

(2003) 08 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal No's. 309, 312 and 313 of 1999

Devendra Mishra, Ajay Kumar Mahto and Amar Nath
Chaudhary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 120B, 34, 395, 396, 399

Citation : (2003) 4 PLJR 299

Hon'ble Judges : B.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Bishwanath Pd. Sinha, Nand Kishore Singh, Durgesh Kumar Singh, in Criminal Appeal No. 309 of 1999 and Ajay Kumar Thakur and Bimal Kumar, in Criminal Appeal No. 312 of 1999 and Awadhesh Kumar Pandey, in Criminal Appeal No. 313 of 1999, for the Appellant; Bhagya Narain Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—All these three appeals are being disposed of by this common judgment as they arise out of the same judgment.

2. The Appellant in Criminal Appeal No. 309 of 1999, namely, Devendra Mishra has been convicted u/s 399 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. The Appellant in Criminal Appeal No. 312 of 1999 and Criminal Appeal No. 313 of 1999, namely, Ajay Kumar Mahto and Amar Nath Choudhary have been convicted u/s 396 of the Indian Penal Code read with Section 25(1)(a) of the Arms Act and have been sentenced to undergo rigorous imprisonment for life u/s 396 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for two years u/s 25(1)(a) of the Arms Act. All the sentences were ordered to run concurrently.

3. As per the F.I.R. (Exhibit-2) lodged by Raghav Sharan Datta (P.W. 8), Branch Manager of State Bank of India, Rahika Branch, the prosecution story is that on 10.10.96 at about 11 a.m. while the employees of the Bank were busy in their works, the informant heard the sound "do not shake otherwise will shoot you" which attracted the attention of the informant who saw that one dacoit was trying to snatch the gun from the Bank Guard Prabhu Nath Sah (P.W. 14). The Assistant Manager of the Bank, namely, Anil Sharan Singh (P.W. 12) intervened and tried to snatch the gun from the dacoits. In the meantime, one of the dacoits fired upon P.W. 12 which hit the Bank Guard, who fell down in the Corridor. The informant saw that one dacoit entered inside the Bank, who was armed with revolver and fired upon Sri Singh but the shot did not hit him. The informant saw that two dacoits were standing near the Cashier's cabin being armed with revolver and demanded the entire cash from the Cashier Sri Anand Kumar. The dacoits searched for the money but could not get anything. Meanwhile, there was a commotion and the customers of the Bank started running here and there as a result of which there was a Jam at the gate. Two dacoits who were armed with pistol commanded to vacate the gate by giving threats to kill and one of them who had fired upon the Bank Guard came near the gate and started firing outside due to which the gate was free from the crowd and the dacoits came out. It has been alleged that four dacoits boarded on a white coloured Maruti Van parked in front of the Bank and fled away towards Jai Nagar. Two of them could not sit in the Car because the people assembled outside the Bank were brick batting and were chasing them. The informant came out from the Bank and saw that the Chaukidar was lying injured and he also noticed empty and live cartridges as also the bridge support of the gun lying near the copious blood which had fallen due to the injuries sustained by the Bank Guard. The informant learnt that two dacoits were apprehended with pistols by Saukhi Paswan (P.W. 7) and Motiur Rahman (P.W. 11) and they disclosed their names as Rajesh Gupta and Bhagwan Jha, who absconded in course of trial. Both the apprehended dacoits, who belonged to Begusarai, confessed their guilt before the villagers who assaulted them. The dacoits could not take away any cash but they took away the gun looted from the Bank Guard.

4. On the basis of the written report of the informant a case u/s 395/ 397 of the Indian Penal Code was registered but later on the case was converted u/s 396 of the Indian Penal Code because the Chaukidar died after the occurrence. In course of investigation, the looted gun was recovered by the police from accused Munna Mian and after completing the investigation chargesheet was submitted against the seven accused by showing Jagjeet Jha as absconder under Sections 396 and 412 of the Indian Penal Code and the learned Magistrate took cognizance in the case which was committed to the Court of Sessions for trial. It may be pointed out here that accused Bhagwan Jha and Rajesh Gupta against whom chargesheet was submitted absconded, so, they did not face the trial. The remaining five accused faced the trial and the trial Court acquitted accused Jagjeet Jha of the charges under Sections 399 and 120-B of the Indian Penal

Code. Accused Munna Mian, who faced the trial, was also convicted by the trial Court under Sections 396 and 412 of the Indian Penal Code but he did not prefer any appeal against the order of conviction and sentence recorded against him.

