
(2010) 03 JH CK 0093
In the Jharkhand High Court

Bindu Mandal and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 395, 397, 412

Citation : (2010) 03 JH CK 0093

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the the judgment of conviction and order of sentence 27.4.2001 passed by Sri Sharang Dhar Singh, 5th Additional Sessions Judge, Dhanbad in Sessions Trial No. 125 of 1998 by which judgment he found the appellants namely Bindu Mandal (preferred Cr. Apl.158 of 2001), Raju Kumar Sao (preferred Cr. Apl.160 of 2001), Mohan Rabidas (preferred Cr. Apl.163 of 2001), Sanichar Rabidas @ Sanichar Chamar & Kuka Rabidas@ Koka Chamar (both preferred Cr. Apl.240 of 2001), Gorwa Rabidas @ Gorwa Chamar (preferred Cr. Apl.232 of 2001), Kanhai Mahato (preferred Cr. Apl.177 of 2001) guilty for the offence u/s 120B and 395 of the I.P.C for hatching conspiracy for committing docoity in broad day light from a running car on the road in cash money which name of Gomoh Branch of Allahabad Bank was going. All the accused ? appellants were convicted and sentenced to undergo R.I. for 7 years u/ s 395 of the I.P.C and also to pay a fine of Rs. 10,000 each and in default of payment of fine, they were further directed to undergo R.I. for 3 years. All the accused-appellants were also sentenced to undergo R.I. 5 years u/s 120B of the I.P.C. Apart from that three accused persons namely Koka Rabidas (Chamar), Sanichar Rabidas (Chamar) and Gorwa Chamar were found guilty u/s 412 of the I.P.C and they were sentenced to undergo R.I. for 7 years with a fine of Rs. 10,000/- and in default of payment of fine, further R.I. for 3 years. All the above

sentences were directed to run concurrently.

3. It is submitted by learned Counsel for the appellants that prosecution has failed to prove any case of conspiracy for committing the dacoity and as such conviction of the appellants u/s 395 of the I.P.C as also u/s 120B is bad in law and fit to be set aside. It is submitted on behalf of the appellant, Bindu Mandal that it will appear from page 10 para 8 of the impugned judgment that he has been convicted only on the basis of the statement made in the case diary which are not substantive piece of evidence and as such his conviction in absence of any evidence to make out a case of conspiracy is bad in law and fit to be set aside. Learned counsel for the appellant, Raju Kr. Sao has submitted that there is no evidence to support the statement of the Investigating Officer nor there is any recovery from his possession and in absence of any evidence, he has wrongly been convicted u/s 120B of the I.P.C. Learned counsel for the other appellants have also submitted that the conviction of the appellants are bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the state has opposed the same and submitted that all the witnesses have stated that the appellants committed conspiracy to rob the cash which was being carried in a car from one branch of Allahabad Bank to another branch. As such, learned trial court has rightly convicted the appellants u/s 395 and 120B of the I.P.C.

5. After hearing both the parties and after going through the evidences on record, I find that the prosecution case was started on the basis of the fardbeyan given by the informant, Dharamnath Kumar, P.W. 3, who stated that he is working as cashier in Allahabad Bank, Gomoh, Hariharpur. On 1.7.1997 at about 11.10 a.m on a private car bearing No. BHR 801 which is run on hire, along with peon of the bank, Bindu Mandal he collected Rs. 3 Lakhs from the Dhanbad Main Branch. Since, the Santri guard was on leave, he had no guard with him. The car was being driven by the driver, Suraj Prasad. He has stated that earlier also he used to bring money from the main branch of Allahabad Bank and bring the same to the branch of Gomoh. He has stated that about 3 p.m he left the Dhanbad branch for Gomoh Branch of Allahabad Bank. When the car reached near Bhuian Chitro Gaon, where the road was a bit bad, the driver slowed the vehicle. Then a black colour Rajdoot motorcycle where there was sign of "+" (doctor) also marked and name of Dr. Raj Kumar was written overtook the Ambassador Car and proceeded towards Chitro Basti and at a distance where the road goes to Paharpur Jungle, there was old dilapidated primary health centre. He stopped the motorcycle and started blowing horn for signal. Thereafter, the motorcycle left away. When the car reached near that dilapidated health center, then criminals came out and stopped the vehicle and then another person, who was tall, put his revolver on the head of the driver. Thereafter, both of them sat on the car. The person, who was sitting on the front with the driver put revolver on the head and second man sitting on the back where the informant was sitting, asked 4/5 persons behind the car to chase them. Then he made hulla to which

