IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 102 of 2005

[*Against the Judgment of conviction and Order of sentence dated 12.01.2005, passed by learned 3rd Additional Sessions Judge (Fast Track Court), Jamtara in Sessions Case No. 63 of 2003 / 85 of 1997*].

1. Angad Bouri, son of Kartick Bouri, resident of Village – Mejhladih, P.O. and P.S. – Bindapathar, District – Jamtara.
2. Ajit Bouri, son of Shankar @ Shankar Bouri, resident of Village – Jamjori, P.O. and P.S. – Kundahit (Fathepur), District – Jamtara.

... ... **Appellants**

Versus

The State of Jharkhand ... ... **Respondent**

.....

For the Appellants : Mr. Indrajit Sinha, Advocate.
Mr. Akhouri Awinash Kumar, Advocate
Mr. S.K. Mukherjee, Advocate.
Mr. K. Chakraborty, Advocate.

For the Respondent : Mr. Prabhu Dayal Agarwal, Spl.P.P.

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P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 14.08.2026 Pronounced on 06.11.2026

1. Heard learned counsel for the parties.

2. The present appeal is directed against the judgment of conviction and order of sentence dated 12.01.2005 passed by learned 3rd Additional Sessions Judge (Fast Track Court), Jamtara in Sessions Case No. 63 of 2003 / 85 of 1997 (arising out of Fatehpur P.S. Case No. 126 of 1994 corresponding to G.R. No. 662 of 1994), whereby and whereunder the appellants have been held guilty for the offence under Sections 395 and 397 of the I.P.C. and sentenced to undergo R.I. of

seven years for the offence under Section 397 of the I.P.C. and no separate sentence has been passed for the offence under Section 395 of the I.P.C.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that on 24.12.1994 at about 7:00 P.M., the informant along with his family members was watching some programme on T.V. In the meantime, they heard loud sound of barking dogs. The informant came out towards verandah of house and saw that 5-6 persons were present in the verandah, two of them caught hold of the informant and another uttered that he is Ganesh kill him. Thereafter, one of the miscreants put a knife over temporal region of the informant and another inflicted a bottle blow upon his head causing head injuries. It is further alleged that four miscreants entered into the house of the informant dragging him inside the house and demanded his licensee gun. The informant replied that the gun is with his brother. It is alleged that the miscreants putting under fear of knife and other weapon conjointly committed robbery in the house of informant took away four gold bangles, one golden chain, golden ring and golden ear ring of the wife of informant and also one golden ring and golden

bangles belonging to bhabhi of informant. Apart from jewelleries other house hold articles and cash were also robbed and taken away. It is further alleged that one of the miscreants attempted to take a sword kept at the corner of the house and attempted to give sword blow to the brother of the informant namely, Uttam Sadhu, who apprehended the said miscreants, then other miscreants exploded a bomb causing injury to his brother. The informant has claimed to identify one Sunil Singh, Sujit Bauri and son-in-law of Shanar Bouri, who was present and participating in the alleged crime along with other unknown. The total number of miscreants was 12-13, who were speaking in Bangla and Hindi language. On the basis of fardbeyan of informant, Kundahit P.S. Case No. 126 of 1994 was registered for the offence under Sections 395 of the I.P.C.

4. After completion of investigation, I.O. of this case has submitted charge sheet against five accused persons, out of which, one Sujit Bauri died. Hence, proceeding against him was dropped. After taking cognizance, the case of other four accused persons was committed to the court of Sessions, where Sessions Case No. 63 of 2003 / 85 of 1997 was registered. The defence has denied the charges leveled against them and claimed to be tried.

5. In course of trial, altogether 06 witnesses were examined by the prosecution:-

P.W.-1 : Gautam Kumar Sadhu (Informant).

P.W.-2 : Mausami Sadhu.

P.W.-3 : Debiyani Sadhu.

P.W.-4 : Pratima Sadhu.

P.W.-5 : Dr. S.K. Gutgutia.

P.W.-6 : Uttam Kumar Sadhu.

Apart from oral testimony of witnesses, following documentary evidences were adduced by the prosecution:-

Exhibit-1 : Fardbeyan.

Exhibit-2 : Injury Report of Gautam Kr. Sadhu.

Exhibit-2/1 : Injury Report of Uttam Kr. Sadhu.

6. On the other hand, the case of defence is denial from occurrence and false implication due to previous enmity. They are co-villager of the informant. However, one defence witness namely, Durga Pado Bauri has been examined by defence. The defence has also adduced following documentary evidence:-

Exhibit-A : C/C of Prosecution report of N.G.R. No. 3 of 1995 of the court of S.D.J.M., Rampurhat.

Exhibit-A/1 : C/C of bail bond.

Exhibit-A/2 : C/C of P.R. Bond.

