

COURT OF PRABHAT KRISHNA, ADDITIONAL SESSIONS JUDGE-IV, BHAGALPUR
S.T. No.-200/2021

STATE Vs KUNDAN SAH @ SAURABH KUMAR SAH.

FORM - A

Present:- Prabhat Krishna
Additional Sessions Judge-IV
Date of Judgment: 23.06.2026

S.T. No.-200/2021
Case No:-Mojahidpur (Babarganj) P.S. 268/2018

INFORMANT	State through Mahendra Prasad Mandal
REPRESENTED BY	Md. Babar Ansari, Learned Addl. P.P.
ACCUSED	1. Kundan Sah @ Saurabh Kumar Sah, Age- 28 Years, son of Ashok Sah; R/O Moh-Aliganj, P.S.-Mojahidpur Babarganj, District- Bhagalpur.
REPRESENTED BY	Sri Santosh Kumar, Learned Advocate

FORM B

Date of Offence	18-12-2018
Date of FIR	18-12-2018
Date of Chargesheet	C.S. No. 142/2020 Dated 31-08-2020
Date of Framing of Charges	08-12-2021
Date of Commencement of evidence	04-01-2025
Date on which judgment is reserved	12-06-2026
Date of the Judgment	23-06-2026

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest/Surrender	Date of Release on Bail	Offence Charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for Purpose of Section 428 Cr.P.C
1.	Kundan Sah @ Saurabh Kumar Sah	10-06-2020	21-07-2022	395/412/120(B) of the I.P.C.	Acquitted	NIL	NIL

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES :-

A. **Prosecution:**

Rank	Name	Nature of Evidence (Eye witness, police witness, expert witness, medical witness, panch witness, other witness)
P.W. 1	Mahendra Prasad Mandal	Informant/Eye Witness

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P.W. 2	Rahul Ranjan	Informant's son
P.W. 3	Tejaswi Raj	Related Witness/Eye Witness

B. Defence Witnesses, if any: NONE.

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :NIL

B. Defence :- NIL

J U D G M E N T

1. Above named sole accused person stands charged for the offences punishable u/Ss 395/412/120(B) of the I.P.C.
2. The prosecution story, to the extent relevant and necessary as unfolded in the fard bayan of informant Mahendra Prasad Mandal, is that on 18.12.2018 at about 06:30pm while he was inside his house, five arms wielding criminals intruded into his house and though all had covered their faces but informant was able to see their faces. The criminals, thereafter, pointed weapons upon him and dragged him to the room of his son Rahul Ranjan where they made him to open the almirah and thereafter looted away cash and ornaments alongwith two mobiles and one laptop after putting him in fear of death. According to informant, his brother-in-law Yogendra Prasad Sah, maternal grandson Tejaswi Raj alongwith his tutor Brijmohan Upadhyay as well as one domestic girl Moni were present at the time of occurrence. The informant identified the criminals in the light of tubelight and bulb and claimed that he alongwith his maternal grandson Tejaswi Raj and domestic girl Moni can again identify those criminals.

On the basis of the said fard bayan, the police drew up a formal FIR and registered the case vide Mojahidpur Babarganj P.S. Case No.- 268/2018 u/S 395 of the IPC, to which Section 412 of the I.P.C. was added later on, against all five unknown accused persons and proceeded with the investigation.
3. The I.O., after completion of investigation, submitted original charge sheet against one accused Amarjeet Kumar, first supplementary charge sheet against accused Kapil Yadav, second supplementary charge sheet against accused Sahil Mandal @ Sushil Mandal and third supplementary charge sheet against accused Kundan Sah(present accused) keeping the supplementary investigation pending against six others for the offences punishable u/Ss 395/412/120(B) of the I.P.C. and the learned Court below, after applying his judicial mind, was pleased to take cognizance accordingly and after complying with the provision, as contained u/S 207 of the Cr.P.C., the case record of accused Kundan Sah was separately committed to the Court of Sessions where charges were framed under aforementioned Sections contents of which were read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.
4. Now the main point for consideration before this Court is as to whether the prosecution has been able to bring home the charges as levelled against the accused person beyond the shadow of all reasonable doubts or not.