5. In order to prove the charges, the prosecution examined as many as thirty witnesses including the doctors, I.O., Judicial Magistrate, who recorded the statement of P.W. 10 Satya Narain Singh u/s 164 Code of Criminal Procedure P.W. 1 Sudhanshu Shekhar Jha, P.W. 2 Ram Prasad Paswan, P.W. 3 Parma Nand Jha, P.W. 8 Raghav Saran Dutta (informant), P.W. 12 Anil Saran Singh, P.W. 13 Parmeshwar Roy, P.W. 14 Prabhu Nath Sah and P.W. 15 Anil Kumar Mishra are the Bank employees of the State Bank of India, Rahika Branch. P.W. 4 Deo Narayan Sah, P.W. 5 Md. Munna are the shop-keepers, whose shops are situated in the vicinity of the Bank and they went to the place of occurrence on hearing "Hulla". P.W. 5 Md. Munna is also a witness on the seizure list. He has stated that he put his signature on the seizure list at the police station and has also proved his signature (Exhibit-1).

6. P.W. 6 Ajay Kumar Sah is another seizure list witness who has stated that he put his signature (Exhibit-1/1) on the seizure list at the police Station.

7. P.W. 7 Saukhi Paswan was the member of the mob who had chased and apprehended one of the dacoits with revolver who disclosed his name as Rajesh Gupta and had produced the revolver at the Police Station.

8. P.W. 9 Bhola Jha is an employee of the P.W.D. who had gone to the Bank on the alleged date of occurrence to withdraw the money. His evidence is that he heard the sound of firing and there was commotion in the Bank. He also saw that the Bank Guard was attacked and saw a man lying dead near the gate. He, however, could not identify the Appellants in the dock.

9. P.W. 11 Motiur Rahman is another shop-keeper who had participated in chasing the dacoits and apprehended the absconding accused, namely, Bhagwan Jha with revolver and produced him before the police. He also saw the dacoits fleeing away in Maruti Van which was chased by the police and he also accompanied the police party in chasing but he returned back from mid way after Keluahi because the Jeep chasing the dacoits became out of order. He further stated that the police brought four dacoits, who had fled away in the Maruti Van and he had seen them at the Police Station. He further deposed that the Chaukidar was killed in the alleged occurrence of dacoity. He identified Ajay Kumar Mahto, Amar Nath Chaudhary, Munna Mian and Jagjeet Jha in the dock. In cross-examination, he stated that he saw Jagjeet Jha for the first time at the Police Station at 5 p.m. and he had not seen the other accused sitting in the Maruti Van. so he could not say about other accused that whether they were the same persons who fled away in the Maruti Van. So, his evidence on the point of identification of the Appellants becomes shaky. P.W. 11 admitted that the Appellants were not arrested in his presence.

10. P.W. 8 Raghav Saran Datta is the informant of this case, who has supported

the prosecution story by stating that on 10.10.96 at 11 a.m. while he was in the Bank, he heard the sound of firing and also heard warning sound of one dacoit who was saying "Heelo Mat Nahi To Maar Denge". He has also stated that the dacoits tried to snatch the gun from the Bank Guard Prabhu Nath Sah and one of the Bank staff namely, Anil Sharan Singh (P.W. 12) tried to resist, whereupon, one of the culprits fired upon him and the shot hit the Bank Guard. He further stated that the culprits snatched the gun and again fired upon Sri Singh but he escaped and the shot passed through after making a hole in the Almirah. Thereafter, the culprits entered in the Bank but could not get anything. In the meantime, the customers started running and jammed the gate of the Bank where one of the dacoits fired which hit the Chaukidar, namely, Dukh Haran Paswan, who died instantaneously. He also stated that the bridge support of the gun and the empty cartridges were lying and the dacoits went near the cage of the Cashier and demanded money from the Cashier, namely, Anand Kumar, who raised his hand. He further deposed that four dacoits boarded on Maruti Van and fled away towards Jai Nagar road, whereas, two of them were apprehended by Saukhi Paswan and Motiur Rahman on chase who disclosed their names as Rajesh Gupta and Bhagwan Jha. P.W. 8 has proved the written report which was submitted at the Police Station (Exhibit-2). He also stated that the Bank Guard Prabhu Nath Sah and the bank employee Anil Sharan Singh were sent to Madhubani Hospital for treatment. He, however, could not identify the accused persons facing the trial.

11. The evidence of P.W. 12 Anil Sharan Singh also goes to show that he heard the sound of firing and alerted the Bank employees. He also stated that one of the dacoits was snatching the gun from the Bank Guard, so, he went near him for his rescue and was assaulted from behind. He has stated that due to assault he became unconscious, so, could not identify the dacoits.

12. P.W. 13 Parmeshwar Roy has deposed that on 10.10.96 a dacoity was committed in the State Bank of India, Rahika Branch in which a Chaukidar was killed but he did not identify any dacoits.

13. P.W. 14 Prabhu Nath Sah is the Bank Guard, who has deposed that on 10.10.96 at 11.05 a.m. while he was on duty some persons came and caught hold of his gun. In course of snatching the gun he was shot at and became unconscious, so, he could not identify any dacoits.

