114 Year-2004 Thana- AMARPUR District- Banka

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Ramswaroop Harijan, Son of Mangal Harijan, Resident of Village - Masarpur
(Logain), Police Station- Amarpur, District- Banka

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Md. Najmul Hodda, Adv. Ms. Ayushi Choudhary, Adv. Mr. Saurabh Kumar Singh, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 11-02-2026

The instant appeal has been preferred by the appellant against the judgment of conviction dated 15.05.2014 and the order of sentence dated 24.05.2014 passed by the Court of the learned Additional Sessions Judge-I, Banka, in Sessions Trial No. 1293 of 2005/166 of 2014 (arising out of Amarpur P.S. Case No. 114 of 2004), whereby and whereunder the appellant has been convicted for the offence punishable under Section 395 of the Indian Penal Code (in short, "IPC"). The appellant has been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs. 5,000/- (Rupees Five Thousand) for the offence punishable under Section 395 of the IPC. In default of payment of fine, he has been directed to undergo rigorous



imprisonment for six months additionally.

Prosecution Story:

2. The substance of the prosecution story, as appearing from the FIR, is as follows:

As per the informant, on 22.09.2004, he, his wife, and his 5-year-old grandson, namely Shubham, were asleep on a chowki in the courtyard of his house. At about 12:45 A.M., five miscreants entered into the courtyard flashing torches. When the torchlight flashed upon him, he awoke and saw five miscreants standing near his bed. One of the miscreants asked him about the key of the almirah. He then awoke his wife and asked her to run, saying that dacoits had come. As per the informant, when he stated to the dacoits that he did not have the key of the almirah, all the miscreants/dacoits entangled with him. In that course, he caught hold of two miscreants by their necks and identified them in the light of the lantern as Bablu Mandal and Mithhu Mandal. He also identified the three other miscreants standing nearby the chowki in the light of the lantern as Nawal Mandal, Shridhar Mandal, and Ramswaroop Harijan (appellant).

2.1. As per the informant, the two miscreants who had been caught by him tried to free themselves from his clutches. Then one of the miscreants, namely Nawal Mandal,



fired at him using a country-made pistol, and the shot hit his left shoulder. Due to the firearm injury, he freed both the miscreants who were in his grip. Thereafter, all the miscreants fled away through the southern exit of his house and, at the time of fleeing, again fired a shot.

2.2. As per the informant, when the miscreants were fleeing, his wife identified some other miscreants who were also present with the above-named miscreants as Bineshwar Mandal, Bipin Mandal, Ajay Mandal, Prakash Mandal, and Mannu Mandal, all residents of village Mansurpur, falling under Amarpur Police Station, District Banka. Upon hearing the hulla, villagers gathered, and his wife informed them about the identity of the miscreants as well.

2.3. According to the informant, one Shosiya Devi, wife of one Subhash Mandal, a resident of village Mansurpur, used to visit his house. A few days before the occurrence, i.e., on 20.09.2004, she had come to his house and saw him keeping rupees in the almirah. As per the informant, the miscreants used to assemble at the house of Shosiya Devi to take meals. The informant suspected that the said Shosiya Devi had called the miscreants and sent them to his house to commit the alleged occurrence.



3. The informant recorded his fardbeyan on 22.09.2004 at 2:30 hours at Amarpur Police Station and detailed the above-mentioned incident. Upon that basis, the formal FIR bearing Amarpur P.S. Case No. 114 of 2004 was registered for the offences punishable under Sections 398 and 307 of the IPC and Section 27 of the Arms Act, which set the criminal law in motion.

4. After completion of the investigation, two charge sheets were submitted, and the appellant was also charge-sheeted.

5. After cognizance of the alleged offences, the learned Chief Judicial Magistrate committed the case of the appellant and four other co-accused persons to the Court of Sessions for trial. The appellant and four other co-accused persons, namely Mannu Mandal, Shridhar Mandal, Bipin Mandal and Baneshwar Mandal, stood charged for the offences under Sections 307, 398, and 120B of the IPC and also under Section 27 of the Arms Act. Later on, the charges were amended, and they stood charged for the offences under Sections 307 read with Section 34, 398 read with Section 34, 120B, and 395 of the IPC. The said charges were read over and explained to the appellant by the trial court, to which he pleaded



not guilty and claimed to be tried.