4/5 villagers started running behind the car. They identified the accused and the villagers stated that the accused persons are of Hariharpur and named them as Shankarwa Chamar, Kokwa Chamar, Sanicharwa Chamar and the person sitting in the car were Gorwa Chamar and one Mumtaz of Thakur Chouk. They were committing dacoity in the car. Then the accused persons, who were running from behind threw bomb on the villagers due to which villagers stopped. The accused running behind the car asked another one sitting inside the car to run away with the vehicle. Thereafter, the accused sitting in the vehicle took the car and drove towards Paharpur Jungle and at the point of revolver asked the informant to come down. Thereafter, they asked to open the dicky of the car. Thereafter, they took out the cash box containing 3 Lakhs rupees and demanded the key of the Cash Box and after keeping all the money in their personal Jhola, they ran away towards Hariharpur. Thereafter, 4/5 criminals who were running behind the car also followed the accused who were running with the money. They again threw bomb and fired from that revolver, so that villagers and informant could not go behind them. After sometime, police of Topchanchi police station reached the place of occurrence and they also chased the accused persons along with villagers. The driver of the car and peon of the bank also chased the accused persons. The informant stated that the accused persons including Koka Chamar, Shankarwa Chamar, Sanicharwa Chamar and Gorwa Chamar of villager Hariharpur and Mumtaz of village Thakur Chouk and they have been identified by the villagers as also by the chaprasi-peon and driver and peon stated that they are dreaded criminal and dacoit of the area.

6. On the basis of the said fardbeyan, police registered a case u/s 395/397 of the I.P.C and after investigation submitted charge sheet in the case. Since, the case was exclusively triable by the court of Sessions, Learned C.J.M committed the case to the court of Sessions Judge and finally the case was tried by 5th Additional Sessions Judge, Dhanbad who found the appellant guilty and convicted and sentenced him as aforesaid. 7. It appears that the prosecution has examined 16 witnesses to prove its case.

P.W. 1 is Mansoor Ansari

P.W. 2 is Md. Rafique

P.W. 3 is Dharamnath Kumar, informant of the case.

P.W. 4 is Omprakash Mahato

P.W. 5 is Aminuddin

P.W. 6 is Gulam Mustafa

P.W. 7 is Purno Pal

P.W. 8 is Sashi Bhushan Das

P.W. 9 is Chaitu Karmakar

P.W. 10 is Khiro Das

P.W. 11 is Md. Jasim Akhtar

P.W. 12 is Karim Ansari

P.W. 13 is Tulsi Yadav

P.W. 14 is Ramesh Kumar Singh

P.W. 15 is Padmanabh Upadhyay

P.W. 16 is Sanjay Kr. Rana

8. The prosecution has proved the formal F.I.R marked as Ext.8, Fardbeyan as Ext.7, seizure list of money kept in a jhola about Rs. 55,000/- recovered from the house of Khiro Das kept in the northern room of Koka Chamar marked as Ext. 9/1. Seizure list of Rs. 28,000/- from the house of Md. Usman from the possession of Gorwa Chamar marked as Ext-6. recovered loaded desi pistol from the person of Md. Usman, 4 live cartridges marked Ext.6/1. Seizure of black Rajdoot motor cycle bearing No. WMI 2361 with "+" sign and the name of Dr. Raj Kumar was written marked as ext.7

9. P.W. 1, Mansoor Ansari has stated in the court that the occurrence took place about 1 year back. He was not at his home. He had gone to Baghmara and when he reached in the evening he came to know that money of the bank has been looted, but he was not informed as to who were the persons involved in the dacoity. He was declared hostile by the prosecution. He denied that he stated to the police that on the date of occurrence i.e. on 1.7.1997, he stated to the police that at 3.30 when he was coming from Paharpur road, then to save himself from rain, he took shelter in the dilapidated hospital. In the building 8 persons were sitting and he identified them and named them.