14. From the evidence of P.W. 8, it would appear that he has supported the alleged occurrence of attempt to commit dacoity in the Bank in which Chaukidar was killed and the Bank Guard as well as one of the Bank employee were injured. He has also supported the prosecution story that four dacoits fled away in a Maruti Van and two of them were caught on chase by the members of the mob who had assembled in front of the Bank on hearing the hue and cry. The evidence of other bank employees as also the witnesses (P.Ws. 1 to 15) if read together amply goes to prove the fact that an occurrence of attempt to commit the robbery in the Bank was committed by the dacoits in course of which the

Chaukidar was killed and two employees of the Bank were injured. But, on the point of identification of the dacoits, witnesses (P.Ws. 1 to 15) have declined to identify the Appellants in course [of trial.

15. After having reached to the con-delusion that the prosecution had proved its case as regards the attempt to commit the robbery in the Bank on the alleged date and time of occurrence, would first of all take up the case of the Appellant Devendra Mishra (Criminal Appeal No. 309 of 1999), who has been convicted by the trial Court u/s 399 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years.

16. The only witness who has deposed against the Appellant Devendra Mishra is P.W. 10 Satya Narain Singh, who is the driver of the Maruti Van bearing No. UP-53-B 7032. The statement of this witness was also recorded u/s 164 Code of Criminal Procedure by P.W. 30 Man Mohan Choudhary, Judicial Magistrate, Madhubani, who has proved his statement (Exhibit-24). P.W. 10 has deposed that the vehicle belonged to one Madhu Singh of Dalsinghsarai which* was hired on rental of Rs. 200/- per day and he had come to Madhubani with accused Bhagwan Jha and Munna Mian and had stayed in the house of a man whom he could not name but pointing at accused Devendra Mishra, he stated that he had stayed in his house. He further stated that three persons had come on his vehicle. He also admitted that he had given his statement u/s 164 Code of Criminal Procedure. On perusal of the statement of P.W. 10 recorded u/s 164 Code of Criminal Procedure. it would appear that the Maruti Van was hired on 7.10.96 at 1.30 p.m. on which Jagjeet Jha, Bhagwan Jha, Rajesh Gupta boarded and came to Bachwara from Dalsinghsarai, where they stayed at the house of Jagjeet Jha. On 8.10.96, P.W. 10 proceeded for Barauni along with the aforesaid persons and they picked up Munna Mian from Simariya Pool who also boarded in his car. From there all of them came to Madhubani but on the way Jagjeet Jha got down near Zero Mile. He further stated that when he proceeded for Madhubani from Darbhanga, accused Amar Nath Jha met Bhagwan Jha near the bridge and boarded in his car. All of them came to Madhubani at 8.00 p.m. and accused Bhagwan Jha managed his stay at the house of one of his relatives, namely, Devendra Mishra, where P.W. 10 stayed in the night and accused Amar Nath Choudhary, Munna Mian, Rajesh Gupta went to stay in a hotel. Accused Bhagwan Jha also stayed in the house of Devendra Mishra. He further stated that on 9.10.96 he took the Car in motor garage for repairs and again returned back along with Bhagwan Jha and stayed in the house of accused Devendra Mishra. On 10.10.96, Amar Nath Choudhary took away his vehicle on the pretext of meeting with an Officer but did not return back till evening. So, he expressed his anxiety to Devendra Mishra, who told him that he might have gone some where and will return back. P.W. 10 further stated that on being asked by Devendra Mishra, he left for Dalsinghsarai at about 6-7 p.m. and made enquiry from the owner of the vehicle who replied that the vehicle had not reached there, so, on the following day he went to the village home of Amar Nath Choudhary but did not find the vehicle there, so, he informed Dalsinghsarai Police in that connection.

17. Thus, it would appear that save and except that P.W. 10 stayed in the house of Devendra Mishra from 8.10.96 to 10.10.96 at the instance of accused Bhagwan Jha, who happened to be relative of accused Devendra Mishra, there is no other evidence against the Appellant Devendra Mishra.

18. Learned Counsel appearing for the Appellant Devendra Mishra strenuously argued that the prosecution has miserably failed to prove the charge u/s 399 of the Indian Penal Code against the Appellant, inasmuch, as the evidence on record does not show that the Appellant Devendra Mishra had made any preparation for committing dacoity as there is no evidence which may show that accused Devendra Mishra made any plan or took part in any conspiracy for committing dacoity in the Bank. Learned Counsel submitted that the only fault on the part of the Appellant was that he allowed the Driver to stay in his house at the instance of one of his relatives, namely, Bhagwan Jha, without knowing at all that with what purpose Bhagwan Jha came to his house and simply on this score accused Devendra Mishra can not be held liable for committing offence u/s 399 of the Indian Penal Code. It was pointed out that culprits started from Dalsinghsarai on 7.10.96 and came to Madhubani in the night of 8.10.96 and till the arrival of the driver at the house of accused Devendra Mishra, he was nowhere in the picture. Similarly, the driver has not whispered a word that accused Devendra Mishra was with the culprits making any conspiracy or plan for committing dacoity. There is not an iota of evidence like that. As such, by no stretch of imagination it can be said that the prosecution had established the charge against the accused Devendra Mishra u/s 399 of the Indian Penal Code.

