

CRIMINAL APPEAL No.21 (SJ) OF 1998

Against the judgment of conviction dated 17.11.1997
and order of sentence dated 19.11.1997 passed by
Sri Anil Kumar Verma, Additional Sessions Judge II,
Katihar in Sessions Case No. 2 of 1996/262 of 1996.

1.MD.ISLAM SON OF LATE MD.MUSHIR
2.MEGHU LAL SHARMA @ MEGHU SHARMA
SON OF LATE FATEH LAL SHARMA
BOTH RESIDENT OF VILLAGE KURUM,
P.S.BALIA BELON, DISTRICT KATI HAR ---- APPELLANTS
VERSUS
THE STATE OF BIHAR ----- RESPONDENT

For the appellants : Mr.Suresh Prasad Baranwal
For the State : Mr.S.N.Prasad, Addl.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

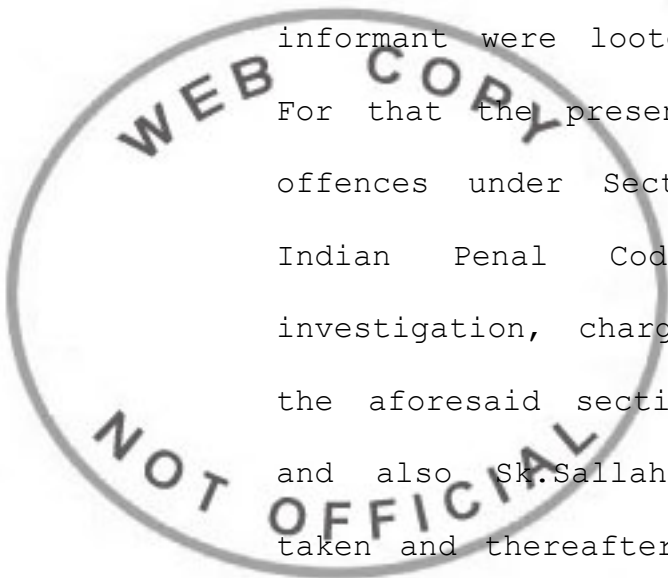
S.K.Sharma, J.

Both the above appellants have preferred this appeal against the judgment of conviction dated 17.11.1997 and order of sentence dated 19.11.1997 passed by Additional Sessions Judge II, Katihar in Sessions Case No. 2/262 of 1996 whereby both were convicted for offence punishable under Section 395 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for 5 years but they were acquitted for the offence under Section 412 of the Indian Penal Code. Co-accused Sallauddin who also faced the trial was acquitted for offence under Section 395 read with Section 120B of the Indian Penal Code.

According to fardbeyan of Raj Kumar Deb (P.W.12) recorded at 4.A.M. on 10.8.1995 by Sub-Inspector of Police, S.M.Khursheed, Officer-in-

charge, Balia Belon Police station (not examined), he, Jyotish Lal Yadav and other traders used to do business at Kurum Hat within Balia Belon police station in the district of Katihar and after collecting money from various traders, they used to stay at the shop of accused Sallahuddin in the night. This was their usual practice. On 9th August, 1995 after attending the work of Hat, informant (P.W.12) and Jyotish Lal Yadav assembled at the shop of co-accused Sallahuddin at about 8.00 P.M. While they were sitting at the shop, co-accused Sallahuddin went out and 10 to 15 minutes thereafter, five miscreants entered into the shop, surrounded the informant and assaulted him and two miscreants whipped out pistols and pointed at the chest of Jyotish Lal Yadav and the miscreants took away the bags containing money. On alarm being raised, the Hat people chased the miscreants and after chase they were able to catch both the appellants with looted bags. Thereafter a mob including chaukidars, dafadar and others gathered and on their interrogation, the appellants disclosed their names and the names of their associates who

managed to escape as Bhavesh Chaudhary, Ramesh Chaudhary, Shankar Chaudhary, Mashuwa Chaudhary, Nawajish and Sk.Dukhwa. It was further alleged that on 7.8.1995, accused Sk.Sallauddin had told the accused persons that the traders who assembled at his shop after selling their clothes possessed huge money which can be easily looted. On the date of occurrence, Sk.Sallahuddin left his shop and informed the dacoit. So the dacoity was facilitated and Rs.1750/- which was in the bag of Jyotish Lal yadav and Rs.196/- which was in the bag of informant were looted and later on recovered. For that the present case was registered for offences under Sections 395 and 412 of the Indian Penal Code. After completion of investigation, chargesheet was submitted under the aforesaid sections against the appellants and also Sk.Sallahuddin. The cognizance was taken and thereafter case was committed to the court of Sessions. Charges under Sections 395/120B of the Indian Penal Code was framed against co-accused Sallahuddin whereas charges under Sections 395 and 412 of the Indian Penal Code were framed against these appellants. The



accused persons pleaded innocence and preferred to face trial. So the trial proceeded.

The defence of the appellants was that they were not amongst the dacoits. They were not arrested at the spot. They were arrested from their village which is adjacent to the village of the informant and looted money was never recovered from their possession.