FINDINGS

5. The prosecution, in order to substantiate its charges, has produced and examined altogether three witnesses whose details are mentioned in the appendix attached with the judgment. Defence did not examine any witness and no chit of paper came to be filed on behalf of either side. Also, the I.O. of this case has not been examined. Situated thus, let me first of all evaluate and appreciate the evidence of informant and thereafter other evidences will be discussed to see as to whether the prosecution has been able to bring home the charges as levelled against the accused person beyond shadow of all reasonable doubts or not and to what extent.

6. The very informant of this case is Mahendra Prasad Mandal who is examined as PW1 and while deposing before the Court this witness stated that on 18.12.2018 at about 06:30pm, while he was at his house, five- six men with covered faces, came at his house and they all took him to another room where they got the almirah and locker opened and took away cash two lakh rupees alongwith ornaments and other items. The informant stated that though their faces were spotted in the CCTV camera but he failed to identify any of them and concluded by stating that the criminals also took away the camera fitted mobile with them. However, this informant failed to recollect the physique, stature and body built of the criminals. In his cross-examination this witness stated that he has deposed earlier also in this case and concluded by stating that he had not identified any of the accused persons.

PW2 Rahul Ranjan happens to be the son of the informant and while deposing before the Court he stated that at the time of occurrence he alongwith his wife had gone to offer prayer in a temple outside his residence and when he saw the CCTV footage on his mobile, after offering pooja, he saw some persons engaged in assaulting his father as his mobile was linked with CCTV camera. After examining the CCTV footage, he made an attempt to make call to nearby people and he also went to Mojahidpur Police Station from where he reached his house where police were found present. This witness stated that when he went inside his house, he found his father weeping and all the almirahs and lockers were found broken. This witness stated that Tejaswi happens to be his *bhagina* who was being tutored by a teacher. According to this witness, the criminals looted away all the ornaments from the house and concluded by stating that the police took away CCTV footage with them. In his cross-examination this witness stated that he saw the incident on his mobile while he was at Ghantaghar where he had gone to offer puja in the temple and categorically stated that neither he was present in his house at the time of occurrence nor he had seen the occurrence from his naked eyes and categorically stated that he doesn't identify any of the accused persons involved in committing the crime.

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PW3 is Tejaswi Raj who happens to be the maternal grandson of informant as well as one of the eye witnesses of this case. This witness, while recalling the incident, stated that while he was taking tuition at his house, approximately four persons came there and took his maternal grandfather in their control. According to this witness, all the criminals were armed with pistols and they all took the keys of the almirah on the point of weapons. This witness stated that though he attempted to make a call to his maternal uncle from the mobile of his teacher Brijmohan Upadhyay but the criminals snatched his mobile. This witness categorically stated that all the criminals had covered their faces with helmet and muffler. In his cross-examination this witness stated that he has no knowledge about the money and the ornaments kept in the almirah. Further, police had not taken this witness in the T.I.P. and concluded by stating that he had not identified any of the criminals who had committed the offence.

7. The fulcrum of the prosecution case is the fardbayan of informant in which there is allegation against the accused persons of committing dacoity in which criminals took away cash and ornaments alongwith two mobiles and one laptop from the house of informant which led the F.I.R. to get registered u/S 395 of the I.P.C. which is exclusively triable by the Court of Sessions but the prosecution has miserably failed to prove the same.
8. To prove the charge for the offence punishable u/S 395 of the I.P.C. the prosecution is bound to prove that five or more persons had committed the offence of robbery. It is well settled principle of law that burden of proving the case wholly lies upon the prosecution and that too beyond the shadow of all reasonable doubts unless onus to prove a particular fact is shifted upon the defence by operation of law. Further, it is cardinal principle of law that every accused is presumed innocent unless he is proved guilty. And last but not the least, in order to bring home a particular charge, the prosecution is bound to prove not only the date, time, place and manner of occurrence but also the name of the perpetrators of the crime. Situated in these backgrounds, now I proceed to evaluate and scrutinize the evidences of three prosecution witnesses one by one. The very informant of this case also happens to be the eye witness as well as one of the victims and in his fardbayan this witness mentioned that face of one of the criminals was not covered and though rest four criminals had covered their faces but it was identifiable. However, when examined before the Court as PW1 this witness stated that they all had covered their faces. Again, in the fardbayan this informant claimed to have identified all the criminals in the light of tubelight and bulb and claimed that he can identify those persons again but when examined before the Court this witness categorically stated that he had not identified any of the criminals. In fact, this witness stated that CCTV