19. Considering the evidence on record, as stated above, am also of the view that the prosecution had miserably failed to prove the charge u/s 399 of the Indian Penal Code against accused Devendra Mishra and simply because he allowed the driver to stay in his house at the instance of his relative Bhagwan Jha, it can not be said that he had made any preparation for committing the alleged dacoity. As such, am of the view that the conviction of the Appellant Devendra Mishra u/s 399 of the Indian Penal Code can not be sustained and the same is liable to be set aside. Accordingly, the order of conviction and sentence recorded by the trial Court against the Appellant Devendra Mishra is set aside and he is held not guilty to the charge u/s 399 of the Indian Penal Code.

20. Adverting to the cases of Appellants Ajay Kumar Mahto and Amar Nath Chaudhary (Criminal Appeal Nos. 312 and 313 of 1999), it may be stated at the outset that according to the prosecution case, the Choukidar on the alleged date and time of occurrence was shot at by one of the dacoits near the gate of the Bank and he died instantaneously after receiving the injuries. The informant and other witnesses have proved this fact.

21. P.W. 16 Dr. B.N. Jha conducted the post mortem examination on the dead body of the deceased, namely, Dukh Haran Paswan on the day of the alleged occurrence itself and found the following ante mortem injuries on his person:

I. One circular wound on left side of forehead 2 millimeter in diameter with inverted margin into cranial cavity which was wound of entry.

II. One wound 3 millimeter x 3.5 millimeter cranial cavity with inverted margin in the occipital region which was wound of exit.

In the opinion of the doctor, death was caused due to shock and haemorrhage on account of injuries to the brain substance caused by fire arms.

22. P.W. 16 has proved the post mortem report (Exhibit-4) and there is nothing adverse to comment in his evidence. Therefore, this fact is established from the post mortem report that the Chaukidar, namely, Dukh Haran Paswan died as a result of the fire arm injuries attributed to one of the dacoits in course of the alleged occurrence.

23. It is the case of the prosecution that Bank Guard and Anil Sharan Sinha (P.W. 12) also sustained fire arm injuries in course of dacoity. P.W. 12 has also stated that when he tried to save the Guard, somebody assaulted him on his head and shoulder from behind as a result of which he became unconscious and regained consciousness at Madhubani Hospital and from there he was referred to Medical College Hospital at Darbhanga. Similarly, P.W. 14 Prabhu Nath Sah has also testified to the effect that in course of snatching the gun he sustained fire arm injuries on his abdomen and thereafter he became unconscious.

24. The evidence of P.W. 17 Md. Kafeel shows that he had examined both the injured at Madhubani Sadar Hospital and found the following injuries on the person of Prabhu Nath Sah:

I. Wound of entry at lower chest 1/2" diameter.

II. Wound of exit on left lower chest 3-1/2" in diameter.

25. On the same day he examined Anil Sharan Singh (P.W. 12) and found following injuries on his person:

I. Bruise on back right side 1" in diameter.

II. Bruise on left shoulder 1-1/2" in diameter.

III. Bruise on right side of face in front of right ear.

IV. Complain of pain throughout the body.

P.W. 17 has proved the injury report of both the injured (Exhibits-6 and 7).

26. The evidence of P.W. 17 Dr. Md. Kafeel corroborates the prosecution story as regards the assault on P.W. 12 and P.W. 14 by the dacoits and both the witnesses have also testified to this effect.

27. From the evidence of P.W. 8, it would appear that four dacoits fled away in a white coloured Maruti Van parked outside the Bank which proceeded towards Jai Nagar road and two dacoits, namely, Rajesh Gupta and Bhagwan Jha, were

apprehended on chase by the witnesses.