6. During the trial, the prosecution examined altogether six witnesses who are as under :-

PW-1	Sakuntala Devi	An eyewitness and wife of the informant
PW-2	Sanjay Kumar	A hearsay witness and son of the informant
PW-3	Pappu Kunwar	An independent witness and was declared hostile
PW-4	Rasho Mandal	An independent witness and was declared hostile
PW-5	Md. Anwarul Haque	The investigating officer
PW-6	Dhananjay Mandal	An independent person and was declared hostile

7. In addition to the above mentioned ocular evidence, the prosecution proved and exhibited the following documents in documentary evidence :-

Ext-1	Xerox copy of the informant's fardbeyan
Ext-2	Xerox copy of the formal FIR
Ext-3	Xerox copy of the injury report of the informant (exhibited with objection)

8. The trial court *suo motu* summoned one person, namely, Shyam Dev Das, who was examined as a court witness, to verify the handwriting of the doctor who issued the injury report of the informant.

9. After the completion of the prosecution evidence, the statements of the appellant and other accused persons were recorded under Section 313 of the Code of



Criminal Procedure (in short, 'Cr.P.C.') by the trial court. The appellant denied the material circumstances appearing against him from the prosecution evidence; however, he did not take any specific defence while recording his statement.

10. In defence, the appellant produced and exhibited the following documents.

Ext-A	Certified copy of the judgment passed in Sessions Trial No. 1561/2004
Ext-B	Certified copy of the deposition of a prosecution witness namely, Sakuntala Devi, pertaining to Sessions Trial No. 1561/2004
Ext-B/1	Certified copy of the deposition of a prosecution witness namely Sanjay Kumar pertaining to Sessions Trial No. 1561/2004

11. While convicting the appellant for the offence under Section 395 of the IPC, the learned trial court mainly placed reliance upon the testimony of Sakuntala Devi (PW-1), wife of the informant, and took the evidence of Sanjay Kumar (PW-2) as supportive of the prosecution story to some extent. Further reliance was placed upon the evidence of the Investigating Officer (PW-5) for accepting the case of the prosecution, particularly with regard to the alleged place of occurrence. The doctor who examined the informant was not produced before the trial court; however, the trial court found sufficient reasons for his non-appearance and considered the



injury report issued by the said doctor to be admissible evidence in light of the provisions of Section 32 of the Evidence Act. The trial court observed in the concluding part of the judgment that the solitary evidence of Sakuntala Devi (PW-1) was convincing and reliable, as she had identified the appellant in the light of a lantern.

12. In respect of the charged offence punishable under Section 395 of the IPC, the trial court concluded that the prosecution failed to prove the same with respect to the other co-accused persons, however, it was further concluded that the prosecution was able to prove the offence under Section 395 of the IPC against the appellant. By the same impugned judgment, the other co-accused persons who faced trial along with this appellant were acquitted of all the charged offences mainly on the ground of their non-identification by PW-1 (Sakuntala Devi), and they were given the benefit of doubt. The appellant was also acquitted of the charged offences under Sections 398 read with section 34, 307 read with Section 34, and 120B of the IPC though he was convicted for the offence under section 395 of IPC.

Submissions on behalf of the appellant:

13. Mr. Md. Najmul Hodda, learned counsel for the



appellant, submits that as per the prosecution story, the most important witness of the prosecution, who was the informant himself, could not be examined before the trial court, and the informant's wife is said to be an eyewitness of the alleged occurrence; however, there are serious contradictions between her testimony and the facts revealed by the informant in his fardbeyan. The appellant, who had no criminal antecedent at the time of the commission of the alleged occurrence, had no motive or reason to be involved with the accused persons who actually committed the alleged occurrence of dacoity. On the same set of evidence, the co-accused persons, namely Mannu Mandal, Bipin Mandal, Baneshwar Mandal, and Sridhar Mandal, were acquitted of the charged offences by the trial court by giving them the benefit of doubt, whereas the appellant was convicted mainly on the basis of identification as claimed by the wife of the informant, which was not probable in light of the circumstances in which the alleged occurrence took place. The other material witnesses of the prosecution, except the informant's wife and son, turned hostile. It is lastly submitted that two co-accused persons, namely Ajay Mandal and Mithhu Mandal, faced trial separately, in which the informant's wife and son were also examined by the prosecution, resulting in the



acquittal of the said co-accused persons. Copies of the depositions of the informant's wife and son pertaining to Sessions Trial No. 1561/2004 were filed before the trial court as defence documentary evidence, but the same were not appreciated by the trial court.

Submissions made on behalf of the State:

14. On the other hand, Mr. Bipin Kumar, learned Additional Public Prosecutor for the State, has argued that the fardbeyan was recorded by the informant in an injured condition within two hours of the commission of the alleged occurrence; therefore, the same was completely natural and believable. The informant and his wife had no inimical terms with the appellant; thus, there was no reason to falsely implicate him in this case. In the cross-examination of the informant's wife, no any fact came in light to suggest any reason for false implication of the appellant by the informant and his wife. The Investigating Officer visited the place of occurrence and found blood stains on the chowki where the informant was sleeping with his wife and grandson, which supports the allegation of causing firearm injury to the informant by one of the miscreants during the commission of the alleged dacoity. Though the informant was not examined before the trial court, the reason for his non-



examination was his death and he had died before he could appear in the trial court, and in such a circumstance, his fardbeyan (Ext.-1) is admissible in evidence under the provisions of Section 32 of the Evidence Act and was rightly taken into consideration by the trial court. Therefore, the conviction of the appellant for the offence of dacoity punishable under Section 395 of the IPC is correct, and there is no need to interfere with the same.

Consideration and analysis:

15. I have heard both sides, perused the evidence adduced by both sides available on the trial court's record and also taken into account the appellant's statement and the findings of the trial court mentioned in the impugned judgment.

15.1. As per the prosecution story, the informant, his wife, and his five-year-old grandson are said to be eyewitnesses to the commission of the alleged dacoity. The informant's grandson, namely Shubham, was only five years old; therefore, for that reason, he might not have been examined by the Investigating Officer and was not made a prosecution witness on account of he being an incompetent witness. Thus, the most important witnesses of the prosecution on whom the prosecution story is based are the informant and his wife.



15.2. Though the informant could not be produced before the trial court by the prosecution on account of his death, his fardbeyan was taken into consideration by the trial court under the provisions of Section 32 of the Evidence Act. From a perusal of the informant's fardbeyan, it appears that the informant alleged that five accused persons, including the appellant, first came inside the courtyard (baramda) of his house where he was sleeping and stood near his bed, surrounding him. When one of the accused flashed a torchlight, he awoke. Thereafter, one of the accused persons asked him to hand over the key of the almirah, and when he expressed his inability to give the key, the accused/miscreants scuffled with him. During that course, he caught hold of two co-accused persons by their necks, whom he identified as Bablu Mandal and Mithhu Mandal.

15.3. The informant further alleged that he identified this appellant and two more co-accused persons and stated that they also stood near his chowki. He further stated in his fardbeyan that when the accused persons were fleeing, they were identified by his wife, and according to her, five more accused persons, namely Bineshwar Mandal, Bipin Mandal, Ajay Mandal, Prakash Mandal, and Mannu Mandal, were also



present there. Thus, according to the informant, altogether ten accused persons, including the appellant, participated in the commission of the alleged dacoity.

15.4. The informant did not mention the name of Shosiya Devi as being present with the accused persons at the time of the commission of the dacoity, though he suspected her role as a conspirator; however, regarding her presence at the time of the commission of the occurrence, he did not say anything.

