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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1065 of 2014**

1. Ritesh Sahu s/o Keshavchand Sahu, aged about 25 years, R/o Baramkela, PS Baramkela, Civil & Revenue District Raigarh, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, CG

---- Respondent**CRA No. 428 of 2015**

1. Arun Kumar Swarnkar S/o Shri Sadharam Swarnkar, aged about 51 years, R/o Village Baramkela, PS & Tahsil Baramkela, District Raigarh, Civil & Revenue District Raigarh, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, CG
2. Sanjay Pradhan @ Singbabu @ Santosh Jena S/o Pitambar @ Duryodhan Jena, aged about 50 years, R/o Village Rehdakhol, District Sambulpur (Orissa) at present Cement Nagar Colony, Bargarh, PS & District Bargarh (Orissa)
3. Mahesh Bagrathi @ Doctor S/o Mana Bagrathi, aged about 24 years, R/o Village Ghunghutipali, PS Dongaripali, District Sonpur, at present Aikamber Chauk, Vijaypur Road, Bargarh, District Bargarh, (Orissa)
4. Navin Thakur @ Thakur S/o Akhilesh Thakur, aged about 38 years, R/o Village Andi, PS Dongargarh, District Rajnandgaon, at present Hirakund First Camp Colony, Hirakund, District Sambalpur (Orissa)
5. Muna Sahu @ Pilate S/o Nilmani Sahu, aged about 22 years, R/o Village Kantapali, PS & District Bargarh (Orissa)

6. Satish Kumar Sahu @ Raki @ Raja S/o Shravan Kumar Sahu, aged about 21 years, R/o Village Kantapali, PS & District Bargarh (Orissa)
7. Vikaschand Rai @ Vikki @ Deepak S/o Nityanand Rai, aged about 23 years, R/o Village Kishanpuri Near Hanuman Mandir, Bhathali, PS Bhathali, District Bargarh (Orissa)
8. Ritesh Sahu S/o Keshavchand Sahu, aged about 25 years, R/o Village Baramkela, PS Baramkela, District Raigarh, CG.
9. Amitdas @ Gurudewa Munda S/o Rangnath, aged about 30 years, R/o Village Duduwasira, PS Town Balangir District Balangir (Orissa)

----- Respondents

AND

CRA No. 1228 of 2014

1. Sanjay Pradhan @ Singbabu @ Santosh Jena S/o Pitambar @ Duryodhan Jena, aged about 50 years, R/o Village Rehdakhol, District Sambulpur (Orissa) at present Cement Nagar Colony, Bargarh, PS & District Bargarh (Orissa)
2. Mahesh Bagrathi @ Doctor S/o Mana Bagrati, aged about 24 years, R/o Village Ghunghutipali, PS Dongaripali, District Sonpur, at present Aikamber Chauk, Vijaypur Road, Bargarh, District Bargarh, (Orissa)
3. Navin Thakur @ Thakur S/o Akhilesh Thakur, aged about 38 years, R/o Village Andi, PS Dongargarh, District Rajnandgaon, at present Hirakund Fast Camp Colony, Hirakund, District Sambalpur (Orissa)
4. Munna Sahu @ Pilot S/o Nilmani Sahu, aged about 22 years, R/o Village Kantapali, PS & District Bargarh (Orissa)
5. Satish Kumar Sahu @ Raki @ Raja S/o Shravan Kumar Sahu, aged about 21 years, R/o Village Kantapali, PS & District Bargarh (Orissa)
6. Vikaschand Rai @ Vikki @ Deepak S/o Nityanand Rai, aged about 23 years, R/o Village Kishanpuri Near Hanuman Mandir, Bhathali, PS Bhathali, District Bargarh (Orissa)

7. Amitdas @ Gurudewa Munda S/o Rangnath, aged about 30 years, R/o Village Duduwasira, PS Town Balangir District Balangir (Orissa)

---- Appellants

Versus

1. State of Chhattisgarh through Station House Officer, Baremkela, District Raigarh, CG

---- Respondent

For Appellants	:	Shri Awadh Tripathi, Shri M.K. Sinha and Shri Ajay Ayachi, Advocates
For Respondent/State	:	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board by Pritinker Diwaker, J

02/02/2018

As the aforesaid three Criminal Appeals arise out of the same judgment dated 30.09.2014 passed by Additional Sessions Judge Sarangarh, District Raigarh in Sessions Trial No. 16/2012 convicting and sentencing the accused/appellants as described below, they are being disposed of by this common judgment.