28. The most important witness in this case is P.W. 28 Rajendra Prasad Sah, who was the Officer In Charge of Rahika Police Station on the alleged date of occurrence and is the I.O. of this case. He has deposed that on the alleged date of occurrence at about 11.00 a.m. an unknown man gave information at the Police Station that dacoity is being committed in the Bank, so, on getting the information he along with S.I. I. Ahmad (P.W. 22) rushed to the Bank on motor cycle and as soon as he reached near Vidyapeeth Chawk, people told him that four culprits have fled away on a white coloured Maruti Van and have gone towards Jai Nagar road, so, the I.O. proceeded to chase the Maruti Van along with the A.S.I. Pitamber Rai (P.W. 23) and one villager. When he proceeded towards Nazipur from Keluahi Chawk and had covered about half kilometer from that place, he spotted a white coloured Maruti Van going in high speed. He tried to overtake the van and also gave warning to the culprits to surrender by saying that they have been surrounded from both the sides but the Van sped away fastly and due to the bad condition of a bridge he lost the balance of the motor cycle and the motor cycle fell down on the road and he was injured. Another motor cycle on which other persons were following also fell down in water in a bid to cross the bridge. The A.S.I. Pitambar Roy (P.W. 23) also sustained injuries but S.I. I. Ahmad and A.S.I. Pitamber Roy got up and followed the Van. The I.O. also took lift on the motor cycle of a villager and chased the culprits. He met the Officer In charge of Keluahi P.S. on the way and informed him that the dacoits are fleeing away on the Maruti Van and boarded on the motor cycle of Officer-In-charge of Keluahi P.S. and chased the culprits. P.W. 28 further stated that the culprits abandoned the Maruti Van and tried to escape through the paddy field, so he as well as other police personnel chased them from different direction. When the I.O. reached near Dokhar temple, he met a female who was returning back after cutting grass who informed him that she had seen the dacoits in Sripatti Sareh. The police party proceeded in that direction and tried to search the culprits in the paddy field but could not get any trace. So, again they made enquiry from the villagers who informed that dacoits were seen near Kosi Baraj. The informant and other police personnel went in that direction and met two village boys, namely, Sunil Kumar Thakur and Ranjit Kumar, who informed that they had seen 3-4 persons concealing themselves in Rahar field. They also informed the police party that one of them was armed with a gun. On getting this information, the police party along with those two boys went in the Rahar field and saw one man who was fleeing away. There was no cloth on the person of that man who fired upon the police party from his country made revolver. The I.O. also returned the fire in self defence and ultimately, that man was caught in a paddy field situated to the west of Kosi Baraj. The I.O. seized one country made revolver, four live cartridges from the possession of that man and seized an empty cartridge. The arrested man disclosed his name as Ajay Kumar Mahto of Begusarai. He also disclosed that his other associates are hiding in Rahar field, so, the police officers and the villagers started searching them. One of the

culprits fled away towards Nahar who was chased and caught by S.I.I. Ahmad, A.S.I. Pitambar Roy, Mahesh Pd. and Paramhansh Prasad. The arrested man disclosed his name as Subodh Singh and from his possession a country made pistol and eight live cartridges were recovered which was seized. Accused Munna Mian was arrested by A.S.I. Ram Krishna Rabi Das and the members of the police force. The police also seized the clothes of accused Ajay Kumar Mahto and Subodh Singh from the field on being pointed out by them and prepared the seizure list in presence of the witnesses, namely, Mohan Rai (P.W. 20) and Pawan Kumar Jha (P.W. 19). P.W. 28 has further stated that S.I. Vishram Das, Officer In charge of Jai Nagar P.S., S.I. A.K.N. Singh, A.S.I. Upendra Paswan also reached there and arrested another dacoit from the Rahar field of Muni Kant Jha and recovered seven cartridges of 315 Bore from the possession of that dacoit who disclosed his name as Amar Nath Choudhary. The police seized those cartridges in presence of the witnesses. The Officer-in-Charge of Raj Nagar P.S., namely, Sita Ram Paswan also came there and P.W. 28 learnt from him that a dacoit has been arrested and from his possession the looted double barrel gun of the Bank was recovered.

29. P.W. 28, who is also the I.O. of this case inspected the place of occurrence. According to him, the place of occurrence is the open land situated in front of the gate of the Bank where he found copious blood and also found the bridge barrel support of the gun bearing No. 8302321 and at a distance of 50 yards on the road a bag of red cloth containing nine live cartridges of 38 bore and 16 live cartridges of 9MM kept in a red bag were seized by him. Besides that, the I.O. also found an empty cartridge of 9 MM near the northern wall adjacent to the gate of the Bank and another empty cartridge of 9 MM lying near that place. The I.O. also found a hole in the Godrej Almirah kept inside the Bank and recovered two live cartridges of 9MM lying on the floor. He further found two empty cartridges of 9MM from the room of the Manager. Accused Bhagwan Jha and Rajesh Gupta, who were caught by the villagers were seen by the I.O. in injured condition, so, he prepared the injury report for their treatment. P.W. 28 further stated that Dr. P.K. Jha handed over to him two live cartridges and a map which he seized and prepared the seizure list in presence of the witnesses. P.W. 28 has further stated that a junior-Sub-In-specter of the Police Station handed over to him a revolver of nine chambers of foreign make which he seized and prepared the seizure list. He also seized the Maruti Van and sent the imported revolver to Sergeant Major, Madhubani, for examination, which was later on sent to Forensic Science Laboratory for examination. P.W. 28 has proved the seizure list prepared by S.I. Rajendra Mishra in presence of Mohan Rai and Pawan Kumar Jha (Exhibit-16) on which accused Ajay Kumar Mahto had put his signature. The seizure list of the Maruti Van has been marked-X for identification. He has also proved the seizure list prepared by Mahesh Prasad (Exhibit-X/1) and the seizure list prepared by Radha Mohan Mishra (Exhibit-X/2), the seizure list prepared by the S.D.R.O. (Exhibit-X/3). The seizure list was handed over to him by S.I. Vishram Das of Jai Nagar RS. (Exhibit-12). The seizure list of the article seized at

the P.O. has been marked as Exhibit-17. The seizure list of the clothes seized by Rajendra Mishra has been marked as Exhibit-18 and the map produced by Dr. P.K. Jha has been marked as Exhibit-X/4 for identification. The endorsement of Dr. P.K. Jha and the signature of the witnesses made on the seizure list (Exhibit-19) have been marked as Exhibits-19/1 to 19/3.