15.5. In light of the aforesaid facts stated by the informant, I have perused the evidence of PW-1 (Sakuntala Devi), who is the most important witness of the prosecution, as she is stated to be an eyewitness to the occurrence as per the prosecution story, and on account of the non-examination of the informant as a prosecution witness before the trial court, her evidence is most crucial. PW-1 (Sakuntala Devi) deposed in her examination-in-chief that the first gunshot fired by the accused Nawal Mandal hit the left side of the chest of her husband (informant), whereas, as per the informant's statement made in the fardbeyan, the gunshot hit his left shoulder. PW-1 further deposed in her examination-in-chief that when firing was being done by Nawal Mandal, she identified the appellant and Shosiya



Devi as being present with co-accused Nawal Mandal. If this statement is believed, then Shosiya Devi was also present at the alleged place of occurrence, but the informant said nothing about her presence. PW-1 further stated in her examination-in-chief that she identified only this appellant and Nawal Mandal and could not identify the other co-accused persons. Thus, as per this witness, she was able to identify only two accused persons, and she said nothing about identifying the other accused persons, whereas the informant stated in his fardbeyan that when the accused persons were fleeing, they were identified by his wife (PW-1) as Bineshwar Mandal, Bipin Mandal, Ajay Mandal, Prakash Mandal and Mannu Mandal, in addition to other co-accused persons. This statement is completely contradictory to the statement made by PW-1 in her examination-in-chief. As such, serious contradictions appear between the testimony of PW-1 (Sakuntala Devi) and the statement made by the informant in his fardbeyan with regard to the identification of the accused persons, which creates serious doubt regarding the claim of PW-1 as an eyewitness to the alleged occurrence. In this regard, I would also like to refer to the deposition of the informant's son, namely Sanjay Kumar (PW-2), recorded in Sessions Trial No. 1561/2004, in which two



co-accused persons, namely Ajay Mandal and Mithhu Mandal, faced trial.

15.6. The informant's son, Sanjay Kumar, deposed in the said trial that he was not present at the time of firing, and his mother was also not present. A copy of his deposition was filed by the defence (appellant) as documentary evidence and was exhibited as Ext.-B/1. As per the prosecution, the informant's son arrived at the place of occurrence just after the firing. This defence evidence was not properly appreciated by the trial court.

15.7. Though, in view of the medical evidence showing firearm injury to the informant, the commission of an offence against the informant cannot be ruled out but the role of this appellant in that occurrence, in view of the contradictions appearing between the statements made by the informant in his fardbeyan and the testimony of the informant's wife, who claimed herself to be an eyewitness, appears to be doubtful. Further, as per the evidence of the Investigating Officer, the appellant had worked as a labourer in the informant's field. At this juncture, I would like to mention one more contradiction appearing from the testimony of PW-1 (Sakuntala Devi). She stated in paragraph 4 of her cross-examination that three



accused persons were identified by her, who were residents of her village, and that the house of the appellant was also situated in her village. However, in the same paragraph, she changed her version regarding the location of the appellant's residence, stating that his house was situated in Mansurpur village. Thus, PW-1 did not remain consistent in her stand. In offences of loot and dacoity, past conduct is somewhat relevant. It came in the evidence of the Investigating Officer that the appellant had no criminal antecedent when the alleged occurrence took place; thus, the past history of the appellant goes in his favour and makes his role in the commission of the alleged dacoity less probable.

Conclusion:

16. Accordingly, I am of the considered opinion that the evidence of PW-1 (Sakuntala Devi), who is said to be the most important witness of the prosecution, was not properly appreciated by the trial court, and in view of the contradictions appearing between her testimony and the statements of the informant as discussed above, the appellant's role in the commission of the alleged dacoity appears to be suspicious, and he is entitled to the benefit of doubt. As such, the impugned judgment convicting the appellant, Ramswaroop Harijan, for the



offence under Section 395 of the IPC and the impugned order sentencing him for the said offence are hereby set aside, and the instant appeal stands allowed.

17. The appellant is on bail; accordingly, he and his sureties are discharged from the liabilities of their bail bonds.

18. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for necessary compliance.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.02.2026
Transmission Date	16.02.2026