Accused/Appellant		Conviction (U/s)	Sentence
Ritesh Sahu		120-B/34 IPC	RI for 10 years with fine of Rs. 1,000/ plus default stipulation
Sanjay Mahesh Naveen Munna Satish	Pradhan, Bagarti, Thakur, Sahu, Kumar	395/34 IPC	RI for 10 years with fine of Rs. 1,000/ plus default stipulation

Sahu, Vikas Chand Rai and Amit Das		
	397/34 IPC	RI for 10 years
	27 Arms Act	RI for 03 years with fine of Rs. 500/- plus default stipulation
	120-B IPC	RI for 10 years with fine of Rs. 1,000/- plus default stipulation

2. As per the case of prosecution, complainant Arun Kumar Swarnkar (PW-1) is the proprietor of a jewelry shop styled as Ruchi Jewelers, situated at Main Road, opposite Gaytri Mandir, Baramkela, District Raigarh, who on 18.02.2012 lodged a written report (Ex. P-2) to the effect that on that day in between 9.30 and 10.30 PM, 4-5 dacoits – some masked and some not, committed dacoity of gold and silver jewelry worth Rs. 40-50 Lakhs and then moved away on a Tavera vehicle. Further case of the prosecution is that 10-15 minutes thereafter when the complainant return home, the accused persons caused injuries to him. They are also alleged to have caused gun shot injury to Jasaldas (PW-2) - the watchman of the complainant's shop. On the basis of this written report, FIR (Ex.P-1) was registered on the same day at 11.00 PM under Sections 395 IPC and 25, 27 Arms Act against 4-5 unknown persons. Injured Jasaldas (PW-2) was medically examined by Dr. D. Bohra (PW-14) vide report (Ex. P-33) mentioning typical fire-arm wound and lacerated wound with bleeding on right medial side of calf muscle and lead core was found inside the calf. Likewise, medical report (Ex.P-34) of Simran Swarnkar (PW-11) given by PW-14 shows bruise over vertex of scalp. Medical report (Ex. 35) of

Rajkumari Swarnkar (PW-9) shows bruises and abrasion over left elbow and right parietal region of scalp. During investigation, on the basis of call details the accused persons were apprehended on 4.3.2012 and arrested formally on 5.3.2012. On the basis of memorandum (Ex.P-10) of accused Sanjay Pradhan recorded on 4.3.2012, seizure of various articles like cots, almirah, fridge, TV, cycle, chair, RC book of Tavera car, number plates of vehicles, tyre of Jylo car, jacket, showcase meant for keeping ornament, monkey cap, cash of Rs. 75,000/- etc was made under Ex. P-15, P-16 and P-17. On the basis of memorandum (Ex.P-14) of accused Mahesh Bagarti recorded on 4.3.2012, seizure of various articles like Pulsor motorcycle, cash of Rs. 80,000/-, pistols and cartridges was made under Ex. P-20. On the basis of memorandum (Ex.P-12) of accused Navin Thakur recorded on 4.3.2012, seizure of one Nokia mobile phone and cash of Rs. 50,000/- was made under Ex. P-22. On the basis of memorandum (Ex.P-08) of accused Munna Sahu alias Pilot recorded on 4.3.2012, seizure of one motorcycle, cash of Rs. 20,000/- and one micromax mobile was made under Ex. P-21. On the basis of memorandum (Ex.P-13) of accused Satish Sahu alias Rocky recorded on 4.3.2012, seizure of one micromax mobile phone and cash of Rs. 01,50,000/- was made under Ex. P-19. On the basis of memorandum (Ex.P-09) of accused Vikas Chand Rai @ Vikki @ Deepak recorded on 4.3.2012, seizure of one Tavera car said to be used in the incident, cash of Rs. 01,25,000/- and a Spice mobile phone was made under Ex. P-18 and Ex. P-23.

