

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.39 of 2004

1. Satish Kumar Bhagat S/o- Raghubir Bhagat Village- Guthauli Ps- Kewati Dist- Darbhanga
2. Qmare Alam S/o- Isharul Haque Village- Jalwara Ps- Kewati Dist- Darbhanga

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Adil Abbas, Amicus Curiae

For the State : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 29-01-2026

Heard Mr. Adil Abbas, learned Amicus Curiae appearing on behalf of appellants and Ms. Anita Kumari Singh, learned APP for the State.

2. The present appeal has been filed against the judgment of conviction and order of sentence passed by the Court of the Additional Sessions Judge, Fast Track Court No.3, Darbhanga dated 23.12.2003 in S.Tr. No. 67 of 1993 (arising out of Keoti P.S. Case No. 37 of 1992), whereby and whereunder the appellants have been convicted under Section 395 of the Indian Penal Code (hereinafter referred to as 'IPC') and they have been sentenced to rigorous imprisonment for ten years.

3. The short facts of the case is that the informant gave *fardbeyan* on 07.05.1992 at about 5:00 a.m. wherein he has alleged that on the last night i.e. the night intervening between 6-7/05/1992, while he was sleeping inside in his house and his son Md. Gafoor was also sleeping along with his wife in his



room, there was a knock heard on the door around 12:30 a.m. and his son abused the persons who were knocking on the door. It is further alleged that upon hearing the noise the informant went out in the courtyard and saw the accused persons flashing torches and upon concealing himself, he identified Sukhdeo Khatebe (whose appeal has now abated), Md. Gafoor of district Madhubani and Md. Sayeed Ansari (whose appeal has already been abated), came variously armed with sticks and knife and some of the dacoits were even assaulting his son Md. Gafoor. The informant has alleged that out of fear, he ran out of the house and shouted for help whereafter the villagers including Bhogendra Yadav and Rajendra Yadav, who even fired from his gun and other villagers also assembled. Upon seeing the villagers, the accused persons even exploded a bomb which caused injuries to Nathuni Mansoori (P.W.6). It is further alleged that several articles were looted from the house of the informant and the informant's son Md. Gafoor was also injured by general assault. The age of the dacoits was assessed to be between 30-40 years and some from 25-30 years. The informant has also stated that some of the dacoits had concealed their identity by covering their faces, however in the light of the torch which was being flashed by the accused persons, he noticed that some of them



were fair while some of wheatish complexion and some were even dark. The height of the dacoits also ranged from short, medium to tall persons. The dacoits had been stated to be 14-15 in number and at the end it has been admitted that there was a dispute with accused Md. Gafoor and with regard to purchase of buffalo and despite the fact that it has been compromised, threatening was given by the said Md. Gafoor.

4. On the basis of above mentioned *fardbeyan* of the informant, Keoti P.S. Case No. 37 of 1992 was registered against six named and other unknown persons. After investigation, charge-sheet was submitted against the present appellants and other accused persons under Section 395 of IPC on 03.11.1992 whereafter the learned Magistrate took cognizance on 17.11.1992. After the case was being committed to the Court of sessions which was numbered as Sessions Trial No. 67 of 1993, charges against the appellants as also other accused persons was framed on 03.04.1993 under Section 395 of the IPC to which they pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution has examined altogether eight witnesses in its favour namely, Ram Shankar Singh (P.W.1), Ram Prakash (P.W.2), who are both the Judicial Magistrates in presence of whom Test Identification



Parade (hereinafter referred to as 'T.I.P.') was conducted. Amina Khatoon (P.W.3), Madina Khatoon (P.W.4) and Shahnaz Begum (P.W.5) who are the daughters-in-law of the informant, while P.W.6 is one Nathuni Mansoori who is the neighbour of the informant as also an injured witness, however, he does not claim to be an eye-witness. Md. Ishaque (P.W.7) is the son of the informant who identified the appellants during T.I.P. while P.W.8 Md. Aziz Nadaf is the informant himself who claims to be an eye-witness to the occurrence. Yogeshwar Thakur was examined as a Court witness who formally proved the F.I.R, fardbeyan and the case diary.

6. No witness has been examined on behalf of defence and the Investigating Officer of the case has also not been examined. However, the case of the defence is complete denial of the occurrence claiming themselves to be innocent.

