

CRIMINAL APPEAL No.176 OF 1993

Against the judgment of conviction and sentence dated 12.5.1993 passed by Sri Ramjee Pandey, 5th Additional Sessions Judge, Samastipur in Sessions Trial No. 324/2 of 1989/1991.

1. Kamal Paswan
2. Nathuni Paswan @ Mochu Appellants

Versus

The State of Bihar Respondent

For the appellants : Mr.Ajay Kumar Mathur, Advocate
For the State : Mr.R.B.S.Pahepuri, Addl.P.P.

P R E S E N T

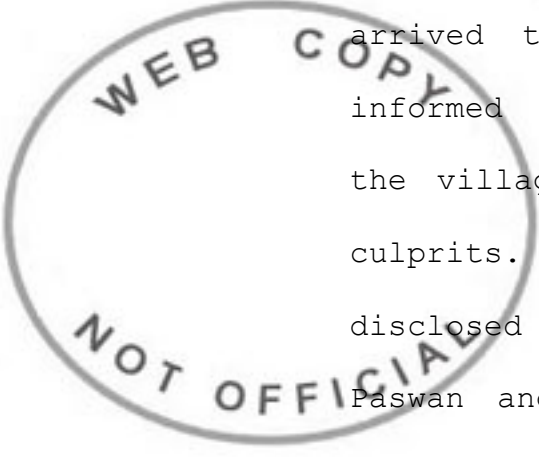
THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S.K.Sharma, J.

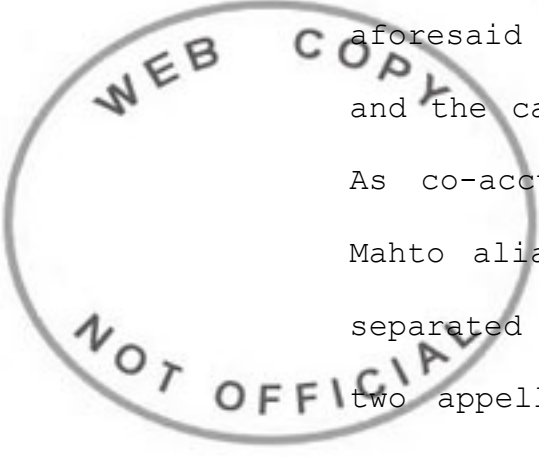
The above two appellants have filed this appeal against the judgment dated 12.5.1993 passed by 5th Additional Sessions Judge, Samastipur in Sessions Trial No. 324/2 of 1989/1991 by which they have been convicted under Section 395 of the Indian Penal Code and have been sentenced thereunder to undergo rigorous imprisonment for seven years.

According to prosecution case, in the night of 4/5.4.1989 at about 9.00 P.M. while informant Rabindra Nath Thakur (P.W.8) along with his wife Geeta Devi (P.W.12) and his tenant Dharmendra Kumar (P.W.7) was seeing television in his house after shutting the door but not bolted, all of a sudden, 6 to 7 persons mostly armed with pistols barged into his house and asked them by showing pistol to keep mum. The criminals thereafter broke open the boxes

and took away the articles. When tenant Dharmendra Kumar (P.W.7) protested, he was assaulted with the butt of pistol due to which the informant and other persons became afraid. The occurrence continued for 10 to 15 minutes and a number of articles were looted away. The dacoits were calling their names as Nathuni, Kamal, Ganeshi, Chhotka, Shamshul, Moin, Bamma and Bishwanath. They, besides using local language, were using Hindi. The dacoits looted one quartz wall clock, one two band Philips radio, two torches of two shells and three shells, portable T.V., one pair of golden ear tops, one pair of silver payel, one tape recorder, one Aristocrat brief case containing cloths and one wrist watch from the house of the informant. After taking the articles dacoits went out of the house after bolting the door from outside. After ten minutes, the informant and others any how came outside the house and heard some noise coming from the side of the railway line. The informant went there and learnt that dacoity has also been committed in the house of Kashi Nath Jha (P.W.9) and from his house, the dacoits looted away one portable T.V., two pairs of golden tops, one Bichhia of silver Payal, one golden nose wring, one hand Amirti and cash of Rs.3100/- and fled away

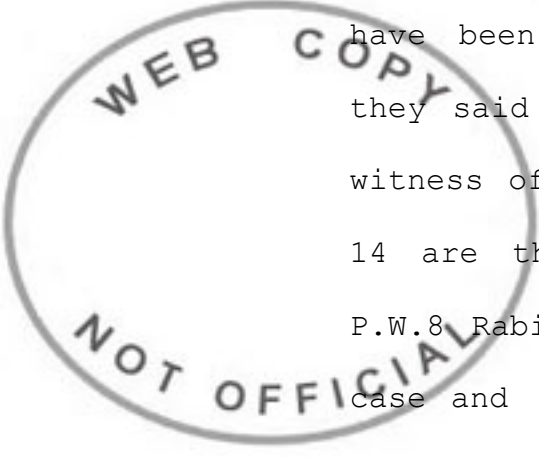


towards north. In the meantime, the police party arrived there. The informant and other witnesses informed the police about the occurrence. Thereafter the villagers and police party started chasing the culprits. On chase, two culprits were apprehended who disclosed their names as Kamal Paswan and Nathuni Paswan and they named Deepak Kumar alias Chhotka, Samshul Mian and Bishwanath Thakur as well as Ganesh Sahni, Moin Mian and Bamma Dhanuk as their accomplices. From the possession of caught persons, one quartz wall clock, one two band Philips radio, two Chinese torches of two sells and three shells and one commander torch were recovered. One bag containing one live country made bomb from possession of Kamal Paswan and one bag containing two country made live bombs from possession of accused Nathuni Paswan were recovered. The informant identified the articles which were recovered from the dacoits as his own. The informant also identified both the caught dacoits saying that they also along with other dacoits committed dacoity in his house. Thereafter on the fardbeyan of Rabindra Nath Thakur, Samastipur (Mufassil) P.S. Case No. 185 of 1989 under Sections 395 and 412 of the Indian Penal Code was registered. The matter was further investigated into and after



