

Criminal Appeal (SJ) No. 274 of 2003

(Against the judgment and order of conviction and sentence dated 31.01.2003 passed by Sri Ram Babu Gupta, learned Additional Sessions Judge, Fast Track Court No. 2, Deoghar in Sessions Case No. 57/1999.)

- 1. Bhutka Mian, S/o Latif Mian.**

- ## 2. Firoj Mian.

Both R/o Vill- Tabhaghat, P.S.- Jasidih, Dist.- Deoghar.

- 3.** Israil Mian, S/o Kanchan Mian, R/o Vill- Gangti, P.S.-
Jasidih, Dist.- Deoghar. ... **Appellants**

Versus

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

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mrs. Snehlika Bhagat, Amicus Curiae
For the State : A.P.P.

Dated : 27/01/2026

JUDGMENT

Per Rongon Mukhopadhyay, J. :

- 1.** Heard Mrs. Snehlika Bhagat, learned Amicus Curiae for the appellants and Mr. Pankaj Kumar, learned P.P.
- 2.** This appeal is directed against the judgment and order of conviction and sentence dated 31.01.2003 passed by Sri Ram Babu Gupta, learned Additional Sessions Judge, Fast Track Court No. 2, Deoghar in Sessions Case No. 57/1999 whereby and whereunder, the appellants have been convicted for the offences under Sections 395 and 397 IPC and have been sentenced to undergo rigorous imprisonment for 10 years along with the fine of Rs. 5,000/- and in default in payment of fine, to undergo simple imprisonment for six months. The appellants have further been sentenced to undergo rigorous imprisonment for 10 years along with a fine of Rs. 10,000/- for the offence under Section 397 IPC

and in default in payment of fine to undergo simple imprisonment for six months. Both the sentences were directed to run concurrently.

3. The prosecution case arises out of the fardbeyan of Kanti Devi recorded on 17.08.1998 at Sadar Hospital, Deoghar in which it has been stated that at 2:00A.M. in the night of 16/17-08-1998, she was sleeping with her 12 year old daughter Roma Kumari while in the outer room her husband Bhushan Pathak was sleeping and all of a sudden, she heard a sound of firing. It has been alleged that the informant came out of her room where she found her husband shouting in his bed inside the mosquito net that someone has shot at him. In the meantime, two miscreants entered inside the room and one of them gave a blow with a stone on the head of the informant and blood started oozing out. The informant had taken her husband to the inside room by which time, 5-6 miscreants had entered and started breaking the door and this prompted the informant to somehow take her husband to the puja room. The informant has further alleged that from the puja room she could see the miscreants opening the almirah and taking out various articles. After 15-20 minutes when all the miscreants had fled away, the informant tried to come out of the room but since it was locked from outside, she called out to her daughter who informed her neighbours who came and opened the door. On coming out, the informant could gather that the miscreants had taken away several articles with them and the total value would be around Rs. 15,000/-.

Based on the aforesaid allegations, Jasidih P.S. Case No. 150/1998 was instituted under Section 395 IPC against 10 unknown persons. On conclusion of investigation, chargesheet was submitted under Sections 395 and 397 IPC and after cognizance was taken, the case was committed to the Court of Sessions

where it was registered as Sessions Case No. 57/1999. Charge was framed under Sections 395 and 397 IPC which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as **eight** witnesses in support of its case:

P.W.1 Bhushan Kumar Pathak has stated that on 16.08.1998 at 2:00A.M., he was sleeping in the outer room of his house when 8-10 dacoits entered inside the room after breaking open the main door of his house. He had a scuffle with the dacoits in course of which the clothes covering the face of 4-5 dacoits were snatched by him and he had identified Bhutka Mian, Firoj Mian and Israel Mian. Bhutka Mian had fired at him and the bullet struck his right cheek. When on hearing the commotion his wife arrived, she was struck on her head with a stone by the dacoits which injured her. His wife had dragged him towards the bedroom and closed the door from inside but when the dacoits broke open the door of the bedroom, his wife had taken him to the pooja room. The dacoits had taken away three VIP suitcases, jewellery, clothes etc. His statement under Section 164 Cr.P.C. was recorded. He has identified Bhutka Mian and Israel Mian in the dock.