On the basis of memorandum (Ex.P-11) of accused Ritesh Sahu recorded on 5.3.2012, no seizure is said to have been made from him. On the basis of memorandum (Ex.P-30) of accused Amit Das recorded on 2.9.2012, seizure of gold and silver ornaments was made under Ex. P-35. Test Identification Parade ("TIP" for short) vide Ex. P-4 was conducted on 5.4.2012 by Tahsildar namely Ashok Kumar Bhoi (PW-17) where the complainant (PW-1) identified accused Sanjay Pradhan @ Singbabu @ Santosh Jena, Mahesh Bagrati @ Doctor, Navin Thakur @ Thakur, Munna Sahu @ Pilot, Satish Kumar Sahu @ Rocky and Vikaschand Rai @ Vikki @ Deepak. Another TIP vide Ex. P-7 on the same date was conducted by the same person where Jasaldas (PW-2) identified two accused persons namely Sanjay Pradhan and Navin Thakur. In another TIP vide Ex. P-25 conducted on the same date and by the same person, Simaran Swarnkar (PW-11) identified five accused persons namely Sanjay Pradhan, Mahesh Bagrati, Vikaschand Rai, Munna Sahu and Navin Thakur. In yet another TIP vide Ex. P-26 conducted on the same date and by the same person, Rajkumari Swarnkar (PW-09) identified five accused persons namely Sanjay Pradhan, Mahesh Bagrati, Munna Sahu, Navin Thakur and Satish Sahu. In yet another TIP vide Ex. P-36 conducted on 23.09.2012 by Arjun Ram (PW-29), Arun Kumar Swarnkar (PW-01) identified accused Amit Das. In yet another TIP vide Ex. P-37 conducted on 23.09.2012 by Arjun Ram (PW-29), Rajkumari Swarnkar (PW-09) also identified accused Amit Das. After completion of investigation

and filing of challan, the Court below framed the charge against accused Sanjay Pradhan @ Singbabu @ Santosh Jena, Mahesh Bagrati @ Doctor, Navin Thakur @ Thakur, Munna Sahu @ Pilot, Satish Kumar Sahu @ Rocky, Vikaschand Rai @ Vikki @ Deepak and Amit Das under Sections 395/34, 397/34 and 120-B/34 IPC and 25, 27 Arms Act and against accused Ritesh Sahu under Sections 201 and 120-B/34 IPC.

3. In order to prove its case the prosecution has examined 36 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. This apart, two witnesses have also been examined by the defence.

4. It is relevant to note here that accused Kunal and Manoranjan Barad and Dilip Malik were absconding from the beginning and therefore the trial proceeded only in respect of accused No. 1 to 8 namely Sanjay Pradhan @ Singbabu @ Santosh Jena, Mahesh Bagrati @ Doctor, Navin Thakur @ Thakur, Munna Sahu @ Pilot, Satish Kumar Sahu @ Rocky, Vikaschand Rai @ Vikki @ Deepak, Ritesh Sahu and Amit Das.

5. After hearing the parties the Court below has convicted and sentenced the accused/appellants as mentioned above by the judgment impugned.

6. Counsel for the accused/appellants submit as under:

- (i) That the accused/appellants have not committed any offence and have been falsely implicated in the case.
- (ii) That the shop of the complainant was empty and no ornaments were there and therefore the question of any dacoity of gold and silver ornaments worth Rs. 40-50 Lakhs being committed therein does not arise.
- (iii) That it is only the owner of the shop and its employee who were aware as to where the ornaments were kept but no investigation took place from this angle.
- (iv) That though there was CCTV camera in the shop in question yet the prosecution has failed to collect any such evidence to substantiate its case.
- (v) That as per the case of prosecution, blood stains were found in the shop in question and some of the accused persons had also suffered injuries, the prosecution should have matched the blood found in the shop in question from that of the accused persons suffering injuries.
- (vi) That as per the evidence on record sketch of the accused persons was prepared before their arrest but none of these documents has been filed by the prosecution.
- (vii) That admittedly the almirahs fitted with glass were there in the shop but no effort was made by the prosecution to take the finger prints from the same.
- (viii) That none of the persons who identified the accused persons disclosed in his statement giving description of the

accused persons and thus the identification of the accused persons becomes doubtful.

