IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 1394 of 2006

[Against the judgment and order of conviction and sentence dated 23.05.2006 and 26.05.2006 respectively passed by learned Additional Sessions Judge, Fast Track Court No.1, Gumla in Sessions Trial No.133 of 2005]

Lalit Kumar Mahto @ Laljit, son of Shri Moy Nath Mahto, resident of village-Kanliga, P.S.-Kumhartoli, P.S.-Basia, District-Gumla, Jharkhand

… … Appellant

Versus

The State of Jharkhand …. Respondent

With

Cr. Appeal (S.J.) No. 1027 of 2006

Lalku @ Anand Sahu, son of Kariya Sao, resident of village-Murkunda, P.S. & District-Gumla … … Appellant

Versus

The State of Jharkhand …. Respondent

With

Cr. Appeal (S.J.) No. 1025 of 2006

Manoj Bhagat @ Fulo Bhagat, son of Late Chama Bhagat, Resident of Village-Kaliga, P.S.-Basia, District-Gumla

… … Appellant

Versus

The State of Jharkhand …. Respondent

For the Appellants : Mr. Suman Saurav, *Amicus Curiae*
[In Cr. A.(SJ) No.1394 of 2006]
Mr. Mohit Prakash, Advocate
[**In Cr. A. (SJ) Nos.1025/1027 of 2006**]

For the Resp.-State : Mr. Suraj Deo Munda, A.P.P.
[In Cr. A. (SJ) Nos.1394/1027 of 2006]
Mr. Naveen Kumar Ganjhu, A.P.P.
[In Cr. A.(SJ) No.1025 of 2006]

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

CAV On 25/08/2026 **Pronounced On 10 /09 /2026**

1. Heard learned counsel for the respective parties.
2. All the above appeals are arising out of common judgement, hence are heard together and are being disposed of by common judgment.
3. Instant criminal appeals are directed against the judgment and order of conviction and sentence dated 23.05.2006 and 26.05.2006 respectively passed by learned Additional Sessions Judge, Fast Track Court No.1, Gumla in Sessions Trial No.133 of 2005, whereby and whereunder all the appellants have been held guilty for the offences under sections 456, 457 and 458 of Indian Penal Code and sentenced to undergo R.I. for 2 years for the offence under section 456 of IPC; R.I. for 3 years for the offence under section 457 of IPC and R.I. for 5 years along with a fine of Rs.2,000/- for the offence under section 458 of IPC with default stipulation. All sentences were directed to run concurrently.

Factual Matrix:-

4. Factual matrix giving rise to this appeal is that on 01.10.2004 at about 9:15 pm, while the informant along with his children and wife including domestic servant, namely, Sanichar Jhora @ Gunga were sleeping in his house, some unknown miscreants attempted to open the door and also they were compelling his servant to open the door. It is further alleged that the informant did not open the door, thereafter the miscreants

forcibly entered into his house by jumping the wall upon which the informant out of fear locked himself in another room and bolted the room from inside. The informant started raising *hulla* but the son of the informant was caught by the miscreants and they started pressurizing his son to call upon his father but the informant did not open the door. Upon hearing *hulla* of his wife and daughter, the local villagers rushed towards his house and seeing the assemblage of the local villagers, the miscreants fled away by jumping the wall, which was under construction, by assaulting the son of the informant (Shrikant) by pistol and caused firearm injury over its back. Some of the pellets entered into over the body of his son and some found disperse at the place of occurrence. It is further alleged that a lantern was burning in the room where the informant was sleeping and the miscreants during course of running away bolted the main door of the house from the outside, which was opened by the villagers. No household articles were taken by the miscreants. It is further alleged that the miscreants have also assaulted his domestic servant by means of *dabia* (a weapon) and caused injuries over his right hand and also beaten him by fists.

5. On the basis of above fardbayan of the informant, initially Basia P.S. Case No.53 of 2004 was registered against three unknown miscreants for the offence under sections 393, 323, 324 of IPC and Section 27 of Arms Act and in course of investigation, after due permission for the offence punishable under Sections 395 and 397 of IPC were added.

6. After completion of investigation, charge-sheet was submitted against the accused persons for the offence under sections 397 and 398 of IPC and after taking cognizance, the case was committed to the court of Sessions where S.T. No.133 of 2005 was registered. The charges were framed on 01.08.2005 for the offence under sections 395 and 397 of IPC. Later on 24.04.2006, charges under sections 456, 457 and 458 of IPC were also framed.
7. The accused persons have denied the charges leveled against them and claimed to be tried.
8. In course of trial, altogether 7 witnesses were examined by the prosecution, namely:-

P.W.1-Sri Kant Mahto

P.W.2-Ram Chandra Mahto

P.W.3-Anita Kumari

P.W.4-Maheshwar Mahto

P.W.5-Dr. Vinod Kumar Gupta

P.W.6-Ram Avadh Paswan

P.W.7-Nawal Kishore Prasad

9. Apart from oral testimony of the witnesses, the following documentary evidences have been adduced by the prosecution.

Ext.1-Signature of Maheshwar Mahto on fardbeyan

Ext.2-Injury report of Sanichar Jhora

Ext.3-Medical examination report of Shrikant Mahto

Ext.4-Fardbeyan

Ext.5-Formal FIR

Ext.6 to 6/2-T.I. Parade Chart in three pages proved by Judicial Magistrate, Shri Asif Equbal.