7. I have heard the arguments of Mr. Adil Abbas, learned Amicus Curiae and Ms. Anita Kumari Singh, learned APP for the State.

8. Learned Amicus has contended at the outset that identification of the accused persons including the appellants is extremely doubtful in view of the admitted fact that the occurrence is said to have happened in the night with no source



of light but for the torches which were being flashed by the accused persons themselves. He has also submitted that the informant himself admitted the factum of concealment of identity by covering clothes over the faces and the description given by him of 14-15 persons, who were involved in the offence, is immensely vague as the description ranges from short height to a tall person, age also varies and complexion of the accused persons has also been vaguely indicative, which is a pointer towards the fact that the informant has been giving these details on the basis of some figment of imagination. Learned Amicus Curiae has also argued that the T.I.P., which is the very basis for conviction of the present appellants, has been extremely delayed and thus, makes it not credible. It has also been submitted that T.I.P. was conducted after approximately more than 3 months of the arrest of the appellants and as a matter of fact the informant did not participate in the T.I.P., rather it was P.W.7 Md. Ishaque who participated in the same and who was admittedly not an eye-witness to the occurrence but had only stated that he had seen the accused persons on way and that he was known to appellant no.2 from before. The T.I.P. was even attended by another witness Md. Izhar, who was not examined by the prosecution and he is also not an eye-witness to



the occurrence. Further argument advanced by the learned Amicus Curiae is that so far as the evidence of P.W.6 Nathuni Mansoori is concerned, the same also remains shrouded in doubt on account of the fact that although he alleges to have received injuries on account of bomb explosion, there is neither any injury report on record nor any doctor has been examined to certify the same. Further, emphasis has been laid upon the non-examination of the Investigating Officer which caused serious prejudice to the defense. Besides, it has also been argued that there are several inconsistencies between the evidence of the prosecution witnesses.

9. Per contra, Ms. Anita Kumari Singh, learned APP for the State has defended the impugned judgment and conviction sentence by submitting that though the present appellants have not been specifically named in the F.I.R. but they have been identified in the T.I.P. which was participated by P.W.7 Md. Ishaque who is the son of the informant, conducted on 18.08.1992 and 31.08.1992 in presence of Judicial Officers who have been examined as P.W.1 and P.W.2 who duly supported such identification and have not pointed out any infirmity in the T.I.P. The T.I.P. chart has also been marked and brought on record as Exhibit-1 and Exhibit-1/1 through which



the identification of the appellants had been confirmed. She has also contended that despite the fact that the occurrence took place in the night, there was enough source of light for the purpose of identification.

10. I have minutely perused both the oral and the documentary evidence, besides hearing the learned counsel for the parties. Before proceeding further, it would be necessary to cursorily discuss the evidence on record.

11. P.W.1 Ram Shankar Singh and P.W.2 Ram Prakash are Judicial Officers, who had conducted the T.I.P. of the present appellants. P.W.1 has specifically stated that on 31.08.1992 he had conducted the T.I.P. of appellant Satish Kumar Bhagat by following all the provisions related to identification and the witness Md. Ishaque (P.W.7) has identified the appellants, namely, Satish Kumar Bhagat and one Akbar Nadaf during the T.I.P. He has also stated that there was one queue made for identification and different persons from the suspects were made to stand in the said queue of different height and built. P.W.2 had conducted T.I.P. of suspect **Qmare** Alam on 18.08.1992 and the same witness P.W.7 had identified him as one of the dacoits. It has also been stated that ten persons of similar appearance were made to stand for T.I.P. and only one



person was identified while the other two witnesses identified other persons who were not suspects. P.W.3 Amina Khatoon, P.W.4 Madina Khatoon and P.W.5 Shahnaz Begum are all daughters-in-law of the informant who have stated in the examination-in-chief that their father-in-law i.e. the informant had told them that he had identified dacoits Gafoor, Sukhdeo Khatbe and Md. Sayeed Ansari and the dacoits had also blasted three bombs. P.W. 3 Amina Khatoon claims to know Md. Gafoor and that she did not come out of the room in which she was sleeping and has further stated that the dacoits had covered their faces with *gamchha*, as such she could not identify any one. In her cross-examination, she has also admitted that she had given the statement only at the instance of her father-in-law. P.W.4 Madina Khatoon, wife of Md. Gafoor, has also reiterated the facts as stated by P.W.3 that she had not seen anything herself and whatever information, she had, was received from her father-in-law. She has also stated that she did not talk with any one except her father-in-law regarding the incident. P.W.5 Shahnaz Begum is a tendered witness who has admitted in her cross-examination that she had come to depose at the instance of her father-in-law.

