

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.94 of 1999

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KRISHNA LAL BARNWAL @ KRISHNA MODI son of Sato Lal Barnwal,
resident of village Pursanda Police Station Sikandra, District Jamui

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Shivendra Kr.Sinha

For the Respondent/s : Mr.Abhimanyu Sharma

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE ANSUL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANSUL)

Date : 13-05-2026

Heard the learned counsel for the appellant as well as
the learned counsel for the State.

2. In the instant appeal, the appellant has challenged the
judgment of conviction dated 27.02.1999 and order of sentence
dated 09.03.1999 passed by the learned 1st Additional Sessions
Judge, Jamui in Sessions Trial No. 24(A)/94/154/97, whereby the
appellant has been convicted under Section 396 of the Indian Penal
Code and sentenced to undergo rigorous imprisonment for life.

3. The prosecution in the instant case was lodged by
Pramila Devi (not examined), wife of Bhagwan Sah. She lodged
her statement that on 11.06.1992 stating that on the prior night she



along with her daughter Rekha Kumari (deceased) was sleeping at the roof of the house. Around 02:00 AM in the night her daughter Rekha Kumari woke her up and pointed someone to her. She saw that two persons were standing before her. When she started weeping then her daughter Indu Devi (P.W. 3) and Nirmala Devi (P.W. 4) came on the roof. Both the criminals started dragging Nirmala (P.W. 4) and Rekha (deceased) down the stairs and while dragging they were asking them to disclose as to where the goods were kept. She started coming down with her daughter. Her daughter Rekha started shouting near the stairs. The miscreants caught Rekha. Out of fear she gave the keys. They opened the southern and western room and started taking away the goods. Indu stated that Rekha has been shot. Three-four more miscreants came and started taking away three steel box and one briefcase. They started shouting and weeping. After one hour Brahmdeo Mahto (PW-6), Muni Mahto (PW-5) and others came. They claimed that they could not identify the miscreants but would identify them after seeing them. They further stated that the box contained ten pieces of Saree, three sets of payal, one nose ring, a gold chain, another silver jewellery, Rs. 1,000/- and three gold rings were there which cost was around Rs. 30,000/-. Apart from the jewellery other things were discovered by the villagers nearby



the house. Surya Narayan Prasad (P.W. 7) was a witness to the F.I.R.

4. After investigation, police submitted charge-sheet and the case was committed to the court of sessions on 20.12.1993 by the learned sub-Divisional Judicial Magistrate, Jamui.

5. During the course of trial, altogether eleven witnesses were examined in support of the prosecution case, who are as under: -

P.W.-1	Bhagawan Lal Barnwal
P.W.-2	Raj Kumar Lal
P.W.-3	Indu Devi
P.W.-4	Nirmala Devi
P.W.-5	Muni Mahto
P.W.-6	Brahmdeo Mahto
P.W.-7	Surya Narayan Prasad
P.W.-8	Awadh Kishore Pandey
P.W.-9	Dr. Shankar Nath Jha
P.W.-10	Rambhajju Mahtha
P.W.-11	Ram Swarup Paswan

On behalf of defence, two witnesses namely Daso Pandit (D.W. 1) and Arjun Pandey (D.W. 2) were also examined.

6. Apart from the oral evidence, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows: -

Exhibit- 1	Signature of Raj Kumar Lal on the Inquest Report
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Exhibit- 1/1 to ½	Signature on Inquest Report
Exhibit- 1/3	Signature of witness Awadh Kishore Pandey on Seizure List
Exhibit-2	Postmortem Report
Exhibit-3	Identification of Witnesses
Exhibit-4	FIR
Exhibit-5	Fardbeyan

7. P.W. 1 Bhagwan Lal Barnwal deposed. He is the father of the deceased and husband of the informant. He stated that on 12.06.1992 he reached his house. His wife (not examined) and daughter Nirmala (P.W. 4) told him that *dacoits* looted away the goods of the house. After ten days his wife informed that he identified four persons who committed dacoity and they were Amir Lal, Gareeb Lal, Krishna Lal (appellant) and Shankar Mahto. He stated that some seven years back he had opened the shop in front of the house of Gareeb Lal and Ameer Lal. They had threatened him that if he will not remove his shop they will get dacoity committed in his house. He admitted that he did not inform anybody regarding the prior threat.

