

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No. 803 of 2005**

Neetu @ Neetu Minz @ Arpit Minz son of –Soma Minz, resident of village-Arya Basti, PS-Basia, District-Gumla

.....Appellant

Versus

The State of JharkhandRespondent

With

Cr. Appeal (S.J) No. 979 of 2005

1. Basant Kumar Sahu, S/o Karma Sahu
2. Chhatku Sahu @ Koya Sahu, S/o Late Ganesh Sahu- both residents of Arya Basti, PS-Basia, District-Gumla

.....Appellants

Versus

The State of JharkhandRespondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Ashok Kumar, Amicus Curiae
[Cr. Appeal (S.J) No. 803 of 2005]
Mr. Pankaj Verma, Advocate
[Cr. Appeal (S.J) No. 979 of 2005]

For the State : Mrs. Nehala Sharmin, Spl. P.P

ORAL JUDGEMENT IN COURT

11/28.11.2024 Both the Criminal Appeals i.e. Cr. Appeal (S.J) No. 803 of 2005 and Cr. Appeal (S.J) No. 979 of 2005 are arising out of the common judgment of conviction dated 20.06.2015 and sentence dated 21.06.2005 passed by Sri Om Prakash Pandey, learned 1st Additional Sessions Judge, Gumla in S. T. No. 262 of 2004 and as such, both the cases are being heard together and being disposed of together by this common judgment.

2. Both the Criminal Appeals i.e. Cr. Appeal (S.J) No. 803 of 2005 and Cr. Appeal (S.J) No. 979 of 2005 have been filed on behalf of the appellants challenging the judgment of conviction dated 20.06.2015 and sentence dated 21.06.2005 passed by

Sri Om Prakash Pandey, learned 1st Additional Sessions Judge, Gumla in S. T. No. 262 of 2004 by which the appellants i.e. appellant -Neetu @ Neetu Minz @ Arpit Minz in Cr. Appeal (S.J) No. 803 of 2005 and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu in Cr. Appeal (S.J) No. 979 of 2005 have been convicted for the offence under Section 395 of the Indian Penal Code and sentenced to undergo R.I for a period of seven (07) years for the offence under Section 395 of the I.P.C and to pay fine of Rs. 1,000/- each and in case of non-payment of fine, they have been further sentenced to undergo S. I. for a period of four (4) months each.

3. The F.I.R was lodged on the basis of the fardbayan of informant Dashmi Kumari wherein it is stated that the informant Dashmi Kumari D/O Jag Mohan Tirkey had come from Delhi during holiday on 03.05.2004 and in the night of 05.05.04 (Tuesday) while she was sleeping alongwith the whole family members in her house suddenly at about 1.00 A.M., she heard a noise of kicking at the door of her house, when she saw the door in the light of torch that was broken and six persons, who were identified in the light of torch, had entered into her house. They were of her own village namely (1) Sarju Sahu, (2) Dilip Gope, (3) Basant Kumar Sahu Sahu @ Koya Sahu, (4) Chhatku, (5) Neetu Minz alias Arpit Minz and 6. Arvind Minz and out of these Suraj Sahu sent two persons out of the house to keep watch at the door and then two persons Neetu Minz and Arvind Minz went out of the house They were having stick and Bhujali in their hands and rest of the four miscreants had Bhujalis, Knives and pistols in their hands and Sarju Sahu put the pistol on the neck of the informant and threatened her to hand over all the things, which were brought by her from Delhi otherwise she would be killed.

Dilip Gope and Basant Kumar Sahu started assaulting her father and all the family members got scared then she took out Rs 8000/- from the box and gave to the miscreants. It is also alleged that Chhatku Sahu took out light blue and pink coloured tape recorder and one golden coloured lady watch and all the things were taken by them and all the miscreants also searched for other things in the house. Sarju Sahu and Koya threatened her not to disclose the matter to the police. After sometime the informant and her father raised alarm and on hearing that the villagers reached there but due to the threatening she could not dare to go to the police station and when she was encouraged by the villagers, then she went to the police station.