(ix) That even proper mixing of the persons was not done at the time of TIP by the prosecution.

(x) That while making seizure, the police has shown the long list of excessive gold ornaments whereas according to the complainant himself the ornaments taken away were worth Rs. 40-50 Lakhs.

(xi) That gold ornaments belonging to the accused persons were also seized and those ornaments have also been included to be the part of crime in question.

(xii) That accused Amit Das is a goldsmith was engaged in the work of melting the gold and silver but unfortunately all his belongings have also been seized by the prosecution.

(xiii) That there are material improvements in the statements of the prosecution witnesses.

(xiv) That the Court below has completely ignored the evidence of the defence witnesses who have clearly stated that they had given ornaments to accused Amit Das for melting the same.

(xv) That the sentence imposed on the accused persons is excessive and therefore in the interest of justice the same be reduced to the period already undergone by them which comes to about six years.

(xvi) That from the evidence it is not clear as to who caused

gun shot injury and therefore the ingredients of Section 397 are not attracted to the case in hand.

(xvii) That as regards accused Ritesh Sahu, there is no evidence against him that he hatched any criminal conspiracy leading to incident of dacoity; the witnesses have just identified him to be the resident of that area but no overt act has been attributed to him.

(xviii) Reliance is placed on the decisions of the Apex Court in the matter of **Phool Kumar v. Delhi Administration** reported in **AIR 1975 SC 905** and in the matter of **Dilawar Singh v. State of Delhi** reported in **2007 (3) Crimes 388 (SC)**.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as detailed above are strictly in accordance with law and there is no infirmity in the same. He submits that in the TIP the accused persons have been duly identified by Arun Kumar Swarnkar (PW-1), Jasal Das (PW-2), Pranjal Soni (PW-7), Rajkumari Swarnkar (PW-9) and Simaran Swarnkar (PW-11). Likewise, according to him, in the Court also the accused persons have been identified by various witnesses. State counsel further submits that the looted articles have been duly seized from the possession of accused Amit Das though in the melted form and that gold ear ring and three silver anklets have been seized from him. He

submits that the description of articles so looted has been given in Ex. D-3 and that of the seized ones in Ex. P-43 and Ex. P-44. According to the State counsel, the conduct of the accused persons goes to show that they are habitual offenders and the other cases of like nature are also pending against them. According to him, gun shot injuries have been sustained by Jasaldas (PW-2) and this fact has been duly proved by the prosecution in medical report Ex. P-33. Likewise, Rajkumari (PW-9) and Simaran (PW-11) also suffered injuries in the incident and their medical reports Ex. P-34 and P-35 have been duly proved by Dr. D. Bohra (PW-14). According to the State counsel, considering the statements of the witnesses and the medical reports of the injured witnesses it is apparent that the pistol seized from accused Sanjay Pradhan has been used in commission of the crime.

8. Heard counsel for the parties and perused the evidence available on record.

9. Arun Kumar Swarnkar (PW-1) - the complainant has stated that on the date of incident in between 10.15 and 10.30 PM when he returned home after attending some religious concert, he saw one Tavera car parked outside his shop and the shutter gate of the shop was also open. As soon as he entered the house, 5-6 persons were coming out of his shop carrying 6-7 bags - out of whom one was wearing monkey cap and jacket, one was in coat and tie, but he could not see as to what the others were wearing. According to this