10. P.W. 2, Md. Rafique ha stated that he does not remember the date of occurrence and on the date of occurrence he had gone to the his sasural at Khakhi kala village and when he returned his home at about 7/7.30 in the evening, then he heard about the occurrence. He denied that he gave any statement to the police. He was also declared hostile. He also denied that he stated to the police that the date of occurrence i.e. 1.7.1997 at 3.30 p.m. when he was returning to his village through the Paharpur road, then he saw the accused Mumtaz sitting with revolver in Ambassador Car bearing No. BHR801 and on the back side accused, Gorwa Chamar was sitting.

11. P.W. 3, Dharmnath Kumar, who the informant of the case and clerk of the Bank has stated that on the date of occurrence when he left the Gomoh Branch of Allahabad Bank at 11.00 a.m in an Ambassador Car bearing No. BHR801 along with bank peon, Bindu Mandal, then they came to park market branch at Hariharpur, Dhanbad and at about 1 p.m. after receiving 3 lakhs rupees for his Gomoh branch, he left with the peon, Bindu Mandal for Gomoh branch. Out of 3 lakhs rupees, one lakh rupees were in bundle of 100 rupee denomination and 2

lakhs were in the bundle of 500 rupees denomination. All the packets had mark of Park Market branch of Allahabad Bank with seal. There was no security guard, since he was on leave on that day. When the car reached Bhuiachitro Basti, where the road was not good, then suddenly about 7/8 persons came with pistol and bomb in their hands and they gardened the car from all side. It was raining slightly at the time of occurrence. Two of the accused sat on the front of the car who had revolver in their hand and one person took the back sit. At the point of revolver they asked them to keep their head down and the person sitting in the front asked the driver to go towards the Paharpur and after going some distance towards the lonely rood towards the hill, they stopped the car and took out the key. Thereafter, they opened the dicky of the car and took out the cask box. Then at the point of revolver, they asked them to open the box. Thereafter, opening the cash box, they took the money and left the place. The villagers also came there running after they left. After sometime police reached the place of occurrence. He gave his statement to the police which was recorded as fardbeyan and signed on the same marked as Ext.1. He also stated that where the car was stopped i.e. Bhuiyachitro just two minutes before, a motorcycle had crossed them. He denied that the driver and Chaprasi had told him about the name of the accused persons. He was also declared hostile and he denied that in his fardbeyan, as stated by the villagers, he had named them as Gorwa chamar, Koka Chamar, Shankar Chamar, Sanichar Chamar of Hariharpur and Mumtaz of Thakur Chouk. The witness only identified Bindu Mandal, the peon of the bank and driver of the car namely, Suraj Pd. He also stated that the seized currency notes are not present in the court today. Subsequently, the seized notes, which is material Ext. III were brought in the court on 14.12.1998 for subsequent examination in chief of the informant. The material exhibits contained bundle of 100 rupees currency notes and 50 rupees currency notes with seal and mark of Allahabad Bank, Jamshedpur main Branch. 100 rupees bundle were about Rs. 30,000/- with Allahabad bank seal. The notes were marked as Ext.X to X/7 for identification. The another material Ext. III/I was also opened in presence of witness with rupees 10,000/- which had seal of Allahabad Bank Park Market branch, Dhanbad and initial of cashier also. Another bundle of Rs. 50 denomination note about Rs. 28,750 had also the seal and sign of cashier of Allahabad bank, Park Market branch, Dhanbad. They were also identified by the informant marked as Ext.Y/1 to Y/3

12. P.W. 4, Omprakash Mahto stated in the court the house of Kanhai Mahto is just by the side of his house and Dr. Raju and Mohan Rabidas come there regularly or not, he cannot say. He denied that on 30.6.1997, Mohan Rabidas and peon, Bindu Mandal of Allahabad Bank along with Dr. Raju came on the motorcycle bearing No. WMI2361 to the house of Kahnai Mahto. He was also declared hostile and in cross examination he refused that he stated the aforesaid fact that the peon and Dr. Raju had come to the house of Kanhai Mahto along with Mohan Rabidas.