8. P.W. 2 Raj Kumar Lal is the witness to the inquest report. He stated that the inquest report was not prepared before him but he identified his signature of the inquest report.

9. P.W. 3 Indu Devi is daughter of Bhagwan Lal. She claimed that she and Nirmala (P.W. 4) went on the roof and



accused Shankar Mahto fired upon her sister Rekha who died. She claimed to have identified one Payal. In cross-examination she claims to identify the appellant also. She stated that she did not claim to identify these persons because she was weeping but she states that she identified all the three before the Superintendent of Police. She claimed that she knew Shanker Mahto from before. She also states that she was shot point blank. She stated that other miscreants Gareeb Lal and Ameer Lal were of their caste and of their village and they had enmity with her father for last four to five years.

10. P.W. 4 Nirmala Devi is another daughter of informant and P.W. 1. She states that she identified the appellants amongst others. She claimed that the appellant was of her village and their house was two-four houses after them. She stated like P.W. 3 that nobody had covered his face. She further stated that there was no light on the roof and there was no provision for keeping any light on the stairs.

11. P.W. 5 is Muni Mahto. He is referred to in the FIR. In his chief-examination he has not named anybody. He has stated that when he heard the sound of firing he started raising *Hulla* from his house itself. When some co-villagers came, he went to the house of Bhagwan Lal.



12. P.W. 6 Brahmdeo Mahto was tendered for cross-examination.

13. P.W. 7 Surya Narayan Prasad is witness to the F.I.R. as well as inquest report.

14. P.W. 8 Awadh Kishore Pandey is also witness to the seizure list but he has been declared hostile.

15. P.W. 9 Dr. Dhankar Nath Jha is the doctor who conducted the postmortem of the deceased. Homicidal death of the deceased is not an issue and thus his deposition is not very relevant.

16. P.W. 10 is the Block Development Officer who got the Test Identification Parade conducted in which the silver anklet was identified.

17. P.W. 11 is the stock witness. He is the court clerk who identified the signature of the informant on the FIR.

18. That the defence examined Daso Pandit (D.W. 1) and Arjun Pandey (D.W. 2).

19. D.W. 1 stated that Bhagawan Lal Barnwal and Krishna Lal Barnwal had their shops in the village and there was business rivalry between them. Ameer Lal and Gareeb Lal were brothers of Krishna Lal Barnwal.



20. D.W. 2 is another defence witness who supported the factum of prior animosity between the parties.

21. The counsel for the prosecution submitted that prosecution has proved its case without doubt. The homicidal death of Rekha Kumari is not in doubt. Some looted materials were recovered during investigation which were identified in Test Identification Parade. Thus, the factum of dacoity is also established.

22. P.W. 1, P.W. 3, P.W. 4 have named the accused persons clearly and consistently. P.W. 1 is the husband of the informant and he has no reason to lie. P.W. 3 and 4 are the eye witnesses to the occurrence and they have also clearly named the accused persons.

23. Counsel for the defence has stated that the informant and the I.O. of the case has not been examined and thus, the FIR (the primary document) of the case has not been proved. He further stated that neither in the FIR nor in the further statement of the informant the name of the accused persons transpired. P.W. 3 and P.W. 4 in their statement before police even on the date of occurrence have only named Shankar Mahto as an assailant and not the appellant. Even P.W. 1 has only stated the name of Shankar Mahto. During investigation one set of anklet was recovered from



the house of Ramchandra Das who was Mama of Shankar Mahto, the person who is alleged to have shot the deceased.

24. Ramchandra Das in his confessional statement has given an entirely different story. The name of the accused persons has been taken for the first time before Superintendent of Police during supervision on 21.08.1992 i.e. after ten days of the occurrence.