4. Heard Mr. Pankaj Verma, learned counsel appearing on behalf of the appellants in Cr. Appeal (S.J) No. 979 of 2005 and Mr. Ashok Kumar, Advocate, who has been appointed as Amicus Curiae for appearing on behalf of the appellant in Cr. Appeal (S.J) No. 803 of 2005 and Mrs. Nehala Sharmin, learned Spl.P.P. appearing on behalf of the State in both the Criminal Appeals.

5. Both the learned counsels for the appellants have submitted that the impugned judgment of conviction and sentence passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law. It is submitted that this is a case of sole identification by the informant and as such conviction of the appellants is not tenable in law. It is submitted that all the material witnesses i.e. P.W.-2, Bimla Devi, P.W.-3, Jag Mohan Tirkey, P.W.-4, Chamar Tirkey, P.W.-5, Sawan Tirkey, P.W.-6, Etwari Devi and P.W.-7, Ranhi Devi have not taken the name of the appellants for committing the dacoity. It is submitted that P.W.-8, Binod Kumar is Investigating Officer of this case, who has done perfunctory investigation. It is submitted that P.W.-1,

Dashmi Kumari i.e. the Informant has falsely implicated the appellants at the instance of the police. It is submitted that the appellants are the poor villagers and they have been implicated by the police personnels. It is submitted that appellant -Neetu @ Neetu Minz @ Arpit Minz of Cr. Appeal (S.J) No. 803 of 2005 has remained in custody for around one (1) year and three (3) months and seven (7) days and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu of Cr. Appeal (S.J) No. 979 of 2005 have remained in custody for around three (3) years two (2) months and seventeen (17) days each respectively and as such, lenient view may be taken and the appellants may be acquitted and these Criminal Appeals may be allowed.

6. On the other hand, learned Spl.P.P has submitted that the impugned judgment of conviction and sentence passed by the learned Court below is fit and proper and no interference is required from this Court. It is submitted that all the appellants have been named in the FIR by the informant. It is submitted that even the informant while examined as P.W.-1, has supported the prosecution case and FIR and has identified the appellants in Court and hence, no illegality has been committed by the learned Court below by convicting the appellants. It is submitted that the evidence of P.W.-1, Dashmi Kumari has been corroborated by the IO i.e. PW.-8, Binod Kumar. It is submitted that P.W.-7, Ranhi Devi and P.W.-9, Uday Kumar Singh have also supported the commission of dacoity in the house of the informant. Thus, these Criminal Appeals are devoid of merit and hence, this Criminal Appeal may be dismissed.

7. Perused the Lower Court Records and considered the submissions of both the sides.

8. It transpires that the informant namely Dashmi Kmari had lodged the F.I.R on 06.05.2004 for the offence under Section 395 of the Indian Penal Code against the appellants namely Neetu @ Neetu Minz [Cr. Appeal (S.J) No. 803 of 2005] and also Basant Kumar Sahu and Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] and three others namely Suraj Sahu, Dilip Sahu and Arvind Minz for committing dacoity of Rs. 8,000/- in her house at the instance of deadly weapons and also for threatening them.

9. It transpires that the police, after investigation, had submitted charge sheet against the appellants namely Neetu @ Neetu Minz [Cr. Appeal (S.J) No. 803 of 2005] and also Basant Kumar Sahu and Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] and three others namely Suraj Sahu and Dilip Sahu and Arvind Minz for the offence under Section 395 of the I.P.C on 09.08.2004 before the learned C.J.M., Gumla.

Thereafter, the learned C.J.M, Gumla had taken cognizance against the said persons including the appellants on 09.08.2004 under Section 395 of the I.P.C.

10. After supplying the police papers to the accused persons including the appellants, the case was committed to the Court of Sessions.

11. It transpires that the charges were framed against the appellants under Section 395 of I.P.C on 29.09.2004 by Shri N. K. Srivastava, then 1st Additional District Judge, Gumla and to which they pleaded not guilty and claimed to be tried.

12. During trial, the prosecution in support of its case, got examined ten (10) witnesses who are as follows:-

- (i) PW.-1, Dashmi Kumari i.e. the Informant of this case,
- (ii) P.W.-2, Bimla Devi,

- (iii) P.W.-3, Jag Mohan Tirkey,
- (iv) P.W.-4, Chamar Tirkey,
- (v) P.W.-5, Sawan Tirkey,
- (vi) P.W.-6, Etwari Devi,
- (vii) P.W.-7, Ranhi Devi,
- (viii) P.W.-8, Binod Kumar, I.O of this Case,
- (ix) P.W.-9, Uday Kumar Singh and
- (x) P.W.-10, Fulmani Devi.

