A RAM SUNDER MAHTO AND ORS.

v.

STATE OF BIHAR

(Criminal Appeal No. 503 of 2003)

OCTOBER 7, 2009

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[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Penal Code, 1860 – s.395 – Dacoity – Loot of Rs.2860, in cash, one "lota" and one glass – Fourteen accused – Two C *persons suffered fire-arm injuries – Four accused i.e. the appellants convicted by trial Court and sentenced to five years imprisonment – Dismissal of their appeal by High Court – Appellants thereafter taken into custody for about one year – On appeal, held: All appellants are in their old age and have* D *already suffered for 28 years since the offence took place – The loot was insignificant – Appellants did not cause any injury to any witness – They deserve lenient treatment – Sentence of appellants reduced to 3 years.*

In a case of dacoity involving loot of Rs.2860/- in E **cash, one lota and one glass, two persons suffered fire-arm injuries. There were fourteen accused. Four accused i.e. the appellants were convicted by the trial court u/s.395 IPC and sentenced to five years imprisonment. The conviction was upheld by the High Court. After dismissal** F **of the appeal, the appellants were taken into custody and remained behind bars for about one year.**

In appeal to this Court, the question which arose for consideration was whether considering that the loot was G **relatively insignificant and that all the appellants were in their old age and had already suffered for 28 years after the offence took place, they deserved lenient treatment.**

Disposing of the appeal, the Court

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HELD: 28 years have already elapsed since the offence took place and the accused persons are suffering for all those 28 years. During course of the dacoity, two persons suffered injuries by fire-arm. However, the person who had handled fire-arm though was convicted has not filed any appeal, i.e. the original A-2. Considering the evidence, it is found that all these accused persons might have been present during the dacoity but have not caused any injury to any witnesses. In that view of the matter, the sentence is reduced to three years. The appellants are directed to surrender to serve out the remaining sentence. [Paras 2 and 3] [1128-C-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 503 of 2003.

From the Judgment & Order dated 12.8.2002 of the High Court of Judicature at Patna, in Crl. Appeal No. 645 of 1987.

Shekhar Prit Jha, C. Selvaraj for the Appellants.

Anuj Prakash, Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

V.S.SIRPURKAR, J. 1. This appeal is filed by the four accused persons who have been convicted for the offence punishable under Section 395, Indian Penal Code (in short 'IPC') and have been sentenced to suffer rigorous imprisonment for five years. Considering their identification in the test identification parade and the evidence led before the trial court, the trial court convicted 11 persons out of 14 accused persons and awarded life sentence for their offence. These 11 accused persons having appealed before the High Court, the High Court allowed the appeal of five persons namely Panchu Mahto, Bilas Baitha, Thaga Mahto, Deo Narain Mahto and Ganeshi Mahto and acquitted them. The High Court took the view that they being very old, they should be sentenced only to suffer rigorous

A imprisonment which they had already undergone. Two other accused were let off on undergone sentence.

After the dismissal of the appeal, these accused persons were taken into custody and remained behind bars for about one year. Learned counsel for the appellant argues before us
B that the loot was relatively insignificant as it was only of Rs. 2860/- cash, one lota and one glass. It is also pointed out that now the accused persons namely Ram Sunder Mahto, Ram Lagan Mahto, Bindeshwar Mahto and Ram Ekbal Mahto are 78, 73, 68 and 58 years of age respectively .

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2. Considering the overall circumstance, we are of the opinion that the accused persons deserves lienent treatment. In that, we have considered that the 28 years have already elapsed since the offence took place and the accused persons
D are suffering for all those 28 years. It was pointed out before us by the State counsel that during the course of the dacoity two persons have been injured and have suffered injuries by fire-arm. However, we are informed that the person who had handled fire-arm though was convicted has not filed any appeal,
E i.e. Arun Kumar Singh, the original A-2. Considering the evidence we find that all these accused persons might have been present during the dacoity but have not caused any injury to any witnesses. In that view of the matter we reduce the sentence which has been awarded by the High court to that of
F three years.

3. With this modification, the appeal is dismissed. The bail bonds of the accused appellants are cancelled. The appellants are directed to surrender within two weeks from today to serve out the remaining sentence failing which the non-bailable
G warrants shall be issued against them by the concerned court for their arrest.

B.B.B. Appeal disposed of.