In order to prove its case, the prosecution has examined altogether 12 witnesses. P.W.1 is Fani Gopal Rai who is a Dafadar of the area and claims to be an eye witness of the occurrence. P.W.2 Ramakant Rai and P.W. 3 Dhirendra Rai are the Chaukidars. They have been tendered. P.W.4 Pocha Singh has supported the factum of dacoity but he denied that any statement was taken by the police. Later on he declared hostile. P.W.5 Ganesh Prasad Yadav has been tendered. P.W.6 Habib has been declared hostile. P.W.7 Md.Muzaffar Hussain has been tendered. P.W.8 Rajendra Sharma and P.W.9 Bipin Sharma have also been tendered. P.W.10 Md.Jamaluddin is a seizure list witness. P.W.11 Jyotish Lal Yadav who claims to be an eye witness and victim also. P.W.12 Raj Kumar Deb is

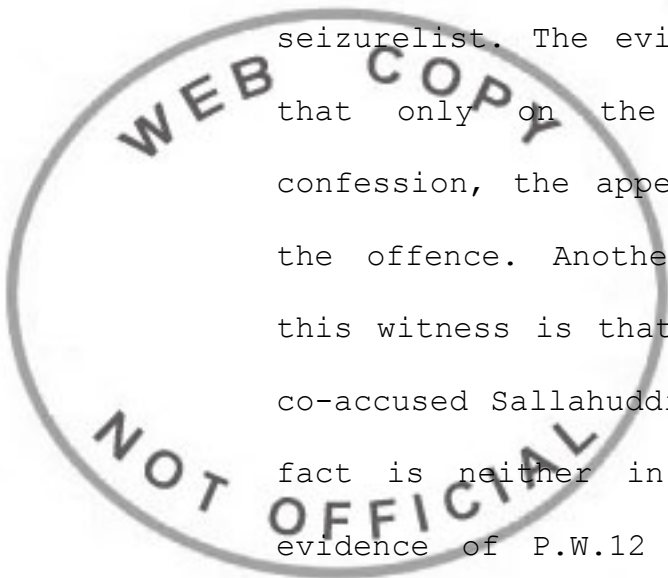
the informant himself who has also become hostile and has not supported the role of the appellants. The defence has not examined any witness.

After considering the evidences and hearing the parties, the trial court came to the opinion that the prosecution was able to prove the charges beyond all reasonable doubts against the appellants who were convicted and sentenced as mentioned above but another accused Sallauddin was acquitted from the charges.

Most important witness of the occurrence is P.W.12 who is the informant. He has stated in his evidence that he has given information to the police that he was staying in the shop of Sallahuddin after selling the clothes. At about 7.30 to 8.00 P.M., P.W.11 and others were present. He was in possession of Rs.196/- . At that very time, Sallahuddin went out and after half an hour, 2-3 masque dacoits came and started indiscriminate assault. He and P.W.11 were assaulted and their money was snatched. He has further stated that two dacoits were caught but he has not identified them. Thereafter, he was declared hostile. Therefore, the evidence of

this witness is of no help to the prosecution.

P.W.11 is a witness and victim of the offence. He has stated that in the evening of about 8.00 P.M. he was staying in the shop of Sallahuddin along with P.W.12. Sallahuddin was in the shop. At that very time, 2-3 dacoits came and started demanding money. They snatched his bag containing Rs.1750/-. Later on Chaukidars caught two persons who were the appellants. They made their extra judicial confessions and they were responsible for the offence. He also put his signature on the seizure list. The evidence of this witness shows that only on the basis of extra judicial confession, the appellants have been roped with the offence. Another fact in the evidence of this witness is that at the time of occurrence, co-accused Sallahuddin was inside the shop. This fact is neither in the fardbeyan nor in the evidence of P.W.12 so, there is contradiction about presence of Sallahuddin who later on made accused. Prosecution case is that Sallahuddin left the shop deliberately so that dacoity may be facilitated. If the evidence of this witness is relied upon, there would be



controversy in the evidence of P.Ws. 1 and 12. Other witnesses are not required to be discussed because either they have been tendered or declared hostile. Only prosecution witness remained to be discussed is P.W.1. He is Dafadar and he has stated that he was on his duty along with others namely, P.Ws. 2 and 3, Chaukidars Rama Kant Rai and Dhirendra Rai. He stated that he heard hulla of dacoits. They went towards that and they caught two persons. They were the appellants. His statement has not been supported by his colleague P.Ws.2 and 3 because the prosecution allowed them to be tendered. So the statement of this witness has remained unsubstantiated that these appellants were caught after chase.

The defence of the appellants is that they are residents of nearby village and their presence nearby occurrence cannot be doubted in view of the fact that according to prosecution case it was a market days and in the rural areas, the villagers remained in the market till late hours. The prosecution has charged them with the commission of dacoity but this fact has neither been supported by the informant nor the

seizure list witnesses. There are material contradictions on all the vital points with regard to manner, time and role of the appellants.

After analyzing the entire evidences, I came to the opinion that the prosecution has not been able to prove the charges beyond the shadow of all reasonable doubts. So the conviction and sentence of the appellants are fit to be set aside.

In the result, this appeal is allowed and the conviction and sentence of the appellants are set aside. The appellants are discharged from the liabilities of their bail bonds.

Patna High Court, Patna
The 29th January, 2010
Tahir/- (NAFR)

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