30. The I.O. has further stated in his cross-examination that the report received from Forensic Science Laboratory, Bihar disclosed that the imported revolver sent to the Forensic Science Laboratory was a foreign make regular revolver having nine chambers and he produced the revolver from the sealed cover received from the Director, Forensic Science Laboratory, Bihar. He also produced the empty cartridges (Exhibits-Y to Y/7) after breaking the seal of the box of Forensic Science Laboratory. He also proved the seizure list in respect of 16 cartridges of 9MM seized by Radha Mohan Mishra (Exhibit-17) and those cartridges were marked Exhibit-Y/9 for identification. Similarly, he also produced cartridges seized in course of investigation which have been marked Exhibits-Y/10 to Y/12.

31. The I.O. has stated that he had seized a revolver of six chambers from the possession of accused Ajay Kumar Mahto and Rajendra Mishra, Officer-in-Charge of Keluahi P.S. had prepared the seizure list in respect of the revolver on which he had also signed (Exhibit-16). The revolver was marked as material Exhibit-I and the cartridges seized alongwith the revolver have been marked as material Exhibits-II to V. He has proved the signature of Ajay Kumar Mahto (Exhibit-16/1) on the seizure list. Seven cartridges of rifle seized by S.I. Vishram Das (vide Exhibit-12) were identified by him and the same has been marked as material Exhibits-VI to VI/6. Similarly, he has identified the eight live cartridges seized by S.I. Sita Ram Paswan (Vide exhibit-17) and the same has been marked as material Exhibits - VIII to VIII/7.

32. P.W. 28 has stated that he had arrested accused Ajay Kumar Mahto and had recovered a sixer from his possession and he also identified accused Ajay Kumar Mahto in the dock. He also identified accused Amar Nath Chaudhary, who was arrested by Vishram Das, Officer-in-charge of Jai Nagar P.S. and was handed over to him. He also identified accused Munna Mian in the dock and stated that he was arrested by the S.D.P.O. and other police personnel along with looted gun of the Bank (vide seizure list Exhibit-21).

33. In cross-examination, P.W. 28 has stated that the details of the articles seized from the possession of dacoits along with their respective places have been mentioned in separate seizure lists. He asserted that the articles were recovered from the possession of Amar Nath Chaudhary in his presence and on his direction the seizure list was prepared. He further asserted that he seized a country made revolver from the possession of accused Ajay Kumar Mahto and the seizure list was prepared under his signature. He has admitted that there is no seal on the revolver (material Exhibit-I) but the details have been written on a piece of paper which has been pasted on the revolver and it has been written on the piece of paper that the revolver was seized from the possession of accused

Ajay Kumar Mahto. By showing material Exhibits-II to V, it was asked to the I.O. whether the numbers are same to which he replied in affirmative. He has given the details of the number written on material Exhibits-II to V.

34. P.W. 28 has stated that Ajay Kumar Mahto and Amar Nath Choudhary were produced in the Court on 12.10.96, whereas, Munna Mian was produced after lapse of several days because he was under treatment. The I.O. was cross-examined at length and nothing has been elicited so as to dis-believe his evidence.

35. The next most important witness is S.I. I. Ahmad (P.W. 22), who had also chased the Maruti Van along with the informant. His evidence fully corroborates the evidence of P.W. 28 and he has made consistent statement as regards the arrest of accused Amar Nath Chaudhary, Ajay Kumar Mahto, Munna Mian and Subodh Singh as also the seizure of arms and ammunitions made by different police Officers from their possession. He has stated that he arrested Subodh Singh and he had not seen that which accused was arrested by which police Officer. It may be pointed out that according to P.W. 28 also accused Subodh Singh was arrested by P.W. 22 with the help of other police personnel and a country made pistol along with eight live cartridges were recovered from his possession. P.W. 22 has also stated that accused Amar Nath Chaudhary was arrested and was brought by Chandrama Singh. Accused Munna Singh was also arrested by the Police Officers and from his possession a gun belonging to Rahika State Bank of India was recovered. He also identified accused Amar Nath Chaudhary and Munna Mian in the dock. He further stated that when he returned back to the Police Station, accused Ajay Kumar Mahto was brought by the police personnel and he identified Ajay Kumar Mahto in the dock.