Exhibit-A/3	:	C/C of Bail order dated 04.01.95 of the court of Sr. P.R. Jha, J.M., Rampurhat.
Exhibit-A/4	:	C/C of order dtd. 22.01.2001 of the court of Sr. M. Das, J.M., 1st Class, Rampurhat.
Exhibit-A/5	:	C/C of Police Station Diary of Fatehpur Out post bearing No. 264 dated 18.1.95.
Exhibit-B	:	Rent Receipt of the year 1974-75.
Exhibit-B/1	:	Rent Receipt bearing No. 009691
Exhibit-C	:	Notice Dtd. 19.10.95 in Crl. Misc. No. 752 of 1995.
Exhibit-C/1	:	Original Patta bearing No. 631 in name of Shankar Bouri in Settlement Case No. 33 of 92-93.
Exhibit-C/2	:	Notice to Shankar Bouri dated 5.10.94 in Rev. Misc. Revision No. 12/94-95.
Exhibit-C/3	:	C/C of order dtd. 16.08.1997 in Rev. Misc. Revision No. 12/94-95.
Exhibit-C/4	:	C/C of Order dtd. 13.09.01 / 20.9.01 in Settlement Case No. 33/92-93.
Exhibit-D	:	C/C of C.O. report.

Exhibit-D/a : C/C of Karamchari's report.

Exhibit-D/b : Trace Map.

7. The trial court recorded finding that the prosecution has been able to prove its case against named accused persons namely, Ajit Bouri and Angad Bouri (present appellants), whose presence and participation during commission of alleged dacoity at the house of informant has been proved beyond all reasonable doubt. So far involvement of accused persons namely, Shankar Bouri and Sunil Kumar Singh are concerned, most of the witnesses have not identified them. Therefore, they were extended benefit of doubt and acquitted from the charges. Accordingly, present appellants were convicted and sentenced, which has been assailed in this appeal.

Submission on behalf of appellants

8. Learned counsel for the appellants challenged the impugned judgment of conviction and sentence of the appellants by raising following grounds:-

(i) In the F.I.R. itself, it is admitted that there were 12-13 miscreants, but the charge sheet was submitted only against 05 accused persons including the present appellants. The named accused Shankar Bouri and Sunil Kumar Singh have been acquitted. It is a case of dacoity, where

5 or more persons required to commit robbery conjointly for constituting the offence. Therefore, conviction of two accused persons for the offence under Section 397 of the I.P.C. is not justifiable.

(ii) The named accused persons Shankar Bouri and Sunil Kumar Singh, against whom, presence and participation was alleged in the F.I.R. have been acquitted and on the basis of same evidence, appellants have been convicted. Hence, they also deserve the benefit of doubt.

(iii) The learned trial court has miserably failed to take into notice, several documentary evidence adduced on behalf of defence showing long drawn land dispute with the informant and his family members. As a matter of fact, it may be that on the date of occurrence some dacoits might have entered in the house of the informant, but taking advantage of the same, he has falsely implicated the appellants in this case dragging their names in the F.I.R. and escape the main culprits to whom he never identified.

(iv) Huge quantity of golden ornaments has been alleged to be robbed from the house of the informant, but surprisingly not a single ring has been recovered from the possession of

appellants, rather no looted article was found in conscious possession of the appellants.

(v) The learned trial court without considering the factum of enmity between the parties relied upon testimony of some witnesses as gospel truth simply because they have named the present appellants with some specific overt act and identified behind the dock.

(vi) The evidence of witnesses of fact suffers from material contradictions and discrepancies which has also been ignored by the learned trial court.

(vii) The learned trial court also failed to consider that the I.O. of this case was not examined. Therefore, the defence has been seriously prejudiced from taking explanation of contradictions and improvements appearing in the testimony of alleged ocular witnesses, who are close relative and member of same family under inimical terms with the appellants.

In view of above, it is prayed that the impugned judgment of conviction and order of sentence of the appellants may be set aside and this appeal may be allowed.

9. Learned counsel for the appellants has placed reliance upon reported judgment of ***Raj Kumar @ Raju Vs.***

State of Uttaranchal [(2008) 11 SCC 709], wherein it has been held by Hon'ble Apex Court that "*For recording conviction of an offence of dacoity, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons - or even one - can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in Section 141 IPC and the liability of every member of such unlawful assembly for an offence committed in prosecution of common object under Section 149 IPC.*"

Submission on behalf of State

10. On the other hand, learned Spl.P.P. appearing for the State has defended the impugned judgment and order of conviction and sentence of the appellants and has

submitted that the learned trial court has very wisely and aptly considered all aspects and materials available on record. The impugned judgment and order is well-reasoned and based upon evidence available on record. There is no illegality or infirmity in the impugned judgment and order of conviction and sentence calling for any interference by way of this appeal which is fit to be dismissed.

Analysis, discussions and reasons

11. I have gone through the record the case along with impugned judgment in the light of contentions raised on behalf of both side.

12. The only point for consideration in this appeal is, as to whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference in this appeal or not?