12. Nathuni Mansoori, who was examined as P.W.6



and had confirmed the fact that there was a robbery in the house of the informant at around 1:00 a.m. in the night, stated that he awoke when his brother was making noise and as soon as he came out of the house he got hit by a bomb and got injured by it. He has further stated that he did not have any conversation with the informant that night nor did the informant reveal the name of any dacoit. He denied the fact that the informant had told him the name of three dacoits being Md. Gafoor, Md. Sayeed Ansari and Sukhdeo Khatebe. In his cross examination, he had specifically stated that he had not identified any dacoit while in further cross-examination he had also admitted that *Gathra* and *Dahipura* are adjacent villages and people of both the villages are known to each other. P.W.7, Md. Ishaque, who happens to be the son of the informant, had stated in his examination-in-chief that an incident of robbery was committed in his house leading to theft of jewellery, clothes etc. He had gone to jail for T.I.P. where he identified Qmare Alam, Akbar Nadaf and Satish Kumar Bhagat. He further stated that he had identified these dacoits in the light of torch in the night at the time of the robbery. In his cross-examination, he deposed that when he returned home he found the ladies of the family weeping and they told him that the dacoits had looted all the articles and that,



apart from the female members of the family, his father and other villagers were also present at the place of occurrence, however, he did not meet any outsider. His attention has been invited to the statement given before the police under Section 161 Cr.P.C in paragraph no. 9 of his evidence that he had admitted to have gone to participate in the T.I.P. after three months and the constables of Keoti P.S. had taken him along. He alleges to have gone for the T.I.P. only on one day and there was a queue of around 50 persons consisting of persons of varied descriptions being young and old of different height and built. With regard to the appellant Satish Kumar Bhagat, he has stated that he had seen him coming to his village and has been rather seeing him for the last 2-4 months and hence, he recognizes him. It has further been reiterated in paragraph no.13 of the cross-examination that the T.I.P. was held in a single day and lastly, he had stated that he came home after it was dark and he did not see any dacoit at the place of occurrence.

13. The informant Aziz Nadaf has been examined as P.W.8 and he has narrated the story as stated in the *fardbeyan* in his examination-in-chief with regard to the robbery committed in his house leading to loot of articles by accused persons out of which he recognized some in the light of torch.



He further stated that his son Ishaque P.W.7 had gone on duty on night of the incident and he said that while returning home, he saw some dacoits on way. The informant has claimed to identify Md. Gafoor, Md. Sayeed Ansari and Sukhdeo Khatebe as the persons involved in the offence of robbery committed at his house. In the cross-examination, the informant has admitted that there was a dispute with accused Gafoor with regard to purchase of buffalo before the incident in question, however, the said dispute was resolved through *panchyati* but the said Md. Gafoor had still demanded money from him. The informant has also admitted the fact that some of the accused persons had covered their faces. With regard to Sayed Ansari, he stated that he knew him from before the incident and that he was also a broker in the business of buying and selling of buffalos. He also admits to have known Nathuni Khatibe who is the father of Sukhdeo Khatebe. In further cross-examination, this witness has admitted to have talked with Md. Ishaque (P.W.7) while he was returning and Ishaque had told him that he had identified some dacoits on the way. All these facts were recorded by the police.

14. One Yogeshwar Thakur has been examined as Court witness no. 1, who is an Advocate Clerk by profession, has identified the formal F.I.R as Exhibit-I, *fardbeyan* as



Exhibit-II and case diary as exhibit-III. In the cross-examination this witness has accepted that the said documents were not written before him and he personally does not have any information about the hand writing.

15. After closing of the prosecution evidence, trial Court recorded the statements of the appellants under section 313 of Cr.P.C. dated 28.11.2000, enabling them to personally explain the circumstances appearing in the evidence against them, however, they denied the said charges and circumstances.

16. The learned trial Judge, upon appreciation, analysis and scrutiny of the evidence adduced during trial, has found the appellants guilty of the offence and sentenced them to imprisonment, by its impugned judgment and order.