witness, when he asked the dacoits as to how they entered the shop and what they were carrying in their bags, they told him to keep quiet or else he would be shot at, and saying so they put the gun on his temple. Those persons are then said to have demanded the key of the chest from him and when he declined the same, they started searching him. When they did not find anything in his pocket, they tried to pull off the gold chain worn by him and when they did not succeed in that, they asked him to remove and give the same to them which he did accordingly on account of fear. Evidence of this witness further goes to show that his wife and children were already made captive by them in the kitchen and that from there his daughter asked him not to resist their act or else they would kill him. Accused persons then took him also in the kitchen and kept in confinement. His two daughters, daughter of his brother-in-law, his watchman and the dog were also confined in another room and bolted the door from outside. Thereafter, daughter of his brother-in-law named Pranjali (nick name Neeni) confined in another room somehow managed to open the door of her room and after coming out she opened the room of the kitchen also and only then he noticed that Jasaldas (PW-2) suffered two bullet injuries on his leg and the blood was coming out therefrom. Thereupon, he telephonically informed the police of the dacoity committed in his shop but by that time the culprits had moved away. This witness has further stated that when the police people came there, someone informed them that the dacoits were in the roof top

of the neighbouring house and though the search was made, they were not found. Thereafter, the report was lodged. On inspection of the shop and the house, he found that the dacoits had taken away all the articles including gold and silver ornaments kept in the almirah worth 40-50 Lakhs including cash of Rs. 70,000/-. This witness states that the gold and silver ornaments bore the identification mark and if happens to see, he would identify them. According to this witness, two days prior to the incident two persons carrying cash of about 60,000-70,000/- had visited his shop and shown the desire of buying gold ornaments and when a suspicion grew in his mind, he asked them as to where they hail from and on that they disclosed themselves to be the residents of the neighbouring village. In Court this witnesses identified accused Amit Das, Mahesh Bagrati, Sanjay Pradhan and Navin Thakur and stated that he could not properly identify 2-3 persons inside the shop because when he went therein they had attacked him. He also did not identify the persons, 2-3 in number, standing outside guarding the situation as he had not seen them properly. This witness has further stated that in the TIP conducted in Raigarh Jail under Ex. P-4, out of 25-30 persons, he identified 5-6 persons involved in the dacoity. In paragraph No. 15, this witness has stated that when the seized articles were shown to him, he identified one gold ring marked as *Article A-1* as well as two gold tops and three pairs of silver anklets marked as *Article A-2*. Since this witness was subjected to lengthy cross-examination, certain discrepancies

are bound to be there but if his overall evidence is seen, he appears to be firm on material particulars. He has admitted that he used to keep account of all sale and purchase on day to day basis. In paragraph No. 64 he however has clarified that accused Ritesh Sahu had not entered his house and likewise he could not identify 2-3 other persons who were sitting outside on the motorcycle.

10. Jasaldas (PW-2) – the servant of PW-1 has stated that on the date of incident at about 9.30 PM when he came to the house of complainant for night duty, the accused persons gave a call from outside to open the door and when it was opened by the wife and daughter of the complainant, 5-6 persons entered the house and while getting back firearm was shot at him which hit his calf. He is also stated to be confined in a room along with two daughters of the complainant as also the dog. Though this witness has been declared hostile, he has clearly stated in the cross-examination that in the TIP he identified accused Sanjay Pradhan and Navin Thakur. *At one place he is stated to have identified only accused Navin Thakur in TIP.* This witness has admitted that 3-4 accused persons were talking in *Chhattisgarhi*. Tarachand Patel (PW-3) and Ravi Shankar Patel (PW-4) – the witnesses to memorandum and seizure have not supported the case of the prosecution and turned hostile. Sahnu Nishad (PW-6) – the witness to TIP conducted under Ex. P-4, P-7, P-25 and P-26 has not supported the case of the prosecution and turned hostile. Pranjal Soni (PW-7) is the child witness who identified accused