36. P.W. 24 Vishram Das, who was posted as Officer-in-charge of Jai Nagar RS. on the alleged date of occurrence has deposed that he received information on telephone that a dacoity has been committed in Rahika State Bank of India and the dacoits have fled away towards Jai Nagar on a Maruti Van, so, he alongwith other police personnel proceeded towards Keluahi and arrested one dacoit, namely, Amar Nath Chaudhary from a Rahar field and from his possession he seized seven cartridges of 315 Bore and prepared the seizure list (Exhibit-12). He also identified accused Amar Chaudhary in the dock. In his cross-examination P.W. 24 has stated that he was not known to accused, namely, Amar Nath Chaudhary, Ajay Kumar Mahto and Munna Mian from before.

37. P.W. 26 Chandrama Singh is another witness who participated in chasing and apprehending the dacoits and he has also testified that Dy S.R along with other police personnel had arrested one accused, namely, Munna Mian and had recovered a double barrel gun belonging to State Bank of India, Rahika Branch, from his possession. He also identified accused Munna Mian in the dock.

38. P.W. 27 Radha Mohan Mishra has stated that he had prepared the seizure-cum-production list (Exhibits-13 to 13/3) in respect of the articles seized by the

different police Officers. He also stated that Md. Motiur Rahman had produced before him a pistol of foreign make with two loaded cartridges along with magazine and he had prepared the production list in respect thereof (Exhibit-14). He further stated that Motiur Rahman disclosed to him that he had recovered the pistol from the possession of Bhagwan Jha, who was arrested by him. Similarly, the pistol which was seized from the possession of accused Rajesh Gupta was produced by Saukhi Paswan and P.W. 27 prepared the seizure list in respect thereof (Exhibit-15).

39. Learned Counsel appearing on behalf of Appellants, namely, Ajay Kumar Mahto and Amar Nath Chaudhary submitted that there is no evidence to show that these Appellants committed robbery nor there is any witness who saw them fleeing away in the Maruti Van. No witness has come forward to say that he identified these Appellants sitting inside the Maruti Van or fleeing away in the Van. There is also no evidence to the effect that who shot fire upon the chaukidar or the Bank Guard as also the Assistant Manager. The employees of the Bank, who were the best witnesses to identify the dacoits have not stated about the Appellants and several seizure list witnesses have turned hostile. Therefore, the seizure or arms and ammunitions as deposed by the police witnesses becomes doubtful. As such, it was submitted that the prosecution had not proved the charge against the Appellants Ajay Kumar Mahto and Amar Nath Chaudhary beyond all reasonable doubts.

40. It is true that the witnesses who are the employees of the State Bank of India have not identified the Appellants, namely, Ajay Kumar Mahto and Amar Nath Choudhary and it is also true that nobody had identified the Appellants while boarding on the Maruti Van or fleeing away from the place of occurrence. In other words, there is no evidence on the point of identification so far the first part of the alleged occurrence relating to attempt of committing dacoity in the Bank and fleeing away in the Maruti Van is concerned. But, from the evidence on record it is well established that an attempt to commit robbery had taken place in the Bank on the alleged date and time of occurrence in course of which the Bank Guard and Chaukidar were shot at by the dacoits and out of them the Chaukidar succumbed to the injuries, whereas, the Bank guard was saved. It would further appear from the evidence on record that on halla raised by the Bank employees and the customers the dacoits fled away from the Bank premises and four dacoits boarded on a white coloured Maruti Van, whereas, two dacoits ran away but on chase both of them were arrested with fire arms by the independent villagers and those two dacoits who were arrested by the villagers with arms were Rajesh Gupta and Bhagwan Jha, who were handed over to the police. It is also well established from the evidence of the witnesses that soon after the occurrence the Officer-in-Charge of Rahika P.S. alongwith A.S.I, reached at the P.O. where he learnt from the witnesses that four dacoits have fled away toward Jai Nagar road on a white coloured Maruti Van where upon he chased the dacoits on motor cycle. It further appears from the evidence on record that the news of dacoity having been committed in the Bank premises was flashed on

telephone and wireless to other Police Stations and the police personnel of Jai Nagar, Keluahi and Madhubani Police Stations proceeded to chase the dacoits and in course of chase they noticed the white coloured Maruti Van which was abandoned by the dacoits. After leaving the vehicle, the dacoits tried to escape through the paddy field and the police party searched for them on getting the clue from the villagers as also from two children who disclosed to the police that dacoits have concealed themselves in the Rahar field and ultimately, the police succeeded in arresting accused Ajay Kumar Mahto and Amar Nath Chaudhary, Munna Singh and Subodh Singh and also recovered arms and ammunitions from their possession and the seizure lists as referred to above were prepared by the respective police Officers. The Police also recovered the clothes worn by the dacoits which they had thrown in the Rahar field. P.W. 28 has stated that a separate case was registered at Raj Nagar P.S. because the seizure of the fire arms were made in the jurisdiction of Raj Nagar P.S. except the double barrel gun of the State Bank of India.