13. The prosecution in support of its case has got marked the following document as the Exhibits which are as follows:-

- (i) Exhibit-1 is the signature of the Informant on the fardbeyan,
- (ii) Exhibit-2 is the Fardbeyan,
- (iii) Exhibit- 3 is the formal FIR and
- (iv) Exhibit-4 is the charge sheet.

14. Thereafter, the appellant -Neetu @ Neetu Minz @ Arpit Minz in Cr. Appeal (S.J) No. 803 of 2005 and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu in Cr. Appeal (S.J) No. 979 of 2005 were examined under Section 313 of Cr.P.C. on 16.05.2005 before the learned Court below and to which they denied the circumstances put forth before them.

15. Neither any defence witness examined nor any document was marked as the Exhibit on behalf of the defense (i.e. the appellants).

16. However, the learned Court below has convicted the appellants for the offence under Section 395 of I.P.C and sentenced them to undergo R.I for seven (7) years each for the offence under Section 395 of the Indian Penal Code and to pay fine of Rs. 1,000/- each.

17. Now, this Court has to consider as to whether the prosecution is able to prove the case against the appellants beyond

the shadow of all the reasonable doubts or not ?

18. From perusal of the FIR, it would appear that the informant has made allegations against the appellants namely Neetu @ Neetu Minz [Cr. Appeal (S.J) No. 803 of 2005] and also Basant Kumar Sahu and Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] and three others namely Suraj Sahu, Dilip Sahu and Arvind Minz for committing dacoity of Rs. 8,000/- in her house under threat of deadly weapons for the offence under Section 395 of the Indian Penal Code. It is alleged that one miscreant Dilip Gope and the appellant no. 1, Basant Kumar Sahu [Cr. Appeal (S.J) No. 979 of 2005] had started assaulting her father and miscreants had left her house on 05.05.2004.

19. It further reveals from the FIR that father, Jag Mohan Tirkey and other family members were sleeping there, but she has not named any of them.

20. It further reveals from the FIR that though FIR was lodged on 06.05.2004, but it was seen by the learned Chief Judicial Magistrate, Gumla on 09.05.2005 after delay of three days and no plausible explanation has been furnished by the prosecution for sending the FIR after delay three (3) days and which makes the prosecution case doubtful.

21. So far as the oral evidence is concerned, PW.-1, Dashmi Kumari is the Informant of this case and her evidence will be discussed later on after scrutinizing the evidence of other witnesses.

22. P.W.-2, Bimla Devi, who is the mother of the informant has stated, during her evidence that while she was sleeping at around 9.00 to 9.30 PM in the night around 5-6 months ago, then the dacoits had broken the gate of the house and on the point of pistol and stick, they were demanding money and then her

daughter handed over the cash, tape, watch. However, she has not any specific appellants for doing any overt act.

During cross-examination, she stated at paragraph-8 and 9 that it was a dark night and she has not identified any miscreants and she is not aware as to how many persons arrived. She also admitted that a panchayati was held and she learnt the name of dacoits in panchayati and her daughter also learnt the name of dacoits in panchayati. She further stated that she is giving evidence for the first time in Court.

23. Thus, from scrutinizing the evidence of P.W.-2, Bimla Devi i.e. the mother of the Informant, it is evident that she had not identified the appellants or any dacoits for committing any dacoiting in her house although she was sleeping. Her evidence is contradictory to the evidence of the informant and the FIR as the Informant has identified the miscreants in torch light. The evidence of P.W.-2 also reveals that after the dacoity in her house, a panchayati was convened in the village and thereafter she learnt the name of dacoits and it reveals that the informant is not giving correct picture in the FIR for committing dacoity in her house and thus, evidence of PW.-2 is not reliable and cannot be considered for convicting the appellants.

24. P.W.-3, Jag Mohan Tirkey, who is the father of the Informant, has also stated that the dacoity took place in his house at around 9.00 to 9.30 PM in the night and dacoits had entered into his house by broking his door and at the instance of pistol and knife and they looted Rs. 8,000/- from his daughter and also looted tape, torch of his daughter. However, he has not identified any miscreants, but his daughter has identified the dacoits.