completion of investigation, charge sheet under the aforesaid section was submitted. Cognizance was taken and the case was committed to the court of sessions. As co-accused Ganeshi Sahni, Moin Mian and Ranbir Mahto alias Bamma Dhanuk absconded, their trial was separated and the trial proceeded only against these two appellants and Deepak Kumar, Samshul Haque and Bishwanath Thakur. Charges were framed and explained to the accused persons. They pleaded innocence and faced trial.

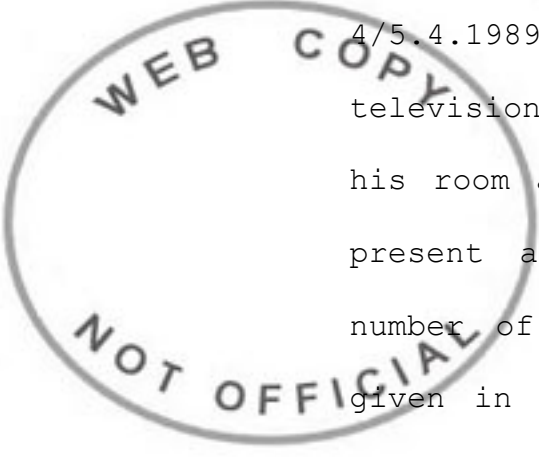
In order to prove its case, the prosecution has examined altogether 22 witnesses. Out of whom, P.Ws. 1,2,15,21 and 22 are formal witnesses who have only proved some documents. P.W.1 has proved the writings of seizure list which has been marked as Ext.1. P.W.2 has proved the writings of two seizure lists which have been marked as Exts. 1/1 and 1/2. P.W. 15 has proved the writings of the formal F.I.R. which has been marked as Ext.5. P.W.21 has proved endorsement made by S.I. Randhir Kumar Singh on the fardbeyan which has been marked as Ext.6. P.W.22 has proved the writings of two charts of T.I.P. which have been marked as Ext.7 and 7/1. Two P.Ws. namely P.Ws.4 and 7 have been declared tendered for the cross-examination who have said nothing about the



occurrence. P.Ws. 3,5,6,9,11,12,13,16,17,18 and 20 have been declared hostile by the prosecution and they said nothing about the occurrence. P.W.19 is a witness of the seizure list (Ext.1/2). P.Ws.8,10 and 14 are the only material witnesses. Out of whom, P.W.8 Rabindra Nath Thakur is the informant of this case and P.W.10 Manjhula Devi is a person in whose house dacoity was also committed and both are eye witnesses of the occurrence. P.W.14 Randhir Kumar Singh is the Investigating Officer of the Case and he is the person who along with others chased the dacoits and caught two culprits.

Besides seizure list Ext.1, some other documents were also exhibited on behalf of the prosecution. Those are Exts.1/1 and 1/2 showing the seizure of two Televisions. Exts.2, 2/1 and 2/2 are signatures of Ashok Kumar, Satish Kumar Matta and Gaya Sah on Exts.1, 1/1 and 1/2. Ext.3 is signature of the informant on the fardbeyan (Ext.4). Ext.4 is the fardbeyan and Ext.5 is the formal F.I.R. Ext.6 is the forwarding report by the Police Officer. Ext.7 and 7/1 are the photo stat copy of T.I.P.Chart. The prosecution has also produced Material Exhibits which are Ext.I,II and III.

The informant Rabindra Nath Thakur (P.W.8)



in his evidence has stated that in the night of 4/5.4.1989 while he along with others were watching television, 6-7 dacoits variously armed entered into his room and committed dacoity. His tenant was also present at that time. The dacoits looted away a number of articles, the details of which has been given in the fardbeyan. Similar evidence has come from P.Ws.10 Manjhula Devi and 14 Randhir Kumar Singh.

The witnesses have stated that on the date of occurrence, the dacoity was committed in the house of the informant in which a number of articles were looted. The articles which were recovered from the dacoits were identified by the informant. The seizure list was prepared with regard to the looted and recovered articles. These two appellants were caught immediately after the occurrence on chase along with the looted articles and they were identified by the informant as amongst the dacoits who committed dacoity in his house. So the prosecution has been able to prove the case beyond shadows of all reasonable doubt. The appellants have been acquitted under Section 412 of the Indian Penal Code. The trial court has rightly convicted the appellants and the same is not required to be interfered with by this

Court. Accordingly, conviction of the appellants is maintained.

From the order dated 6.8.1993 passed in this appeal, it appears that the appellants have remained in custody for about four years and four months.

Learned counsel for the appellants has submitted that as the appellants have remained in custody during trial and appeal for about four years and four months, their sentence may be modified to the period already undergone by them which may be sufficient for the ends of justice.

Taking into entire facts and circumstances of the case, I am in agreement with the submission of the learned counsel for the appellants to modify the sentence. Accordingly, the sentence of the appellants is reduced to the period already undergone by them during trial and appeal which will be sufficient for the ends of justice.

In the result, this appeal is dismissed with modification in sentence.

(**Shyam Kishore Sharma, J.**)

Patna High Court, Patna
The 23rd January, 2008
Tahir/- (NAFR)