In cross-examination, he has deposed that he had a factory at industrial area Jasidih which closed down in the year 1993. The father of the accused Firoj Mian used to work in the factory. The distance between his house and the house of Bhutka Mian is about 100 feet. He has deposed that he had a scuffle with the dacoits for five minutes. He was not shouting at the time when the scuffle had taken place. Since he was struck by a bullet on his cheek, he was not in a position to speak. He had become unconscious and had regained consciousness after two days. Even after regaining consciousness, he had not disclosed the

name of Firoj Mian and Bhutka Mian to his wife because he was not in a position to speak. He had not written down the names of the dacoits and showed it to his wife. His statement was not recorded by the Patna Police. Before giving his statement under Section 164 Cr.P.C., he had not disclosed the name of the dacoits to any person. He has deposed that he was fired at the place he was sleeping. His wife had continued shouting for 30 minutes even after the dacoits had left. One of his children was with him. He had received an amount of Rs. 8,52,000/- from Bihar State Financial Corporation towards financing of his factory and he has neither returned the entire amount nor the interest thereupon. A case has also been instituted by the Bihar State Corporation against him in which he is on bail.

P.W.2 Dr. Nirmal Chandra Gandhi was posted at Sadar Hospital, Deoghar and on 17.08.1998, he had examined Bhushan Pathak and had found the following injuries on his person:

(i) Lacerated injury on right cheek with charred margin 3" x 1½" with numerous small lacerated injuries all over the face (in right side of face).

ii) Swelling right side Jaw, chin, neck and upper part of chest.

Nature of Injuries :- Injury no. 1 was caused by a bullet and small injuries were due to pellets for injury no. 2. Was caused by bullet and was grievous.

On the same day, he had examined Kanti Devi and had found the following injuries on her person:

(c) Lacerated cut wound on her head posteriorly 3" X 1½" X scalp deep, simple in nature, caused by hard and blunt substance.

He has proved both the injury reports which have been marked as Exhibit-1 and 1/2 respectively.

In cross-examination, he has deposed that the injury sustained by Kanti Devi could have been caused due to fall on a hard substance.

P.W.3 Kanti Devi is the informant of the case who has stated that on the date of occurrence at 01:00-02:00AM, she was sleeping in her bedroom along with her daughter and her husband was sleeping in the outer room of the house when she heard the sound of firing and on coming out, she had seen her husband groaning and two miscreants standing besides him. One of the miscreants had hit her on her head with a stone which injured her. She had dragged her husband to another room and locked it from inside and when the miscreants tried to break open the door, she took her husband to the pooja room and locked it as well. The miscreants had entered in her bedroom and had taken away various articles. Her daughter had called Mukesh Singh who had arrived and opened the door. She had taken her husband to Deoghar Hospital where her fardbeyan was recorded by the Police. She has proved her signature in the fardbeyan which has been marked as Exhibit-2. She has also proved the signature of Ghanshyam Dubey on the fardbeyan which has been marked as Exhibit-2/1. She has identified Israel Mian in the dock.

In cross-examination, she has deposed that 20 years prior to the incident she used to reside along with her family members in the industrial area. She woke up from her sleep on hearing the sound of firing. Her daughter had also woken up. Both had come outside and she had seen the bulb burning in the room of her husband. There was blood in the mosquito net as well as in the mattress. Blood was also lying on the floor. Her husband had not become unconscious, but was wriggling with pain. Her husband was operated upon in Madras and the bullet which had struck the cheek was taken out. The said bullet was never given by her

to the Police. Her statement was twice recorded by the Police. She has deposed that when she had entered the room of her husband, she found him lying inside the mosquito net.