13. Before adjudicating the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial.

14. **P.W.-1 Gautam Kumar Sadhu**. He is the informant-cum-one of the injured of this case. In his evidence, this witness has stated that the miscreants have inflicted bottle blow upon his head, resulting in head injury. He has further stated that he has identified Sujit Bouri, Angad Bouri and Sunil Singh as

miscreants. As per evidence, Uttam Sadhu has sustained bomb injury. This witness has not identified one accused namely, Ajit Bouri and stated that he had not seen him on the alleged day and time of occurrence. This witness has admitted his signature over the fardbeyan i.e. marked as Exhibit-1.

15. **P.W.-2 Mausami Sadhu**. She is wife of the informant. In her evidence, this witness has stated that she had identified the accused, though their names were not known to her.

In her cross-examination, this witness admits that she has identified one Ajit Bouri and Angad Bouri in commission of dacoity and did not identify Shankar Bouri and Sunil Singh.

16. **P.W.-3 Debyani Sadhu**. This witness has only supported the factum of dacoity, but did not identify any of the miscreants.

17. **P.W.-4 Pratima Sadhu**. This witness has supported the fardbeyan of the informant, so far as factum of dacoity is concerned. This witness has also identified Angad Bouri and Ajit Bouri and did not identify Sunil Kumar Singh and Shankar Bouri.

In her cross-examination, this witness has stated that the police did not call her for T.I. parade. She further stated that she is unaware that whether her

family members were called for T.I. parade or not.

18. **P.W.-5 Dr. S.K. Gutgutia** is the doctor who has examined the injured Gautam Kumar Sadhu (informant) on 24.11.94 at about 11:00 P.M. and found following injury:-

(i) One lacerated wound on the scalp midline 2" x ¼" x ¼".

(ii) Swelling and laceration on the upper lip.

(iii) Sharp cut injury on the right thigh 1" x ½" x 1" deep.

According to this witness, injury no. (i) caused by hard and sharp weapons, injury no. (ii) caused by hard object and injury no. (iii) caused by sharp cutting weapons.

Injury Report of Gautam Kumar Sadhu has been marked as Exhibit-2.

On the same day and time, this witness has also examined Uttam Kumar Sadhu and found following injury:

(i) One large lacerated wound on the left buttock with loss of skin in the area of approximate 9" x 5" x 2" deep loss of skin and muscle surrounding having tattooing with barud. The splinters are removed.

(ii) Cut and penetrated wound on left side of chest, two in numbers:-

(a)At the level of 5th rib 2" from the midline on left side 1" x ½" x 1".

(b) Posterior axillary line at the level of 9th rib 1" x ½" x 1".

According to this witness, injury no. (i) caused by blast injury and injury no. (ii) by sharp cutting and penetrating weapons.

Injury Report of Uttam Kumar Sadhu has been marked as Exhibit-2/1.

19. **P.W.-6 Uttam Kumar Sadhu**. He is one of the injured witnesses. In his evidence, this witness has stated that a dacoity has been committed in his house on the alleged day and time of occurrence while they were seeing T.V. According to him, miscreants have bomb and knife in their hand. This witness has stated that he identified two miscreants who were present with bomb and that was Sujit Bouri (dead) and Angad Bouri. This witness has stated that after sustaining bomb injury, he has been treated at Popular Nursing Home, Jamtara.

20. From the aforesaid discussion, it emerges that, it is clear cut case of the prosecution, as depicted in the FIR, that when the informant hearing sound of barking dog while watching T.V. came out near his

Varandah, two miscreants caught hold of him putting under fear of knife and four miscreants entered into room and committed robbery. Although at the last breath of FIR, it is asserted that there were 12-13 miscreants, but only 05 accused persons were charge-sheeted in this case. Out of them, one died during proceeding of the case and four accused persons faced the trial. Two of them namely, Shankar Bouri and Sunil Kumar Singh have been acquitted by the trial court casting doubt regarding their complicity in the alleged occurrence. On the basis of same evidence, only these two appellants have been convicted. Admittedly, no incriminating article has been recovered from the conscious possession of the appellants and sheer enmity and long drawn land dispute is also existing between the parties. The I.O. of this case has also not been examined, which has caused prejudice to the case of the defence. The accused were not put on T.I. parade, as such, their identity is also disputed. In the aforementioned circumstances, the possibility of false implication of appellants cannot be overruled. Therefore, the conviction of the appellants for the offence under Section 395 and 397 of the I.P.C. cannot be sustained.

21. Accordingly, the judgment of conviction and order of sentence of the appellants are hereby set aside and this appeal is **allowed**.

22. The appellants are on bail. As such, they are discharged from the liability of their respective bail bonds and sureties are also discharged.

23. Pending I.A., if any, stand disposed of.

24. 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.)

Jharkhand High Court, Ranchi
Dated, the 6th November, 2026.
Sunil /**N.A.F.R.**
Uploaded on 06/11/2026