Analysis and Consideration

17. I have perused the impugned judgment of the learned trial Court, the entire materials on record and I have given thoughtful consideration to the rival submissions made by the learned Amicus Curiae for the appellants and learned APP for the State.

18. The contents of the F.I.R has already been discussed in detail earlier which discloses an offence with regard to robbery being conducted in the house of the informant



leading to looting of articles and injuries being caused to some and further identification of some of the accused by the informant and subsequent identification of the present appellants during the T.I.P.

19. The focal point for consideration now is as to whether the prosecution has been able to bring home the charges leveled against the appellants beyond all reasonable doubts so as to sustain the conviction, and for such consideration the evidence on record needs to be examined and analysed.

20. Upon going through the records, the starting point of the present case which is the F.I.R. based upon the *fardbeyan* of the informant needs to be considered as to whether both the *fardbeyan* as also the formal F.I.R are reliable piece of documents. This analysis has to be done in background of the the fact that neither the *fardbeyan* nor the formal F.I.R. has been proved or marked as an exhibit by the informant or the Investigating officer or by the person who recorded the *fardbeyan* of the informant. This Court is unable to comprehend as to what deterred the prosecution from getting the signature/LTI identified by the informant himself while he was being examined as P.W.8 in order to prove the same. There is only a vague statement in his deposition that he had got his



statement recorded by the Senior Inspector of Police, however, the fact remains that the S.I Chandrama Singh of Keoti P.S. has also not been examined as witness. The formal F.I.R ought to have been proved by the Investigating Officer or any other person posted in the same P.S. in his absence but as a matter of fact all these documents have been proved formally by one Court witness, who happens to an Advocate Clerk and such a practice has always been deprecated by the Hon'ble Supreme Court in various judicial pronouncements. It is also a fact that this Court witness has accepted that neither these documents were prepared before him nor he had any personal information with regard to hand writing etc., of the makers of such documents. Thus, in absence of the informant identifying his signature/LTI, the S.I. who recorded the *fardebayan* as also in the absence of Investigating Officer, the contents of the *fardebayan* loose its sanctity and credibility and thus, it is difficult to treat such an F.I.R as a reliable piece of document. From a bare reading of the *fardebayan* of the informant, it would appear that it suffers from the vice of vagueness inasmuch as the description of the accused persons has such a wide range with regard to height, looks, complexion and built etc., that such kind of identification cannot be held to be reliable.



21. It would now be pertinent to discuss the credibility of the witnesses in the background of the facts stated above that the *fardbeyan* and the FIR itself do not appear to be reliable piece of documents. The maker of the *fardbeyan* i.e. the informant has been examined as P.W.8 and upon perusal of his evidence, it has appeared that that he has neither named nor identified appellant no. 2 and 4. Per contra, he has recognized one Gafoor with whom he has admitted that he is on inimical relations. He has also categorically stated during his cross-examination that some of the accused persons had concealed their identity by tying clothes on their faces and he has also admitted that flashing of the torch by the accused persons was falling on the faces of the informant and others. In such a situation when the occurrence is said to have happened in a dark night, with torch being flashed by the accused persons and several accused persons having concealed their identities, it appears that any identification made of any of the accused persons including the present appellants, is not worth believing.

22. As discussed earlier, P.W.3, P.W.4 and P.W.5 have not claimed to be the eyewitnesses and they have rather stated in their evidence that they have made their statements at the instance of and on the instructions of their father-in-law, who



is the informant PW8. As such, the evidence of P.W.3, P.W.4 and P.W.5, though being present in the house and who could have given an eyewitness account of the occurrence have failed to do the same. As such, the evidence of these three witnesses P.W.3, P.W.4 and P.W.5 are of no consequence. Moreover, PW5 is the witness who has only been tendered for cross-examination. So far as PW6 is concerned who claims to be an injured witness, his evidence would also not be of much relevance because he never claimed to be an eyewitness to the occurrence nor did he claim to have identified any of the dacoits. His injury report is not on record nor any doctor has been examined to certify the injury received by the said witnesses, as such, the very factum of PW6 being injured witness is also not established. The witness upon whom the identification of the present appellants rests is P.W.7, who happens to be the son of the informant PW8, Md. Ishaque and he claims to have identified these appellants in the T.I.P. at jail, however, the point to be considered is that this identification in the T.I.P. took place after about three months of the date of occurrence and after lapse of 20-25 days of the date of custody of the appellants. This goes to indicate that T.I.P. was not conducted with all promptness. Moreover, the evidence of P.W.7