13. P.W. 5, Aminuddin has identified his signature on the seizure list marked as

Ext. 2, but denied that police recovered 3 box on which Dhanbad and Gomoh was written on black paint.

14. P.W. 6, Gulam Mustafa stated that the occurrence took place on 1st of July 1997. At about 3.45 hearing hulla he came out of his house and saw that some people are running towards dilapidated hoslpital site on the road of Paharpur. He also heard the sound of explosion and thought that some docoity is taking place, then he came out of his house taking his licensee Bandhook and again went to the place of occurrence. The he saw that Ambassador Car is going towards the kachcha road and people were running behind the vehicle. Lastly the car stopped on the middle of road. The Villagers also reached there. The staff of the bank and driver stated that docoits had taken 3 lakhs rupees from the Dhanbad Branch. They were going to the Gomoh Branch of Allahabad Bank which has been looted by the accused the persons. Thereafter, Officer Incharge with other constable of Topchanchi branch came there. Thereafter, he came back. He had not identified any accused persons and he denied that he stated that a motorcycle bearing registration No. WMI2361 with doctor sign was being driven by the accused Raj Kumar who stopped near the dilapidated hospital and gave some signal to 7/8 persons sitting there and thereafter, he proceeded towards Gomoh.

15. P.W. 7, Purno Pal also stated in the court that he was posted as Senior Manager of Allahabad Bank, Gomoh Branch at 1997. The said branch is pension payee branch and in the end of month money comes from the main branch of Dhanbad whenever, required. On 30.7.1997, peon of the Bank namely Bindu Mandal and Bill Clerk with cashier, Dharamnath Kumar had gone to Dhanbad to bring money and on the next day they were coming from Park Market Dhanbad with the money on a rented car which was looted by the criminals on the way. He received information at 4.30-5.00 in the evening, but he was not disclosed the name of the docoits. In cross examination, he ha stated that cashier, Dharamnath Kumar and peon, Bindu Mandal directly came to the office of Branch Manager and gave detail of the docoity and then he gave the information to the Manager Operation.

16. P.W. 8, Sashi Bhushan Das, A.S.I Topchanchi stated that by the order of Officer In charge, Topchanchi branch, he prepared the cover of the seized notes worth Rs. 55,000/- in the denomination of Rs. 50 currency notes and gave MR No. 17/1997 and another packet of Rs. 28,750 having mark of MR No. 18/1997. Both the cover with currency notes bundle were signed by Officer In charge Binod Kr. Rout. Bundles were marked as Ext.3 and 3/1.

17. P.W. 9, Chaitu Karmakar stated that one and half years back police came to Karkatta village to the house of the doctor. The doctor was living in the house of Laddu Sao. The time was about 8-9 in the night. His house was searched by the police. He identified his signature on the seizure list which was marked as Ext.Z for identification. This witness was also declared hostile. He denied that the motorcycle bearing No. WMI2361 with "+" sign on the number plate was recovered from the house of doctor on which Raj Kumar was also written. He had

put his L.T.I on the same.

18. P.W. 10, Khiro Das stated that accused Koka Chamar is his "sala" and he used to come to his house. About one and half years back when police came to his house and made search at about 4 a.m in the morning and recovered money and prepared seizure list. He had put his L.T.I on the same which was marked as Ext.Z/1 for identification. In his cross examination, he denied that currency notes kept by Koka Chamar was recovered from his house.