41. It may also be pointed out in this connection that accused Amar Nath Chaudhary belongs to Samastipur and Ajay Kumar Mahto belongs to Begusarai and no explanation has been submitted on their behalf as to how they were present in the Rahar field from where they were arrested. As such, it would appear that there is chain of circumstances which go to show the nexus between the alleged commission of dacoity and the arrest of Appellants Ajay Kumar Mahto, Amar Nath Chaudhary, Munna Mian and Subodh Singh and recovery of fire arms and ammunitions from their possession further goes to prove the fact that they had gone to commit the dacoity in the Bank being armed with fire arms and after the occurrence they fled away on the Maruti Van parked outside the Bank which was seized by the Police from near the place of arrest of the above named four accused. Therefore, even if no witness of the Bank has identified the Appellant Ajay Kumar Mahto and Amar Nath Chaudhary nor any body saw them boarding in the Maruti Van that will not impair the case of the prosecution in any way and the arrest of Amar Nath Chaudhary and Ajay Kumar Mahto with arms and ammunitions would conclusively prove the fact that after making attempt to commit dacoity in the Bank they fled away in the Maruti Van and were arrested with arms and ammunitions on being chased by the Police Officers of different Police Stations. The statement of the driver of the Maruti Van, namely, Satya Narain Singh recorded u/s 164 Cr.P.C. by P.W. 30 further goes to show that the Van was taken on hire on which Bhagwan Jha, Rajesh, Munna Mian, Amar Nath Chaudhary had boarded and in the morning of 10.10.96 Amar Nath Chaudhary went away with the Maruti Van which was subsequently used in the commission of dacoity and was seized by the Police in course of chase.

42. In my view, even if some of the independent witnesses of the seizure list have turned hostile, that will not affect the prosecution case in view of the fact that the police officials who had seized the respective arms and ammunitions from the Appellants as well as other accused have consistently deposed about the search and seizure made by them and the arms and ammunitions were also

produced in the Court as material exhibits. In such view of the matter, there appears no reason to disbelieve the testimony of the police officials, who had seized the arms and ammunitions from these Appellants and other accused. must say that it is a rare case in recent days where the police acted so promptly and arrested the dacoits with arms and ammunitions at the cost of taking great pains. Therefore, there appears no reason to dis-believe the evidence of the Police Officials, who have deposed on oath without being unshaken in their cross-examination that they had arrested the Appellants, namely, Ajay Kumar Mahto and Amar Nath Chaudhary with arms and ammunitions and the facts and circumstances of case prove beyond any doubt that the Appellants along with their associates had fled away after making attempt to commit dacoity in the Bank.

43. Regard being had to all the facts and circumstances of the case, find and hold that the prosecution had proved its case beyond all reasonable doubt by strong circumstantial evidence. The chain of circumstances as discussed above conclusively point out to the guilt of the Appellants Ajay Kumar Mahto and Amar Nath Choudhary.

44. The learned trial Court has convicted the Appellants Amar Nath Choudhary and Ajay Kumar Mahto u/s 396 of the Indian Penal Code read with Section 25(i) (a) of the Arms Act. In my view, the Appellant Ajay Kumar Mahto and Amar Nath Choudhary are liable for committing offence u/s 396/34 of the Indian Penal Code since there is nothing specific against them that the deceased died as a result of firing by them. Therefore, the conviction of the Appellant Amar Nath Chaudhary and Ajay Kumar Mahto is altered to 396/34 of the Indian Penal Code in place of 396 of the Indian Penal Code. In view of the evidence on record, their conviction u/s 25(i)(a) of the Arms Act does not require any interference. Accordingly, the order of conviction as recorded by the trial Court against Appellant Amar Nath Chaudhary and Ajay Kumar Mahto is upheld with the aforesaid modification.

45. On the point of sentence, it was submitted that the Appellant Amar Nath Chaudhary and Ajay Kumar Mahto are the first offender. Hence, a lenient view may be taken in awarding sentence to them. But the facts and circumstances of the case in which Chaukidar was killed and the Bank Guard narrowly escaped death and the dacoits also fired upon the Bank employee (P.W. 12) as well as the police personnel, am not inclined to take a lenient view. As such, no interference is called for in the sentence awarded to the Appellants Ajay Kumar Mahto and Amar Nath Chaudhary. Accordingly, the order of sentence as recorded by the trial Court against Ajay Kumar Mahto and Amar Nath Chaudhary is hereby confirmed.

46. In the result, do not find any merit in Criminal Appeals No. 312 and 313 of 1999 which stand dismissed and Criminal Appeal No. 309 of. 1999 is allowed. Appellant Devendra Mishra (Cr. Appeal No. 309/99), who is on bail, is discharged from the liabilities of his bail bond. Appellant Ajay Kumar Mahto (Cr. Appeal No. 312/99) and Amar Nath Chaudhary (Cr. Appeal No. 313/99), who are in jail shall serve out the remaining part of the sentence.

Bal Krishna Jha, J.

47. I agree.