P.W.4 Shyam Narain Singh was posted at Jasidih P.S. and on 17.08.1998, he had received the fardbeyan from the Officer-in-charge, after which Jasidih P.S. Case No. 150/1998 was instituted. He has proved the fardbeyan which has been marked as Exhibit-3. The formal FIR has been proved and marked as Exhibit-4. He was entrusted with the investigation of the case. He has proved the Police Requisition of the injured Kanti Devi and Bhushan Pathak which have been marked as Exhibit-5 and 5/1 respectively. In course of investigation, he had recorded the re-statement of the informant but could not record the statement of Bhushan Pathak as he was not in a position to speak. He had inspected the place of occurrence which is the residential house of Kanti Devi which is adjacent to the factory and where the informant resided with her husband and daughter. The second place of occurrence are the shacks of Subodh Mandal and Saryu Jha which was situated at a distance of 1000 yards from the first place of occurrence. He had recorded the statement of Saryu Jha, Anil Kumar Jha and Subodh Mandal. He had recorded the statement of Bhushan Pathak on 28.10.1998. The statement of Bhushan Pathak was recorded under Section 164 Cr.P.C. He had taken steps for attachment of the property of the accused persons and the said requisitions have been marked as Exhibits-6, 6/1 and 6/2.

In cross-examination, he has deposed that the informant had stated about seeing the dacoits and though he had tried to conduct a T.I.P., but the informant never came. Not a single article said to have been looted were recovered from the house of any of the accused. He had not seized the blood stains cloths of Bhushan Pathak. There was blood found on the floor, but the

same was not mentioned in the diary. The informant had not taken the name of the dacoits in her re-statement. The fired shell was not recovered. He had not recorded the statement of the minor daughter of the informant and had also not recorded the statement of the persons of the locality.

P.W.5 Subodh Mandal has stated that in the night of the incident he was sleeping in his room in Jasidih Industrial Area when on hearing a commotion, he came out from his room and went to the adjoining room of Saryu Jha from where he witnessed some dacoits fleeing away. The dacoits by breaking open the latch of his door had entered inside and had taken away Rs. 4,000/- in cash and clothes worth Rs. 2,000/-. He had seen the face of the dacoits from the light emanating from a lamp. After some time, the son of Saryu Jha had disclosed that the dacoits had entered into the house of Bhushan Pathak and Bhushan Pathak had been fired upon by them.

In cross-examination, he has deposed that Police had not conducted a Test Identification Parade of the accused.

P.W.6 Nitya Nand Kumar has proved the fardbeyan which has been marked as Exhibit-6. He has also proved the requisitions of the injured Kanti Devi and Bhushan Pathak which have been marked as Exhibits-7 and 7/1 respectively.

In cross-examination, he has deposed that the informant had not taken the name of any of the accused in the fardbeyan.

P.W.7 Saryu Jha has stated that he was sleeping in his room when on the sound of a commotion, he woke up. The dacoits had taken away a box containing clothes and they had also taken away a box from the house of Subodh Mandal. He has stated that a dacoity was committed in the house of Pathak Ji and he was shot at by the dacoits.

In cross-examination, he has deposed that his statement was recorded by the Police.

P.W.8 Awdhesh Kumar Mishra was posted as a Judicial Magistrate 1st Class, Deoghar in Civil Court, Deoghar and on 28.10.1998 he had recorded the 164 Cr.P.C. statement of Bhushan Kumar Pathak. He has proved the 164 Cr.P.C. statement of Bhushan Kumar Pathak which has been marked as Exhibit-9.

5. The statements of the accused were recorded under Section 313 Cr.P.C. in which they have denied their complicity in the commission of the offence.

6. Mrs. Snehlika Bhagat, learned amicus curiae has submitted that the learned trial court has misdirected itself while recording conviction of the appellants despite there being no evidence available on record. It has been submitted that the appellants were not named in the First Information Report and only on account of a belated disclosure made by P.W.1, they have been implicated. Mrs. Bhagat has drawn the attention of the court to the evidence of P.W.1, P.W.3 and P.W.4 and has submitted that there are glaring inadequacies in the prosecution case with respect to the manner of occurrence as well as the identification of the appellants as being involved in the commission of dacoity. The incident had occurred at 02:00AM, when the informant and their family members were asleep and this would make the identification more improbable. Mrs. Snehlika Bhagat, learned amicus curiae has also strongly relied on the evidence of the Investigating Officer (P.W.4) who has stated about P.W.3 not turning up for the Test Identification Parade and according to the learned amicus, the entire sequence of events as depicted by the prosecution witnesses speaks of false implication of the appellant and the relative connection of the incident with the non-repayment of loan and interest by P.W.1 to the Bihar State Financial Corporation. In the touchstone of her submissions, a prayer has been made to set aside the judgment

of conviction and order of sentence recorded against the appellants.