25. During cross-examination, he stated at para- 5 to 7 that he had not identified dacoits as it was dark night and he is not aware

as to how many persons entered into his house. He further stated in para-8 of his cross-examination that after three days of occurrence, a panchayati was convened in the village and hence the FIR was lodged, but he also admitted in para-10 that he was not aware the name of the miscreants even during panchayati. He also stated that his daughter disclosed the name of dacoits before the police and prior to that, she has not disclosed the name of the dacoits before him.

26. Demeanor of the witness has been observed by the learned Court below that witness is illiterate, Adiwasi not knowing the trick of Court.

He further stated that the police had not recorded his statement, but recorded the statement of his daughter and the police had apprehended the accused persons and the police had investigated his daughter alone.

Cross-examination of P.W.-3, Jag Mohan Tirkey was declined by the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005].

27. Thus, from scrutinizing the evidence of P.W.-3, Jag Mohan Tirkey i.e. the father of the Informant, it is evident that he had also not identified any miscreants, although the appellants are his villagers, whereas he claimed that his daughter had identified the dacoits, but he also admitted during his cross-examination that a panchayati was held in the village after three days of occurrence, which contradicts the FIR. He also admitted that the police had enquired his daughter.

Thus, evidence of P.W.-3, Jag Mohan Tirkey is not sufficient to convict appellants and hence the evidence of P.W.-3, Jag Mohan Tirkey is not reliable.

28. P.W.-4 is Chamar Tirkey and who is a hearsay witness

and stated during his evidence that he heard alarm raised from the house of Dashmi Kumari i.e. the informant and he went there and learnt about the dacoity. However, the informant-Dashmi Kumari had not disclosed the name of any dacoits.

This P.W.-4, Chamar Tirkey has been declared hostile by the prosecution.

During cross-examination, he admitted that Jag Mohan Tirkey i.e. P.W.-3 is his brother. He also admitted in para- 8 and 10 of his evidence that he had gone to the house of the informant on the next day of occurrence, but they had not disclosed the name of any persons or miscreants before him.

Thus, P.W.-4, Chamar Tirkey has not supported the prosecution case and he had not taken the name of any appellants for doing any overt act and hence, his evidence is not reliable.

29. P.W.-5 is Sawan Tirkey and who is also a hearsay witness and stated during his evidence that the informant-Dashmi Kumari worked as a maid servant in Delhi. However, he had not gone to the place of occurrence on hearing alarm and his statement was not recorded by the police and this witness has also been declared hostile by the prosecution.

During cross-examination, he admitted that Jag Mohan Tirkey i.e. P.W.-3 is his own brother.

Thus, P.W.-5, Sawan Tirkey has not supported the prosecution case and he had not taken the name of any appellants and hence evidence of PW-5 is not reliable.

30. P.W.-6 is Etwari Devi and who is the maternal aunt of the informant and she also stated that while they were sleeping in the house and on hearing alarm, they learnt that a dacoity was committed in the house of the informant. However, she is not aware, who had committed dacoity in the house of the informant

and she does not identify any person.

Thus, P.W.-6, Etwari Devi has also not supported the prosecution case and hence the evidence of P.W.-6, Etwari Devi is not reliable.

31. P.W.-7 is Ranthi Devi and she also stated that she is aware of the informant and had heard that a theft was committed in the house of the informant, but she is not aware of the name of any accused persons.

Therefore, P.W.-7, Ranthi Devi has not supported the prosecution case and thus, evidence of P.W.-7, Ranthi Devi is also not reliable.

32. P.W.-9 is one Uday Kumar Singh, who is an Advocate Clerk and proved the charge sheet of Basia P. S. Case No. 21 of 2004, which has been marked as Ext. -4.

During cross-examination, he admitted that charge sheet was not written before him.

Thus, P.W.-9, Uday Kumar Singh is a formal witness and Advocate Clerk and he is even not competent to prove the charge sheet. Thus, evidence of P.W.-9 is not reliable.