19. P.W. 11, Md. Jasim Akhtar stated that he know nothing about the occurrence and declared hostile. In cross examination he denied that he stated to the police that on 1.7.1997 at 3.30 in the evening, Mansoor Mian stated him that known criminal namely Gorwa Chamar, Koka Chamar, Sanichar Chamar, Shankarwa Chamar, Kayuum, Muslim and Kurban were sitting.

20. P.W. 12, Karim Ansari has stated that Khiro Das stayed in his village and about one and half years back in his presence Khiro Das's house was searched. He cannot say what was recovered, but he signed on the seizure list. He identified his signature on the seizure list marked as Ext.Z/1. He was declared hostile and denied that police had recovered Rs. 55,000/- kept in a bundle of 100 and 50 rupees currency note with slip of Allahabad Bank.

21. P.W. 13, Tulsi Yadav stated that the house of Khiro Das is at a distance from his house and he identified his signature on the seizure list marked as Ext. Z/2. He has also been declared hostile and denied that police had recovered Rs. 55,000/- kept in Jhola from the house of Khiro Das in the bundle of 100 and 50 rupee currency notes with slip of Allahabad Bank. He denied that Khiro Das and Koka have also put their L.T.I in his presence marked as Ext.Z/1.

22. P.W. 14, Ramesh Kr. Singh, cashier of Allahabad Bank, Park Market Branch, Dhanbad stated that on 1.7.1997 cashier, Dharamnath Kumar and peon of Gomoh branch came and on the direction of the Branch Manager, he prepared voucher and gave 10 bundle of 100 rupee denomination about one lakh rupees containing Rs. 10,000/- each and 40 packets of Rs. 50 denomination total two lakh rupees every pocket containing Rs. 500/-. Each had slip of Allahbad Bank and seal. In presence of Lawyers of both parties packets ext. 3 and 3/1 were opened. He identified the slip marked as y to y/4 having the seal and signature of his Park Market Branch.

23. P.W. 15 Padmanabh Upadhyay stated in the court that he was posted at Topchanchi Branch on the date of occurrence i.e. dated 1.7.1997 and on 24.7.1997 at about 6.15 in the morning he had recovered Rs. 28,750 from the house of Usman Mian @ Yasir Mian from the room of Gorwa Chamar kept in his "sirhana" in attache. The recovered money was in the bundle of Rs. 100 currency note which are 10 in number with slip of Allahabad Bank Branch. He also recovered 3 bundles of Rs. 50 currency notes with Allahabad Bank slip total Rs. 15,000/-He also recovered Rs. 3750 rupees in the denomination of Rs. 50 which were opened. He proved the seized notes bundle marked as Ext. 5 to 5/3. The

currency notes recovered in presence of two independent witnesses. He proved the seizure list marked as Ext.6. He also recovered licensed desi pistol with 2.315 live cartridges from the same place and prepared seizure list in carbon copy which was signed by the independent witnesses now also signed by him. He has also stated that the person arrested from the room was identified by the inmates of the house as Gorwa Chamar. He has proved the seizure list marked as ext. 6/1. He identified the accused Gorwa Chamar in court who was arrested by him. In cross examination he has stated that accused Gorwa Chamar was sleeping on the bed by keeping the attachee filled with notes under his head. The house owner was Usman Mian. The arm was recovered from the possession of the accused Usman Mian and he had criminal history.

