2026:JHHC:13896

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 1394 of 2007

Karma Uraon @ Chhotu Uraon, Son of Late Nago Uraon, resident of village-Bongadag, P.S.-Simaria, Dist.-Chatra

... ... **Appellant**

Versus

The State of Jharkhand …… **Respondent**

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Nawin Kumar, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.

J UDGMENT

Dated: 07th May, 2026

1. Heard Mr. Nawin Kumar, learned counsel for the appellant and Mrs. Nehala Sharmin, Learned Spl.P.P. for the State.

2. The instant criminal appeal is directed against the judgment of conviction dated 15.09.2007 and order of sentence dated 20.09.2007 passed in S.T. No. 357 of 2003 and S.T. No. 42 of 2005 by the learned Addl. Sessions Judge (F.T.C No.-III), Hazaribagh, whereby and whereunder, the appellant has been found guilty for the offence under Section 395 of the IPC and has been sentenced to undergo R.I. for 7 years, however, the other accused persons have been acquitted from the charges.

Factual Matrix

3. The factual matrix giving rise to this appeal is that on 04.03.2003, at about 5:00 pm, the informant had gone to Hazaribagh, for treatment of his daughter, along with his wife, on his own vehicle and his driver also came with him, on a motor-cycle. After treatment, the informant returned to his house, on his own vehicle and followed by his driver, by a motor-cycle. At about 8:30 PM,

when they reached to their house, thereafter, the informant came out of his house to see off his driver. In the meantime, two miscreants caught hold of them, on the point of pistol, entered into the house and thereafter, 4-5 miscreants also entered into the house and took out gold ear tops, gold ring, silver payals and nose-pins of his mother and wife along with Rs. 700/- cash. After dacoity in the house of the informant, they locked the driver in a room and informant was also taken to the house of his uncle Brahmdeo Pandey and directed to call his uncle, then, informant's aunt opened the door, thereafter, all the miscreants entered into the house of informant's uncle house and looted away ornaments and cash and fled away extending threats of dire consequences to the informant. Due to threat of dire consequences by the miscreants, the informant did not raise any alarm and in the morning, the informant came to know that the miscreants also looted the property in the house of Sheo Nandan Sharma, Umesh Sharma, Vijay Pandey, Gurudayal Sao and Kedar Nath Sharma. The miscreants were talking in local language and in the light of torch and lamp, the informant has claimed to identified all the miscreants.

4. On the basis of fardbeyan recorded by S.I., Sri Venkatesh Kumar, Officer-in-charge, Pelawal, Katkamsandi P.S. Case No. 28 of 2003 for the offence under Section 395 of the IPC was registered. After completion of investigation, first charge-sheet was submitted against three accused persons. Subsequently, another chargesheet

was submitted against this appellant and after taking cognizance, the case was committed to the court of Sessions, where Sessions Case No.42 of 2005 was registered and other three co-accused persons' trial were separated in S.T. No. 357 of 2003. The appellant has pleaded not guilty and claimed to be innocent and false implication.

5. It appears that altogether four witnesses have been examined by the prosecution: -

P.W.-1	Sudhir Kumar Pandey (Informant)
P.W.-2	Sabitri Devi (Aunt of the Informant)
P.W.-3	Jib Lal Sao
P.W.-4	Radhey Shyam Pandey

6. On the other hand, no oral or documentary evidence has been adduced by the defence.

Submissions on behalf of the appellant

7. Learned counsel for the appellantsubmits that the appellant has been convicted and sentenced under Section 395 of the IPC and other accused persons facing trial with him have been acquitted, extending the benefit of doubt, due to non-identification in the concerned trial Court. It is further submitted that the appellant has been held guilty, on the basis of evidence of P.W.-2 Sabitri Devi, who has claimed to identify the appellant behind the dock, for the first time, in the Court, who was examined, during trial on 22.06.2006, although, the occurrence is alleged to have been occurred on 04.03.2003 in the night. Admittedly, no incriminating

articles were recovered from the possession of the appellant and as such, no charge under Section 412 of the IPC was framed against the appellant. It is further submitted that a dacoity might have been committed in the house of the informant but so far as the involvement of the present appellant is concerned, there is no iota of evidence against the appellant except P.W.-2 Sabitri Devi, none of the witnesses have been able to specify any overt act or involvement of the petitioner in the alleged occurrence. In this connection, learned counsel for the appellant has placed reliance upon the reported judgment in the case of **Dana Yadav @ Dahu& Ors. Vs. State of Bihar, AIR 2002 SC 3325** wherein the Hon'ble Apex Court analyzing the law quoted as under:-

> *"**38.** In view of the law analysed above, we conclude thus:*
> *(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.*
> *(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification*

parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

Submissions on behalf of the State

8. Learned Spl.P.P. has opposed the contentions raised on behalf of the appellant and submitted that the learned trial Court has properly appreciated the evidence of P.W.-2 who has been able to identify the appellant committing dacoity. Therefore, there is no illegality or infirmity in the impugned judgment calling for any interference in this appeal, which is fit to be dismissed.

9. I have gone through the record of the case and rival contentions of the parties along with the impugned judgment. It appears that altogether four witnesses have been examined by the prosecution in this case.

P.W.-1-Sudhir Kumar Pandey, the informant, in his deposition has stated that all accused persons had muffled their faces. In para 4 of his deposition has stated that I was taken to the police station and asked to identify the arrested accused but I could not identify him. He has further stated that no identification parade was conducted either in court or at jail and today it is not possible to identify any of the accused.

P.W.-2-Sabitri Devi has stated that she was not taken to identification parade. She further deposed that all accused person had tied cloth over their face. On the question asked by the court that when their face was covered with cloth then how she identified? She replied that it was visible a little bit.

P.W.-3-Jimlal Sao has stated in his cross-examination that none of the robbers were identified by him, their faces were covered.

P.W.-4-Radhe Shyam Pandey has also stated that none of the accused were identified by him.

10. From the above, it appears that P.W.-2 Sabitri Devi has specifically stated that prior to occurrence, she was not aware of the miscreants but in the Court, she has claimed to identify the present appellant because due to muffling the face of the present appellant, some portion of his face was visible. This fact has not been disclosed by

the above witness at any point of time during investigation and no test identification parade was conducted during investigation and after three years of the occurrence, P.W.-2 has claimed to identify the appellant to which no credence can be placed. There was a blink chance to clearly identify the appellant at the time of occurrence. It appears that she has never claimed to identify any of the miscreants during investigation and interrogation by the police. Hence, no T.I.P. was conducted. Therefore, the conviction of the appellant passed by the learned trial Court only on the basis of evidence of P.W.-2 appears to be not justified under law.

11. In view of the above discussions and reasons, the conviction and sentence of the appellant passed by the learned trial Court is set aside and **this appeal is allowed.**

12. Appellant is on bail, as such he is discharged from the liability of bail bond and sureties are also discharged.

13. Pending I.A(s), if any, is also disposed of accordingly.

14. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

07.05.2026
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Uploaded on 11/05/2026