10. On the other hand, two defence witnesses, namely, **Karam Dayal Sahu @ Karia Sahu and Safique Ansari** have been examined as **D.W.1** and **D.W.2** respectively by the defence.

11. Apart from oral testimony of defence witnesses, one documentary evidence i.e. an application submitted by the father of the appellant, Lalku Sahu to the court of C.J.M., Gumla marked as **Ext.A** has been adduced by the defence.

12. Further, one witness, namely**, Asif Eqbal** has also been examined as court witness i.e. **C.W.1**.

13. Learned trial court, after scrutinizing the evidence available on record, held the appellants guilty for the aforesaid offences and sentenced them as stated above, which has been assailed in these appeal.

Submission on behalf of appellants:-

14. Learned counsel for the appellants has strenuously argued that initially the First Information Report (in short FIR) has been lodged by the informant, Maheshwar Mahto against three unknown miscreants, although, P.W.1, Shrikant Mahto is a minor and happens to be an eye-witness to the occurrence, who claimed to identify the miscreants in the light of lantern, has also recognized some miscreants in T.I. Parade but

the said lantern has not been seized during course of investigation, which shows contradictory in his statement. He has further submitted that in course of trial, P.W.1 Shritkant Mahto has deposed in his statement that the accused, Abhimanu Mahto has opened fire upon him as a result of which he sustained injuries on his person, thereafter, Abhimanu Mahto was sent for its trial to the Juvenile Court but Shrikant Mahto(P.W.1) has stated nothing against all the above appellants rather the conviction and sentence of the appellants is based upon conjecture and surmises alone and without any concrete evidence. Learned counsel further submits that the eye-witness (P.W.1) has claimed that he has sustained firearm injuries over his body, but in this regard, no injury report has been brought on record, which also demolishes the evidence of P.W.1 and cast serious doubt against his statement. The informant has claimed to have acquainted with the miscreants, namely Abhimanu Mahot, Lalit Mahto, Amit Kumar Mahot and Fula as well as Miraj Anol Minz @ Amit Kumar but at the time of lodging FIR, he has not stated the name of any miscreants while at the time of deposition. He had exaggerated and advanced his version, which shows his evidence tutored and not free from embellishment on the matter of identification. It is further submitted that so far as the commission of offence of dacoity is concerned, during investigation, it was found that nothing has been robbed from the house of the informant or seized from possession of the appellants. Therefore, the impugned judgment of conviction and

order of sentence of the appellants is liable to be set aside, allowing these appeals.

Submission on behalf of State:-

15. On the other hand, learned counsels for the State have opposed the aforesaid contentions raised on behalf of the appellants and submitted that learned trial court after appreciating the evidence available on record has very wisely and aptly recorded the findings of the guilt of the appellants for the offence under sections 456, 457 and 458 of IPC, which has been proved conclusively and requires no interference in these appeals, which are devoid of merits and fit to be dismissed

Analysis, Reasons and Decision:-

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

17. The only point for determination in these appeals is that "**as to whether the impugned judgment and order of conviction and sentence of the appellants passed by learned trial court suffers from any error of law calling for any interference in these appeals?**"

18. Before adjudicating the above point, it is necessary to take brief resume of oral as well as documentary evidence adduced by the prosecution to substantiate the charges leveled against the appellants.

19. It appears that altogether, 7 witnesses have been examined by the prosecution:-

The most important witness is the informant, **Maheshwar Mahto**, who has been examined as **P.W.4.** According to his evidence, on 01.10.2004 at about 9:30 pm, while he along with his son, Shrikant Mahto (P.W.1) aged about 12 years and his domestic servant were sleeping inside the house, some miscreants suddenly jumped into the *angan* and entered into his house and over powered his domestic servant, who is dumb and known to be *Gunga* and put pressure upon him to open the door. After apprehension of entering the miscreants in the house, he went to another room of the house and woke up his wife and two daughters. Thereafter, they raised alarm upon to which the local villagers assembled and the miscreants fled away. He further states that when he came out from the house, he saw his son in injured condition and his son was taken to hospital for treatment. He further states that on the next day, he lodged the case which he proved as Ext.1. He has identified the miscreants, Abhimanyu, Mahto, Lalti Mahto, Amit Kumar, Phula behind the dock. He further states that following the occurrence, he received a letter containing a threat, which he produced before the police station.