also indicates that he was made to identify the appellants from a queue of about 50 persons being made to stand together of varied height, age, complexion, etc. So far as the norms of T.I.P. is concerned, the identification is to be done from persons having similar appearance and not in the manner as it was done as according to P.W.7. It has also been accepted by this witness in his evidence that appellant Satish Bhagat is a resident of Gathali village and that he used to regularly go to the said village and has even admitted that people of both the villages recognize each other by face. He has also admitted in paragraph 12 that he had recently seen Satish coming to village and he has been seeing him since the last 2-4 months and therefore he recognizes him.

23. In background of such evidence where he claims to have known the appellant and has been seeing him for the past two to four months, the identification of such a person by this witness in a T.I.P. seems to have completely lost its relevance and sanctity. The evidence that remains to be analyzed is only that of P.W.1 and P.W.2 who happen to be the Judicial Magistrates who conducted the T.I.P. which was participated by PW7. Since these witnesses are Judicial Magistrates, holding responsible positions, there is no reason to doubt their evidence



but it remains a fact that they are merely official witnesses who got the T.I.P. conducted and it has also been accepted by them that there was one queue made for identification in which persons different from the suspects were made to stand. It has also been admitted by P.W.2 that there were three witnesses at the time of identification and only one person was identified whereas other two persons identified other persons who were not suspects. Thus, it is also borne out of the testimony of this witness that the appellants have been identified only by one witness, i.e. P.W.7. The value of evidence becomes extremely diminished by the fact that he not only happens to be the son of the informant, thus being an interested witness, he also claims to have known one of the appellants from before and contrary to the deposition of P.W.1 and P.W.2, he has admitted that he has gone for identification only once. So far as issue of credibility of witness is concerned, the evidence of these witnesses suffer from several inherent defects and inconsistencies in the background of the fact that the defense has not been able to draw any contradiction in their evidence in the wake of non-examination of the Investigating Officer.

24. After having discussed the credibility of the testimony of the prosecution witnesses, who have been



examined, it would also not be out of context to notice that despite the fact that the case of the prosecution itself is that several villagers and local people had assembled at the place of occurrence and had even resorted to firing shots, except P.W.6, no other independent witness came to support the case of the prosecution. It is no doubt true that it is the quality and not the quantity of evidence which determines a case, but the non-examination of the independent witnesses, although available, are likely to have an adverse impact on the case of the prosecution. It is also a fact that some of the most competent witnesses whose evidence would have been very relevant and crucial for the prosecution to establish its case, have not been examined or have been deliberately withheld. These witnesses included SI of police, Chandrama Singh of Keoti P.S. who had recorded the *fardbeyan*, of the informant whose evidence could have given same credence to the *fardbyan* which is the very foundation of the entire prosecution case and it is this witness who could have even got the documents exhibited which would have been legal and proper. The *fardbeyan* discloses the fact that the son of the informant Md. Gafoor was the one who got into both verbal and physical embroil with the accused persons and as such, he was one of the most competent witnesses who would



have given an eye-witness account of the entire occurrence and would have also identified the accused persons, in case the story had some element of truth in it. The non-examination of this witness Md. Gafoor again puts a big question mark on the veracity of the prosecution case itself. Additionally, the neighbors and the local people, who claim to have seen the occurrence, have also not been examined and the major blow to the prosecution case comes from the non-examination of the Investigating Officer, as in his absence, no objective evidence could be collected from the place of occurrence in order to conclusively prove the place of occurrence or even the manner of occurrence. The non-examination of the Investigating Officer has also caused serious prejudice to the defense inasmuch as they did not have any opportunity to draw contradictions from the statements of the witnesses, although in the cross-examination, their attention has been drawn to their statement made under section 161 Cr.P.C, but in the absence of Investigating Officer, the defence was precluded from carving out those contradictions. In the absence of the investigating officer, no question could be put with regard to the recovery of looted articles and in absence of any such evidence, it may be assumed that the looted items were not recovered from the



conscious possession of these appellants.