Navin Thakur, Sanjay Pradhan and Amit Das in the Court. He has stated that as on seeing the accused persons the pet dog started barking, they asked them to control it and that in a bid of shooting the dog, the bullet hit Jasaldas (PW-2). While being subjected to cross-examination, except on minor particulars he stood firm at all places. Kiran Kumar Ravani (PW-8) is the photographer who drew photographs in the shop of the complainant. Rajkumari Swarnkar (PW-9) – wife of complainant (PW-1) has stated that in the Court she identified accused Sanjay Pradhan, Navin Thakur, Satish Kumar Sahu, Ritesh Sahu and Amit Das whereas in the TIP she identified accused Sanjay Pradhan, Mahesh Bagrati, Navin Thakur, Munna Sahu alias Pilot, Satish Kumar Sahu, Vikaschand Rai and Amit Das under Ex. P-26 and P-37. She in paragraph No. 24 however has stated that amongst 4-5 persons entering her house, accused Ritesh Sahu was not there. In spite of being subjected to lengthy cross-examination this witness remained firm on material particulars. In paragraph No. 32 though she is stated to have seen the photographs of 2-3 persons in a newspaper but just thereafter she has denied the said fact and clarified that accused persons were not shown to her before the TIP was conducted. Karam Singh Rathia (PW-10) is the *Patwari* who prepared spot map Ex. P-28 and *panchnama* Ex. P-27. Simaran Swarnkar (PW-11) – the daughter of PW-1 is stated to have identified in the Court the accused persons namely Sanjay Pradhan, Mahesh Bagrati, Navin Thakur, Munna Sahu, Ritesh Sahu and Amit Das whereas in the TIP she is said to

have identified Sanjay Pradhan, Mahesh Bagrati, Vikaschand Rai, Munna Sahu and Navin Thakur vide Ex. P-25. This witness then has stated as to the manner in which the incident took place including the fact that the family members were detained in a room and that on account of gun-shot injury their watchman (PW-2) sustained injury. She too remained firm on material particulars throughout her lengthy cross-examination. Rajesh Patel (PW-13) is the witness who assisted in the investigation. Dr. Bohra (PW-14) is the witness who conducted medical examination of Jasaldas (PW-2), Rajkumari (PW-9) and Simaran (PW-11) vide reports Ex. P-33, P-34 and P-35. Laxmi Prasad Sidar (PW-16) is the witness to seizure made under Ex. P-24. Ashok Kumar Bhoi (PW-17) is the Tehsildar who conducted TIP of the accused persons and certain articles such as jackets, cap, bag etc. vide Ex. P-4, P-5, P-7, P-25 and P-26. Jaipal Patnaik (PW-20) is the armorer who examined the fire-arm and found the same to be in working condition. Surau Sahu (PW-21) is the witness to memorandum Ex. P-32 and seizure Ex. P-33 by which gold ornaments – some of them in melted form were seized. He is also the witness to TIP done under Ex. P-36, P-37 and P-38. Setram (PW-22), Gopal Ram Bhagat (PW-23) and Rishikesh Patel (PW-25) are the witnesses who assisted in the investigation. Arjun Kumar Sahu (PW-26) is the witness who registered FIR against the accused at police station Bargad (Orissa) in some other case. It is relevant to note here that as per the prosecution case, accused Amit Das was involved in the case of similar nature and he has been

tried at Bargad. Arjun Ram (PW-29) is the witness who conducted TIP vide Ex. P-36, P-37 and P-38 has duly supported the case of the prosecution. Sushant Kumar (PW-30) is the Sub Inspector who has been examined by the prosecution to prove the seizure made from accused Amit Das in Orissa. According to him, certain gold ornaments, pistol, ATM card, cheque book and debit card were seized from him. Ram Kumar Singh Rana (PW-31), K.K. Wasnik (PW-32) and Deepak Paswan (PW-33) are the witnesses who assisted in the investigation. Ashok Mehar (PW-34) and Basanti Badhia (PW-35) have not supported the case of the prosecution and have been declared hostile. I. Tirki (PW-36) is the investigating officer who while supporting the case of the prosecution has stated that he investigated the matter with his colleagues. From his cross-examination it is apparent that the investigation could have been done in a better manner. Though he has admitted that on certain points he could make proper investigation like lifting of finger prints from the place of occurrence, collecting the details of ornaments as to from where they were purchased, availability of artificial jewelry, non-verification of CCTV footage but yet if his overall evidence is seen, non investigation on certain issues may not damage his entire version and eventually the case of the prosecution. Defence witness No.1 namely, Ashok Kumar Bhoi has stated that no recovery has been made from accused Amit Das who was residing in his house as tenant. Another defence witness Joginder Mehar has stated that he was goldsmith by occupation and his main job was to melt the

gold.