In his cross-examination, he admits that he has been a teacher since 1974 and none of the accused was his student. He further admits that he is acquainted with the accused, Lalit for 10 years. At the time of occurrence, he was inside the house and the miscreants before leaving locked the door from the outside which the local villagers opened later

on. He further admits that he has never mentioned either in the fardbayan or during investigation before police that he identifies the miscreants by face. After fardbayan, his statement was not recorded by the police. He further admits that in the month of January, the police has informed that some of the miscreants were arrested and sent to jail. He further admits that after 3-4 months of the occurrence, he was called for in the jail for identification of the apprehended accused along with his son, Shrikant and domestic servant, Gunga. He also admits that nothing has been looted from his house. He further admits that he went to bed by getting the flame of the lantern at mild, which was not seized by the police. He has denied the suggestion of the defence that he has falsely implicated the accused in this case under the pressure of the police. He has further denied the suggestion of defence that before identification of the accused in jail, the police has shown the accused to him and his son and domestic servant.

P.W.1-Shrikant Mahto is a minor boy aged about 12 years and has claimed to be an eye-witness to the occurrence. According to his evidence, on 01.10.2004 at about 9:00 pm, while he was sleeping in his house, some people called his domestic servant, Gunga to open the door. Thereafter, his father went to another room to wake up his mother. In the meantime, three miscreants entered into his house by jumping the boundary wall and approached to him and asked about his father but he has not replied. Thereafter, all the miscreants dragged him out from the

house and assaulted him. He further states that his father, mother and sisters started raising alarm by calling *chor-chor*, then all the miscreants fled away. He sustained firearm injuries on his back. He has identified the miscreants in the light of lantern. He identifies the accused by name as Abhimanyu and Lalku. He also identifies the accused, Miraj @ Anil Minz by face but not by name. He also identifies the accused, Lalit by name. He further admits that the accused assaulted him by revolver.

In his cross-examination, he admits that the lantern was in his room, and going to bed, he dimmed the lantern light. He further admits that when the accused entered into his room, he turned up the flame of lantern. He also admits that prior to this occurrence, he is well known to all the accused by their name since 2-3 years and they usually come to his village. He further admits that his father is also known to the accused. He has identified the accused in the police station, though in police station, the police has not told him that these are the accused, who have committed dacoity in his house. He further admits that the accused have not taken anything from his house. When the accused dragged him out of the house and assaulted him, then his parents were inside the house, but he has not told them who has shot him. He has given statement in the hospital stating that he has identified the accused in the light of lantern and also stated that accused, Abhimanyu has shot him. He has denied the suggestion of defence that he has given false

statement on the instance of police, although he has no knowledge that who has committed dacoity in his house.

P.W.2 Ram Chandra Mahto has been declared hostile by the prosecution.

P.W.3-Anita Kumari is the daughter of the informant. According to her evidence, the miscreants entered into her house by jumping the boundary wall of the house and caught hold of her brother, Shrikant Mahto and dragged him outside from the house and assaulted him by means of fists and slaps and also opened fire upon him as a result of which her brother sustained firearm injuries on his body. She further states that her domestic servant, Gunga was also assaulted by the miscreants. She further states that she has not seen the miscreants by face because she locked herself inside a room at the time of occurrence. She has not sated about the miscreants looted anything from her house.

There is nothing in her cross-examination to rebut the aforesaid testimony.

P.W.5 Dr. Vinod Kumar Gupta has examined the Sanichar Jhora and found following injuries:

(i) Wound on lateral parts of right forearm at the junction of middle & lower bone deep of size about 3” x ½” x bone deep over the body and opined that the said injury was caused by sharp edged object but was simple in nature.

He further examined Shrikant Mahto (P.W.1)on the same day and found following injuries:-

(i) Wound with lateral margin over right infra scapular area of back size about 3" x ½" x depth varying in character in different parts, muscle deep and outer layer of ribs bone deep. Margin of wound showed burnt edge and blackening in depth of wound, pellets were present. The injury as opined by this witness was simple in nature and weapon used for causing injury was firearm.

He has proved the injury reports of both the injured as Exts.2 & 3.

P.W.7-S.I. Nawal Kishore Prasad is the first Investigating Officer of this case. According to his evidence, he has recorded the fardbayan of the informant during the investigation. He has visited the place of occurrence and found the house of informant made of earthen tiled and brick situated at village Sakia Bar Toli. He has also noticed the under construction wall by which the miscreants allegedly scaled and entered into the house of the informant. He forwarded the injured, Shrikant Mahto and Sanichar Jhora for getting them medically examined. He has also recorded the statement of both the injured besides the statement of wife of the informant and his two daughters. He proves the fardbayan scribed by one Ram Swaroop Singh, ASI marked as Ext.4. Thereafter, he was transferred to another place.