25. Certain basic facts necessary for adjudication of the case are as under:-

(I) FIR was lodged against unknown.

(II) The informant even in her further statement did not name the appellant.

(III) P.W. 1 husband of the informant admitted that his wife, the informant had informed him about the name of the appellant ten days after occurrence.

26. Neither P.W. 1 nor P.W. 3 and 4 had named this appellant in their statement before police under Section 161.

27. P.W. 3 and P.W. 4 during investigation named Shankar Mahto. Recovery of one silver anklet was made from the house of Mama of Shankar Mahto namely Ramchandra Das.



28. The witnesses have admitted that no source of light for identification was available to them.

29. That the witnesses have also admitted that appellant was their neighbor and co-villager and there was prior animosity between P.W. 1 and the appellant.

30. This Court proceeds to analyse the facts and arrive at a conclusion in the light of aforesaid facts which are more or less admitted in the deposition of the witnesses.

(I) That the FIR has been lodged against unknown and P.W. 1, 3 and 4 have not named the appellant during investigation. Surprising part is that they admitted that this appellant was their neighbor and there was prior animosity between P.W. 1 and the appellant as they had their shops at the same place. In such situation, the courts have held that even in the dark of night identification can be made but the same has not been done.

31. The witnesses have admitted the delayed naming of the appellant.

32. In the case of *Gayadin v. State of M.P.*, reported in *(2005) 12 SCC 267* Hon'ble Supreme Court has held at para-5 that:-



“5. At the outset it is to be stated that there is no direct evidence to prove the prosecution case. The High Court mainly relied on the circumstances that there existed a bad relationship between the appellant and his wife and he used to beat her and that the appellant was last seen along with the deceased and that he had set up a false plea of alibi. The counsel for the appellant and the counsel for the State drew our attention to the oral evidence adduced in this case. PW 12 and PW 10 were examined to prove that the appellant used to beat the deceased Kasturi Bai. These two witnesses are neighbours and they stated that they came to the house of the appellant and saw the deceased Kasturi Bai lying on a carpet and she had been weeping and stating that she was beaten by her husband. Apart from this, there is no direct evidence as to what had transpired on the day prior to the death of the deceased. Strangely enough, these two witnesses were not questioned by the investigating officer within a reasonable time. PW 10 was questioned about 20 to 22 days after the incident whereas PW 12 was questioned by the police after a period of 8 days of the incident. There is no case that these witnesses were not available in the locality during the time of the incident and the police could have ascertained the facts from these neighbours. There is every possibility that these witnesses could have been planted witnesses just to help the prosecution. This fact should have been taken note of by the High



Court, especially when the High Court was considering a case of an appeal against acquittal.”

33. In the case of **Govind Mandavi v. State of Chattisgarh**, reported in **2025 SCC OnLine SC 2731** Hon’ble Supreme Court has held at para 41 and 43 that:-

“41. As a matter of fact, going by the fardbeyan (Exh. P/1), the only omission in what the witness conveyed to Heeralal Hidko (PW-1) was the name of accused-appellant Govind Mandavi. This was far too crucial a fact for the witness to have forgotten or omitted while narrating the details of the assault on her husband, to her father-in-law Heeralal Hidko (PW-1). It is clear that the witness Smt. Sukmai Hidko (PW-2) described every other minute aspect such as the arrival of the masked men, the time at which they came, their physical features (one tall, one short and lean), the weapons they carried, the manner in which they awakened her husband, took him away from the farm hut, and the cries she heard thereafter. It is therefore completely unbelievable that she would have omitted to mention the name of the accused to her father-in-law on the ground that she was unwell. This omission strikes at the very foundation of the prosecution's case, and it appears that, to overcome the same, a story was subsequently cooked up and introduced in the belated police statement of Smt. Sukmai Hidko (PW-



2) suggesting that she had fallen ill and was therefore prevented from disclosing the name of Govind Mandavi to her father-in-law even though she had identified him by his voice and as his mask had fallen off.