24. P.W. 16, Sanjay Kumar Rana is the Investigating Officer of the case. He has stated that on hearing rumour at about 4.00 p.m that on the Gomoh road near Bhuiyachitro Basti some criminal are committing loot of an Ambassador Car. He entered the information in the station diary and after taking the police constables present in the Thana along with A.S.I G.S. Yadav, Mangal Hembrum and armed force, he left for the place of occurrence. At about 4.30 when he reached kachcha road near Paharpur Jungle then he recorded fardbeyan of Informant, Dharamnath Kumar. He proved the fardbeyan which was in his writing and signature marked as Ext.7, formal F.I.R -Ext.8. He gave the detail of the place of occurrence. He had found sign of explosion and sutli near the place of occurrence. He prepared the seizure list of the vacant cash box of the Bank from which the money was taken away by the criminals. He recorded the statement of the witnesses and came to know that the motorcycle No. WMI 2361 had crossed the Ambassador Car with name of Raj Kumar written in the number plate and sign of "+" which belonged to Dr.Raju, then on inquiry he came to know that the said Raj Kumar stays in the house Laddu Sao. Then he recovered the said motorcycle No. WMI2361. He has proved the seizure of the motorcycle marked as Ext.9. At para 11 he also stated that on on 6.7.1997, while he was investigating, he went to village Ambadih and arrested Koka Chamar, who confessed his guilt and stated that he has kept the money in the house of Khiro Das from where he recovered Rs. 55,000/- which were kept in the denomination of Rs. 100 and 5 bundle having seal of Allahabad Bank. He prepared seizure list. He proved the seized notes as Ext.9/1. Independent witnesses had also signed the same. He said that Koka Chamar has also named Suraj Prasad and Bindu Mandal as co-accused and he arested both of them. He has stated that subsequently, during investigation he also arrested Sanichar Rabidas and on his confessional statement he recovered Rs. 20,000/- of this docoity and prepared seizure list. Subsequently, he also arrested Gorwa Chamar from the house of Md. Usman @ Yasin and recovered Rs. 28,750 of Allahabad Bank kept in a attache under his "sirhana" and prepared seizure list. He also arrested Md. Rafique, who stated that he participated in the docoity. They stopped Ambassador Car bearing No. BHR801 and in the front seat, Kayyum and Mumtaz took the seat and in the back seat Gorwa Chamar took his seat. 5 accused persons were coming from

back. After taking the money in their custody, he threw bomb to scare the witnesses and Sanichar and Koka fired, but nobody was injured. Then they ran away. He also gave the statement made before him by Omprakash Mahto, Gulam Mustafa, Md. Jasim Akhtar and others.

25. Thus, from the evidences as discussed above, it is evidently clear that during investigation, as disclosed by the evidence of the P.W.s with regard to the dokoity committed by the accused, who had committed dokoity on the Paharpur road and looted about 3 lakhs rupees which were being taken by the informant-clerk and peon, Bindu Mandal from the Park Branch of Allahabad Bank, Hirapur, Dhanbad to Gomoh Branch. The Investigating Officer arrested Koka Chamar and on his confession recovered Rs. 55,000/- kept in Jhola. All the notes were in the bundle of 100 rupee kept in the 3 bundles and also 5 bundles of Rs. 50 denomination having seal and mohor of Allahabad Bank. The seizure of the aforesaid notes were also proved by the seizure witnesses. P.W. 10 Khiro Das from whose house the notes were recovered in presence of accused Koka Chamar was proved by Khiro Das, although he refused to accept that money was seized in his presence. Another seizure list witness, P.W. 12, Karim Ansari also identified his signature on the seizure list marked as Ext.2/1. Although, he denied that Koka and Khiro had put their L.T.I in their presence marked as Ext.z and z/1for identification. The recovered notes had the slip and seal and also signature of the cashier of the Park Branch of Hirapur Allahabad Bank which was also identified by P.W. 14 Ramesh Kr. Singh-cashier of the Bank.

26. Thus, the prosecution has proved beyond reasonable doubts that appellant namely Koka Chamar @ Koka Rabidas participated in the dokoity after making conspiracy with the other dokoits and as such he has rightly been found guilty and convicted by the trial court. It also appears that on the basis of the statement of the witnesses, accused, Sanichar Chamar @ Sanichar Rabidas also stated, as stated to the Investigating Officer in para-13 of his statement, that on his instance Rs. 20000 was recovered in presence of independent witnesses and S.I. Anwar Ali. Seizure of the notes has already been proved by the witnesses as aforesaid. Hence, the trial court has rightly convicted appellant, Sanichar Rabidas @ Sanichar Chamar. In the above facts and circumstances, the Cr. Appeal No. 240 of 2001 filed by Sanichar Rabidas @ Sanichar Chamar and Koka Chamar @ Koka Rabidas are without any merit and accordingly, their appeals are dismissed.