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camera was fitted in his house and faces of criminals had been spotted in the CCTV camera but he didn't identify any of them. Thus, the very informant of this case has given axe blow to his own case by refusing to identify any of the criminals involved in the crime though claimed to have identified them in his fardbayan. The evidence of informant is, therefore, full of contradictions on the point of identity of accused persons and it goes to the root of the prosecution case. Again PW3, like PW1, is also an eye witness to the occurrence and supported the prosecution version but stated that all the criminals had covered their faces with helmet and muffler and he didn't identify any of them. This PW3 also stated that police didn't take him to identify any of the accused in the T.I. parade but neither the original record is available with this record nor the prosecution made any attempt to call for the original record and therefore, this Court is unable to know as to whether any accused was arrested in the case and T.I. parade was conducted or not. Again, though PW2 was not present at his residence at the time of occurrence but claimed to have seen the occurrence involving accused persons on his mobile which was linked with CCTV camera. However, this witness also failed to identify the perpetrators of the crime. In short, none of the eye witnesses identified this accused Kundan Sah, who is facing trial in this record, as one of the perpetrators of the crime. From perusal of fardbayan, it transpires that altogether five persons were present in the house at the time of occurrence but the prosecution examined only two of them and these two witnesses didn't support the case of prosecution on the point of identification of the accused. In this case, charges were framed on 08.12.2021 and all the processes including non bailable warrant of arrest were issued against witnesses to procure their attendance and a letter was also sent to the S.S.P., Bhagalpur but all went in vain and three eye witnesses as well as the I.O. of this case failed to turn up before the Court.

Learned counsel for defence submitted that three accused persons namely Amarjeet Kumar, Sushil Kumar Mandal and Kapil Yadav, against whom separate charge sheet had been submitted, faced the trial jointly and got acquitted by the learned Court of Additional Sessions Judge-XII, Bhagalpur vide judgment dated 19.01.2021 passed in S.T. No. 469/2019 with S.T. No. 519/2019 with S.T. No. 657/2019. Learned defence counsel also submitted that in the said case also neither the informant nor any other eye witness had identified the accused persons. Though defence has not filed any document in support of this but after going through the judgment uploaded on the CIS the submission of defence was found correct. This Court is well aware of the settled legal position that evidence of another record cannot be considered in this case but from perusal of instant record it is very much clear that in the instant case also neither the informant nor any other witness has identified accused Kundan Sah who is facing trial in this record.

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9. In this case, substantive evidence available on record is completely lacking the required force to bring home the charges levelled against the accused person facing trial in this record. The fulcrum of the prosecution case is the fardbayan of the informant but it is equally true that F.I.R. itself is not a substantive piece of evidence. In catena of decisions, it has been held that F.I.R. itself is not the proof of a crime but is a piece of evidence which could be used for corroborating the case of the prosecution. It can only be used to corroborate the statement of the maker u/S 157 of the Evidence Act or to contradict u/S 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses. In this case, the informant and other eye witness have not identified the accused person though supported the case of prosecution on the point of manner of occurrence. In short, the prosecution has failed to connect the guilt with the accused Kundan Sah who is facing trial in this record. Testimonies of informant and other witnesses, even if taken on their face value, fall short of the requirements of proof of the charges beyond all reasonable doubts. The accused person is, therefore, entitled to the benefit of doubt in the singular facts and circumstances of this case.
10. In the light of the discussions held in the preceding paras on laws, facts, evidences and circumstances and after sifting and weighing the evidences and materials available as well as brought on record, this Court is of the considered opinion that the prosecution has utterly and miserably failed to bring home any of the charges against sole accused person facing trial in this case beyond the shadow of all reasonable doubts for want of cogent and consistent ocular and documentary evidences. Resultantly, sole accused person facing trial is not found guilty of any of the charges levelled against him and is accordingly hereby acquitted of all the charges from this case and is further hereby discharged from the liabilities of his bail- bonds.

Dictated and corrected by me.

Sd/-
Additional Sessions Judge-IV
Bhagalpur
23-06-2026

Sd/-
(PRABHAT KRISHNA)
Additional Sessions Judge-IV
Bhagalpur
23-06-2026

Date of judgment/order	23.06.2026
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