43. Thus, the belated introduction of the accused-appellant's name in Smt. Sukmai Hidko's (PW-2) 161 CrPC statement dated 21st April, 2021, appears to be a clear manipulation, devised to implicate the accused-appellant in the crime owing to prior enmity."

34. This coupled with the fact that the Investigating Officer of the case could not be examined to ascertain the veracity of the statement creates a serious dent in the case of the prosecution. It is settled law right from ***Tahsildar Singh v. State of U.P.***, reported in ***1959 SCC OnLine SC 17*** that even a fact which has not been brought before the police during investigation and the same is being brought for the first time in trial then the attention of the witnesses has to be drawn towards his previous statement made before police and the contradiction has to be elicited from the Investigating Officer during his examination only then the credit of the witness could be impeached and the material improvement can be taken out of consideration.



35. In the instant case, the witnesses have admitted the delayed naming but the Investigating Officer was not available to elicit the contradiction in terms of Section 145 and 155 of the old Evidence Act. Thus, non examination of I.O. has caused grave prejudice to the appellant.

36. In this case the informant has not been examined and no explanation has been given for his non-examination. In the absence of informant proving of an FIR through court clerk, a formal witness, clearly shows that the fardbeyan could not be treated as a document worth consideration.

37. The investigating officer of the case has not been examined. The court is aware of the settled law that non-examination of Investigating Officer in any case is not always fatal to the prosecution but in the circumstances detailed above when the witnesses have materially improved the case during trial non examination of Investigating Officer has proved fatal to the prosecution.

38. That even the late identification of the accused is clearly doubtful as no source of identification at the dead of night has been indicated.



39. In the case of *Anjani Singh v. State of U.P.*, reported in **2026 SCC OnLine SC 9** Hon'ble Supreme Court has held at para 38 that:-

“37. Another feature of the case which requires mention is that the gun shot injuries found on the body of the two deceased disclosed blackening at the margins of the entry wound suggesting that shots were fired from close range. If shots were fired from a close range, why would a person kill two innocent people against whom there is no motive. This throws doubt on the theory propounded by the prosecution that gunshots were aimed at someone else but by chance they hit the two deceased. Whether those persons were targeted, if so, by whom, or were victim of indiscriminate firing, is not easy to decipher from the prosecution evidence. Moreover, the aforesaid circumstances lend credence to the testimony of other witnesses that at the time of occurrence lights went off. More so, when one of the two deceased was a generator operator.

38. *In such circumstances, taking a conspectus of the entire evidence as also the fact that all eye witnesses, except PW-1, have not supported the prosecution case and have consistently deposed about there being no light at the time of occurrence, in our view, it was a fit case where the benefit of doubt ought to have been extended to the appellant (Anjani) by the courts*



below. Consequently, the appeal is allowed. The judgment and order convicting the appellant (Anjani) is set aside. The appellant Anjani shall stand acquitted of the charges for which he was tried. It is observed that Anjani was released on bail during the pendency of this appeal. Consequently, his bail bonds are discharged.”

40. No material has been seized to show that there was a source of light in which the accused persons were identified.

41. In such circumstances, this Court has no option but to acquit the appellant.

42. Accordingly, the appeal is allowed and the judgment of conviction dated 27.02.1999 and the order of sentence dated 09.03.1999 passed by the learned 1st Additional Sessions Judge, Jamui in Sessions Trial No. 24(A)/94/154/97, whereby the appellant has been convicted under Section 396 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life is set aside. Consequently, the appellant of the present appeal is acquitted of the charges levelled against him.



43. If the appellant is in jail, he shall be released forthwith, if not required in any other case. The appellant is discharged from the liabilities of his bail bond.

44. The lower court records be sent to the concerned court.

(Ansul, J)
I agree

amitkr/-

(Nani Tagia, J)

AFR/NAFR	NAFR
CAV DATE	19.02.2026
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