7. Mr. Pankaj Kumar, learned P.P. has supported the impugned judgment and order of conviction and sentence by pointing to the fact that a dacoity had indeed taken place wherein P.W.1 was shot at and P.W.3 also suffered injuries on her head which has been duly corroborated by the injury reports. A suitable explanation has been given by the prosecution with respect to the delayed disclosure of the name of the appellants by P.W.1 as he was undergoing treatment and was not in a position to speak.

8. We have heard the learned counsel for the respective parties and have also perused the trial court records.

9. An incident of dacoity leading to a firearm injury suffered by the husband of the informant led to institution of a First Information Report. The same was lodged against unknown persons but in course of investigation, the culpability of the appellants came to light by virtue of the belated statement of P.W.1 under Section 164 Cr.P.C. followed up by his evidence during trial. P.W.1 has given a vivid description of the incident including the scuffle which took place with the dacoits leading to unmasking of their faces and the consequent identification of the appellants by P.W.1. The primal argument of the learned counsel for the appellants seems to have been focused on the identification of the appellants. As we have noticed above, the First Information Report was lodged against unknown accused and in her evidence as P.W.3, the informant has not deviated from the said path. Any doubts regarding the identification of the appellants could have been set at rest had a Test Identification Parade been held. Attempts though were made for conducting a Test Identification Parade by P.W.4 as per his evidence, but the same proved futile on account of the informant not turning up to

attend the same. When we revert back to the evidence of P.W.1, we find that P.W.1 had scuffled with the dacoits after which he was shot at by the appellant Bhutka Mian on his cheek, but when we consider the evidence of P.W.3 we find that in her cross-examination, she has deposed that when she entered the room, she found P.W.1 lying inside the mosquito net which would suggest that he was fired upon while being in his bed and inside the mosquito net which belies the story set up by P.W.1. Moreover, P.W.4 has deposed that he has not mentioned in the diary that there were bloodstains found on the floor of the bedroom. P.W.4 had also not seized the bloodstained cloths of P.W.1. He has also not seen any bloodstains in between the rooms of P.W.1 and P.W.3. There is no mention of seizure of the mosquito net and bloodstains found on the mattress. He had not recorded the statement of the persons from the neighbourhood and even the daughter of the informant who is also an eyewitness was never made a witness. It also appears that the house of the appellants were searched, but admittedly nothing incriminating were recovered. The incident as we have noticed above took place in the dead of night and a sudden act of violence when the entire family members were in a deep slumber reduces the instinct of identification which is further fortified by absence of any seizure of gumchas worn to hide the identity or any bloodstained articles or for that matter any consistency in the testimony of P.W.1 and P.W.3. So far as the investigation conducted in the case is concerned, the less said the better. There has been a total dearth of evidence invoked from the side of the prosecution and the contradictory features of the case highlighted by us have not been appropriately appreciated by the learned trial court and as a consequence, therefore, we hereby set aside the judgment and order of conviction and sentence dated 31.01.2003 passed by Sri Ram Babu Gupta, learned Additional Session Judge, Fast Track

Court No. 2, Deoghar in Sessions Case No. 57/1999.

10. This appeal is **allowed**.

11. Since the appellant(s) are on bail, they are discharged from the liability of their bail bonds.

12. Pending I.A.(s), if any, stands closed.

13. We take this opportunity to appreciate the assistance rendered by Mrs. Snehlika Bhagat learned amicus curiae and consequently, we direct the Member Secretary, Jharkhand High Court Legal Services Committee to extend an amount of Rs. 10,500/- to the learned amicus curiae within a period of three weeks from the date of receipt/production of a copy of this order. Office is directed to send a copy of this order to the learned Member Secretary, Jharkhand High Court Legal Services Committee immediately and forthwith.

(RONGON MUKHOPADHYAY, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court, Ranchi
Dated the 27th Day of January, 2026.

Preet/N.A.F.R.

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