33. P.W.-10 is Fulmani Devi and she also stated that the informant Dashmi Kumari is her neighbour and theft was committed in the house of the informant and at that time, she was sleeping in her house and on hearing alarm, she went to the house of Dashmi Kumari and had seen that articles were scattered there. However, she is not aware as to how theft was committed in the house of Dashmi Kumari.

During her cross-examination, she stated that Dashmi Kumari i.e. the informant had not disclosed the name of theft before her.

Thus, P.W.-10, Fulmani Devi is also hearsay witness and

has not supported the prosecution case and as such, her evidence is not reliable.

34. PW.-1, Dashmi Kumari is the Informant of this case and she stated during her evidence that dacoits had committed dacoity in her house on 04.05.2004 in around 1.00 PM to 1.30 PM and the dacoits had entered into her house after broken the door and they had assaulted her father and on the point of pistol and knife, she handed over Rs. 8,000/- cash to dacoits and they had also looted torch, her lady watch and tape recorder. She claims to identify Dilip Gope, Suraj Sahu and also the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005]. However, she has not named the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] during her examination in-chief.

Thus, even from examination in-chief of PW.-1, Dashmi Kumari, it is evident that there is contradiction in her evidence on the point of date of occurrence and time of occurrence. She had alleged in the FIR that dacoity took place on 05.05.2004 in the night whereas during deposition, she stated during her examination in-chief that dacoity took place on 04.05.2004 at around 1.00 to 1.30 PM in the night and there is contradiction in the date of occurrence.

Even during her cross-examination at para-6, she admitted that occurrence took place in the night of 04.05.2004, but she had gone before the police on 06.05.2004 alongwith her father and where her fardbeyan was recorded. She further admitted that she was not aware of the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005[and Arvind Minz and hence she has not mentioned their name in the fardbeyan.

Thus, she has also contradicted the name of the appellant -Neetu Minz [Cr. Appeal (S.J) No. 803 of 2005] from the FIR.

She further stated in para-12 to 14 that she had disclosed the name of Basant before the Dy. S. P. and she has also disclosed the name of the accused Neetu and Arvind before him and she learnt about the names of both miscreants before the Dy. S. P. She also admitted that she alongwith her father and mother three sisters and four brothers were sleeping and who are younger to her. She also admitted that she was brought by one Dumru Pahan @ Rohan Pahan for giving evidence in this case from Delhi. She further admitted in para- 24 and 25 that occurrence took place on 04.05.2004 and a panchayati was held in the village on 06.05.2005 and then the case was instituted and after panchayati, she had disclosed the name of the accused before the police.

35. Thus, from scrutinizing the evidence of P.W.-1, Dashmi Kumari i.e. the Informant, it is evident that she had not identified the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] during her evidence before the learned Court below, although she has been named in the FIR.

Thus, the informant has concealed several important facts as discussed above, which is fatal to the prosecution case and she has disclosed the name of the appellants in F.I.R., although she was not aware of their names.

36. It further reveals from her evidence that there are several contradictions on the point of date of occurrence and time of occurrence. As per the FIR, occurrence took place on 05.05.2004 whereas as per evidence of PW-1, Dashmi Kumari, occurrence took place on 04.05.2004. Even there is material change in the time of occurrence as P.W.-2, Bimla Devi and P.W.-3, Jag Mohan Tirkey, who were the eye witnesses of the occurrence, have stated

that the dacoity took place at around 9.00 to 9.30 PM in the night whereas the informant-Dashmi Kumari stated that the dacoity took place at around 1.00 to 1.30 AM in the night. Apart from this, it is evident that she learnt the name of the dacoits from the police. Thus, there is material contradictions in the FIR and evidence of the prosecution witness i.e. P.W.-1, who claimed to be solitary eyewitness of the occurrence.

Thus, the evidence of even P.W.-1 is not reliable.

37. P.W.-8, Binod Kumar is I.O of this Case, who has stated during his evidence that he learnt about the occurrence of commission of dacoity in the house of the informant –Dashmi Kumari, then he went to the house of the informant and recorded her fardbeyan, which had been marked as Ext.-2. He further proved the fardbeyan, which had been marked as Ext.-3. Thereafter he inspected the place of occurrence and recorded the statement of father and mother of the Informant and also recorded the statement of other witnesses of the village and on the next date i.e. on 07.05.2004, he had arrested the accused Dilip Gope, Basant Kumar Sahu and Chhatu @ Koya. He further stated that he had arrested the accused Neetu Minz on 10.05.2004. Thereafter he was transferred on 28.05.2004 and he had handed over the investigation of this case to the Officer In-charge Sri Nawal Prasad and the Officer In-charge Sri Nawal Prasad has submitted charge sheet against the miscreants. He identified the accused persons in Court.