25. So far as the case diary being on record by way of formal proof is concerned, this court is conscious of the fact the very practice of exhibiting the case diary has been deprecated by the Hon'ble Apex Court and that too in a situation when the same has been proved by any Advocate Clerk who has had no occasion to have any familiarity with the writing or signature of the concerned Investigating Officer. The Advocate Clerk has been examined as court witness and has made an unambiguous statement in his cross-examination that the said documents were not written before him and he personally does not have any information about the handwriting.

26. After having discussed several lacunae in the case of the prosecution, it remains an admitted position that the sheet anchor of the prosecution case against the appellants rests primarily on the sanctity of the T.I.P. The delay which has been caused in conducting the T.I.P. adversely affects the sanctity of the same and benefit of doubt with regard to the same would lie in favour of the appellants, as has been laid down in the case of ***State of U.P. Vs. Wasif Haider*** reported in ***2019 (2) SCC 303***, wherein it has been indicated that in a case where out of seven witnesses, the T.I.P. was held after an inordinate delay of 55



days and although the involvement of the accused was brought to light on an earlier day itself, the prosecution did not take any effort to arrest or interrogate him for a substantial period of time for which no reasonable explanation was provided, such T.I.P would be susceptible to doubt. The defense had pleaded in the said case that an inordinate delay was caused by the prosecution witnesses to mark their identification. In the present case also, although the names of the appellants had figured much earlier, they were arrested at a subsequent date causing inordinate delay in the conduct of the T.I.P, making the entire procedure meaningless in the absence of any explanation for the same. In such a situation, the benefit of doubt arising out of such inefficient investigation must be bestowed upon the accused persons, as has been held in the case of *State of U.P. Vs. Wasif Haider (supra)*. The T.I.P. also loses its sanctity on the ground as discussed earlier that the accused were already known to the witness. This court would gainfully refer to the case of *Mulla & Anr. Vs. State of U.P.* reported in *2010 3 SCC 508*, wherein it has been clearly held that the necessity of holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The said judgment has also taken into consideration the fact that T.I.P. does not



constitute a substantial evidence and that it is desirable that T.I.P. should be conducted as soon as possible in order to eliminate the possibility of the accused persons being known to the witnesses. Paragraph No. 43, 44, and 45 of the said judgment are being quoted herein below:-

(43) As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .)

(44) The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the



crime.

(45) The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.”

27. The argument of the learned Amicus with regard to the fact that the informant or the son of the informant not having participated in the T.I.P. and also that the informant's deposition itself discloses, that for a few, the faces of accused persons were concealed, is also taken into consideration by this court to doubt not only the identification of the appellants but also the veracity of the testimony of the witnesses. The absence of source of light is also one of the factors which creates serious doubt with regard to the identification of the accused persons. It is also a fact that in the queue of 50 persons of different descriptions and physical appearance and features of different age, height, complexion etc., were made to stand together, which



is also against the norms of a proper T.I.P.

28. Upon taking all the aforesaid factors into consideration and taking an overall perspective of the entire case emerging out of the totality of the facts and circumstances of the case, this court finds that it would not be safe to convict the appellants solely on the basis of their identification by a single witness in the T.I.P and that too by a witness who does not appear to be truthful and credible and with regard to whom the entire procedure of test identification parade seems to be an exercise in futility, as this witness has himself admitted that he was known to the appellant from before. In such a situation, I find that the prosecution has failed to prove the charges under section 395 of the I.P.C. against the appellants beyond the shadow of all reasonable doubts and the conviction does not appear to be legally sustainable. As such, the appellants are entitled to acquittal by virtue of extending to them the benefit of doubt.

29. Therefore, the judgment of conviction and order of sentence dated 23.12.2003 passed by the Court of the Additional Sessions Judge, Fast Track Court No.3, Darbhanga in S.Tr. No. 67 of 1993 (arising out of Keoti P.S. Case No. 37 of 1992) is hereby set aside and the appellants are acquitted of the charges



levelled against them. The appellants are stated to be on bail and as such, they are directed to be discharged from the liability of their bail bonds, if not required in any other case.

30. Accordingly, the present appeal stands allowed.

31. Before parting with the judgment, this court finds it imperative to record an appreciation for Mr. Adil Abbas, learned Advocate, who has assisted this court as Amicus Curiae. The Patna High Court Legal Services Committee, Patna, would thus be expected to provide an adequate remuneration to him for assisting this court, as per fee schedule.

(Soni Shrivastava, J)

Harsh/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06.02.2026
Transmission Date	06.02.2026