27. It also appears from the evidence as discussed above that on the basis of the evidences of the witnesses, during investigation on 23.7.1997, the Investigating Officer arrested Gorwa Chamar as stated by him in para 14 of his statement and he recovered about Rs. 28,750 from the possession of Gorwa Chamar kept in the attache under his "sirhana" having slip of Allahabad Bank with seal. Seizure of the aforesaid Rs. 28,750 kept in bundle of denomination of 100 and 50 have also been proved by seizure witnesses, P.W. 10, P.W. 12 and P.W. 14 and hence, conviction and sentence passed by the trial court against the accused Gorwa Chamar is well founded and requires no interference by this Court. Hence Cr.

Appeal No. 232 of 2001 filed by the appellant Gorwa Chamar is dismissed having no merit.

28. It also appears from the evidences of the Investigating Officer that on the statement of the witnesses made during investigation that Rajdoot motorcycle bearing No. WMI2361 was being driver by Raju Kr. Sao who had given signal to the accused persons after crossing the Ambassador Car and subsequently, the Investigating Officer stated that the said motorcycle was seized from the house of Laddu Sao were the accused Dr. Raju kr. Sao used to reside. The seizure list of the said motorcycle was also proved by the seizure witnesses, P.W. 9, Chaitu Karmakar, who was declared hostile and did not accept that the motorcycle was recovered in his presence nor the witness accept his statement given that the accused, Dr. Raju Kumar Sao had come to the house of Kanhai Mahto along with accused, Mohan Rabidas and Bindu Mandal and as such, although, during investigation some witnesses had named them as co accused, but there is no substantive piece of evidence against them, since, the witnesses have turned hostile and there is no evidence to prove that peon of Allahabad bank, Bindu Mandal, Dr. Raj Kumar Sao, Kanhai Mahto and Mohan Rabidas were also part of the conspiracy in committing dacoity of the money which used to go regularly from Dhanbad main Branch to Gomoh Branch of Allahabad Bank and on the date of occurrence the accused persons committed the dacoity, hence the accused, Dr. Raj Kumar Sao, who has preferred Cr. Appeal No. 160/2001 is given benefit of doubt and acquitted from the charges. Similarly, accused Kanhai Mahto, who has preferred Cr. Appeal No. 177/2001 is also given benefit of doubt and acquitted from the charges. Further, accused Mohan Rabidas, who has preferred Cr. Appeal No. 163/2001 is also given benefit of doubt and acquitted from the charges. Accused Bindu Mandal, who has preferred Cr. Appeal No. 158 of 2001 against whom also evidence has come during investigation that he conspired with Dr. Raj Kumar Sao and accused Mohan Rabidas and had gone with them in the motorcycle bearing No. WMI 2361 to the house of Kanhai Mahto and made conspiracy for committing dacoity on 30.6.1997 just the day before the occurrence, which is very shocking that a regular employee of the Allahabad Bank, who was entrusted every time to bring money, participated in the dacoity in his own branch, but since, the witnesses have turned hostile in court and there is no substantive evidence to prove the charge of conspiracy by him beyond reasonable doubt, he is acquitted from the charge giving benefit of doubt. The Allahabad Bank is directed to take action against him for such misconduct under the Bank Rule.

29. In the result, Cr. Appeal Nos. 158 of 2001, 163 of 2001, 177 of 2001 and 160 of 2001 are allowed. Since, the appellants namely, Dr. Raju Kumar Sao, Bindu Mandal, Mohan Rabidas, Kanhai Mahto are on bail, they are released from the bondage of bail bond. Further, Cr. Appeal Nos. 232 of 2001 and 240 of 2001 are dismissed. Appellants namely, Gorwa Chamar @ Gorwa Rabidas, Koka Chamar @ Kuka Rabidas and Sanichar Chamar @ Sanichar Rabidas are also on bail. Hence, their bail bond is cancelled and learned trial court is directed to issue non-

bailable warrant of arrest against them for serving out the sentence.