During cross-examination, he admitted to have not mentioned in the diary as to from whom he had received the information of dacoity. However, he recorded the statement of the informant and her parents separately and he recorded their statement in para-6 and further recorded the statement of five

witnesses in at para-7. He admitted in para-7 of his cross-examination for not mentioning the date sending the FIR in Court, but it was sent through Chowkidar. He also admitted to prepare arrest memo of the accused persons and copy of the same has not been enclosed in the case diary. He has also not prepared any paper for arresting the accused persons in presence of any witnesses. He admitted to have kept the accused persons in police station before sending them to the Court and mentioned this fact at para-29 of the case diary. He denied the suggestion for doing false paper work on 08.05.2004 and for backdating the FIR.

He further denied the suggestion for taking thump impression of the Informant on Blank Paper and for making false story by converting into her fardbeyan.

38. Thus, from scrutinizing the evidence of P.W.-8, Binod Kumar, it is evident that he was the part Investigating Officer of this case and he had arrested four persons i.e. the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] and the appellant - Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] and Dilip Gope.

Evidence of PW.-8 reveals that he has done complete table work while doing investigation and recorded the fardbeyan. He has concealed the fact of panchayati held in the village, which has been stated by the informant-Dashmi Kumari i.e. P.W.-1 and P.W.-2, Bimla Devi and P.W.-3, Jag Mohan Tirkey respectively.

39. It is evident from the evidence of P.W.-1, Dashmi Kumari i.e. the informant that she learnt the name of the accused persons from Dy.S.P. Thus it is evident that Investigating Officer has concealed the several facts while lodging the FIR and at the time of evidence before the Court.

Thus, evidence of the Informant-Dashmi Kumari, PW-1 and evidence of P.W.-8, Binod Kumar, who was the part Investigating Officer of this case are contradictory each other and cannot be considered for the purpose of convicting the accused persons including the appellants.

40. It is evident that several inconsistency and contradictions in the evidence of prosecution witnesses as mentioned above on the point of date of occurrence and on the point of time of occurrence.

41. It is evident that even her younger sisters and brothers have not been examined by the prosecution, who were the eyewitness of the occurrence. It is evident that even P.W.-2, Bimla Devi and P.W.-3, Jag Mohan Tirkey, who are the mother and father of the Informant, had not seen any of the appellants during their evidence for doing any overt act and also during their cross-examination before the learned Court below.

42. Under the circumstances, the judgment of conviction dated 20.06.2015 and sentence dated 21.06.2005 passed by Sri Om Prakash Pandey, learned 1st Additional Sessions Judge, Gumla in S. T. No. 262 of 2004 by which the appellants i.e. appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] have been convicted for the offence under Section 395 of the Indian Penal Code and sentenced to undergo R.I for a period of seven (07) years for the offence under Section 395 of the I.P.C and to pay fine of Rs. 1,000/- each are set aside.

43. Accordingly, the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @

Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] are acquitted and the appellant -Neetu @ Neetu Minz @ Arpit Minz [Cr. Appeal (S.J) No. 803 of 2005] and the appellant no. 1, Basant Kumar Sahu and the appellant no. 2, Chhatku Sahu @ Koya Sahu [Cr. Appeal (S.J) No. 979 of 2005] are discharged from the liability of their bail bonds.

44. Thus, both the appeals i.e. Cr. Appeal (S.J) No. 803 of 2005 and Cr. Appeal (S.J) No. 979 of 2005 are allowed.

45. Let the Original Lower Court Records be sent to the learned Court below at once by the Office.

46. Let a copy of this order be sent to the learned Member Secretary, JHALSA for the needful.

Learned Member Secretary, JHALSA, is further directed to pay fee of Rs. 5500/- to Mr. Ashok Kumar, Advocate for assisting this Court as an Amicus Curiae.

(Sanjay Prasad, J.)

Kamlesh/