P.W.6-A.S.I. Ram Avadh Paswan is the subsequent Investigating Officer of the case and he has received injury report of both the injured. T.I. Parade of the accused persons was conducted in jail premises by the then Judicial Magistrate during his investigation and after finding sufficient evidence against all the accused, he submitted charge-sheet against them. He has denied the suggestion of defence that the investigation is defective and without any evidence, he has submitted charge-sheet against the accused.

20. On the other hand, altogether two defence witnesses have been examined by the defence:-

D.W. 1-Karam Dayal Sahu @ Karia Sahu is the father of Lalku Sahu. According to this witness, on 13.01.2005, he has submitted a written report in the court of CJM, Gumla against the illegal detention of his son by the police. He has proved the written report marked Ext.A.

D.W.2-Safique Ansari is co-villager of Lalku Sahu. According to his evidence, while he was going to another village for purpose of his business, he saw the police got down from the tempo to Lalku Sahu and thereafter brought him to police station. He has informed the father of Lalku Sahu.

21. Coming to the evidence of **Asif Eqbal**, who has been examined as **C.W.1**, is the Judicial Magistrate 1st Class at Jamshedpur, East Singhbhum and when he was posted as Judicial Officer, Gumla, he has conducted T.I. Parade for accused persons numbering in 11. He proves

T.I. Parade charge numbered in three, which has been marked as Ext.6 to 6/2.

In his cross-examination, on being question asked whether he was aware and acquainted with the fact that the accused were shown to the witnesses earlier by the police before conducting T.I. Parade, he made his ignorance clearly.

22. Taking into consideration the overall materials placed on record, it is crystal clear that the FIR was registered for the offence under sections 323, 324 and 393 of Indian Penal Code against three unknown miscreants but later on sections 395 and 397 of IPC were also added but the learned trial court has convicted the appellants for the offence under sections 456, 457 and 458 of IPC. No conviction has been recorded even for the offences under sections 323 and 324 of IPC apart from sections 395 and 397 of IPC. Thus, the learned trial court has created a third case**,** which was never prosecuted by the informant. It also appears that the appellants are co-villagers of the informant and all along acquainted with the informant prior to the occurrence. None of the witnesses have claimed to identify the accused at the time of FIR rather later on a story was developed claiming to see and identify the accused persons. Although, they are shown at the police station prior of T.I. Parade and thereafter T.I. Parade was conducted and some of the appellants were identified without specifying any overt act against them. P.W.1 has also projected a new story that he identified the appellants at

the time of occurrence in the lantern light. He also states that he has got firearm injury opened by the appellant, Abhimanyu Mahto but no such injury report has been brought on record. It further appears that not a single independent witness or the local villagers have been produced as a witness for corroborating the prosecution story. Initially, the case was lodged for entering into the house of the informant with a view to commit robbery by three unknown miscreants, which later on culminated into dacoity and ultimately punishment for lurking house trespass in the night has been awarded to the appellants. The trend of improvement in the earliest version by the witnesses from stage to stage makes their testimony absolutely unreliable**.** It further appears that the learned trial court has only considered the Examination-in-Chief of the witnesses without adverting to take into notice the materials elicited in the cross-examination having tendency to demolish their evidence. It further transpires that the prosecution has miserably failed to prove the charges levelled against the appellants beyond all reasonable doubt through cogent and reliable evidence.

23. In view of the aforesaid discussion and reasons, I find that learned trial court has committed serious illegality in appreciating the evidence of witnesses in proper perspective and arrived at wrong conclusion about the guilt of the appellants. Therefore, the judgment and order of conviction and sentence dated 23.05.2006 and 26.05.2006 respectively passed by learned Additional Sessions Judge, Fast Track Court No.1,

Gumla in Sessions Trial No.133 of 2005 is, hereby, set aside and the appellants are acquitted from the charges leveled against them. These appeals are **allowed**.

24. The appellants are on bail. They are discharged from liability of their bail bonds and sureties are also discharged.

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

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

27. I take this opportunity to appreciate the assistance rendered by Mr. Suman Saurav, learned *Amicus Curiae* appearing on behalf of appellant in Cr. Appeal (SJ) No.1394 of 2006 and direct the Member Secretary, High Court Legal Services Committee to extend the stipulated fee as per notification of High Court Legal Services Committee to Mr. Suman Saurav, learned *Amicus Curiae* within a period of four weeks from the date of receipt/production of a copy of this order.

28. Office is directed to ensure that a copy of this judgment is served upon Member Secretary, High Court Legal Services Committee.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Dated:- 10/09/2026

***Pappu*/-N.A.F.R.**

Uploaded on 11/09 /2026