11. Having thus taken note of the entire factual position in the light of evidence on record what finally emerges is as under:

(i) On 18.02.2012 in between 9.30 and 10.30 PM dacoity of gold and silver – total value being 40-50 lakhs was committed in the house/shop of complainant (PW-1).

(ii) Written report (Ex.P-2) was lodged promptly by the complainant based on which FIR Ex. P-1 was registered against unknown persons.

(iii) At the time of incident apart from the complainant, his wife Rajkumari (PW-9), daughter Simaran (PW-11), watchman Jasaldas (PW-2) and Pranjal Soni (PW-7) were also present.

(iv) In the statement recorded under Section 161 of the Code of Criminal Procedure the witnesses including the complainant have given categorical description of the accused persons and after arrest all the accused persons have been identified to be the ones who committed the crime in question.

(v) Record further goes to show that in TIPs the complainant (PW-1) identified accused Sanjay Pradhan @ Singbabu @ Santosh Jena, Mahesh Bagrati @ Doctor, Navin Thakur @ Thakur, Munna Sahu @ Pilot, Satish Kumar Sahu @ Rocky and Vikaschand Rai @ Vikki @ Deepak vide Ex. P-4; Jasaldas (PW-2) identified two accused persons namely Sanjay Pradhan and Navin Thakur vide Ex. P-7; Simaran Swarnkar (PW-11) identified five accused persons namely Sanjay Pradhan,

Mahesh Bagrati, Vikaschand Rai, Munna Sahu and Navin Thakur vide Ex. P-25; Rajkumari Swarnkar (PW-09) identified five accused persons namely Sanjay Pradhan, Mahesh Bagrati, Munna Sahu, Navin Thakur and Satish Sahu vide Ex. P-26; Arun Kumar Swarnkar (PW-01) again identified accused Amit Das vide Ex. P-36; Rajkumari Swarnkar (PW-09) also identified accused Amit Das vide Ex. P-37.

(vi) Likewise in the Court Arun Kumar Swarnkar (PW-1) identified accused Sanjay Pradhan, Mahesh Bagrati, Navin Thakur and Amit Das; Jasaldas (PW-2) identified accused Sanjay Pradhan and Navin Thakur; Rajkumari (PW-9) identified accused Sanjay Pradhan, Navin Thakur, Satish Kumar Sahu and Amit Das; Simaran (PW-11) identified Sanjay Pradhan, Navin Thakur, Munna Sahu and Amit Das and Pranjal Soni (PW-7) identified accused Sanjay Pradhan, Navin Thakur and Amit Das.

(vii) So far as involvement of accused Ritesh Sahu is concerned, he has just been identified in the Court to be resident of the same area but the witnesses have categorically stated that he was not present at the time of incident with the people who committed dacoity and no overt act has been attributed to him.

(viii) The prosecution has not adduced any evidence to show that accused Ritesh Sahu, in any manner, hatched the alleged criminal conspiracy and being so the ingredients of Section 120-B IPC are not attracted to the case in hand.

(ix) On the basis of memorandum of accused Amit Das Ex. P-32 seizure of gold ear ring and three silver anklets have been seized and those articles have been duly identified in the Court by PW-1.

(x) In the incident gun-shot was fired by one of the dacoits as a result of which Jasaldas (PW-2) suffered injury on his leg.

(xi) Accused Amit Das was arrested by Police of Police Station Bargad (Orissa) in Crime No. 226/2012 and various articles like pass book, ATM, cheque book, more than 4 KG of gold in melted form and 6 KG of silver have been seized.

12. Taking thus a composite view of the evidence of the witnesses, seizure made on the memorandums of the accused persons, due identification by the complainant, his wife, daughter and the watchman, this Court has no hesitation to hold that the prosecution has proved the involvement of the accused/appellants except accused Ritesh Sahu, in commission of the offence punishable under Sections 395/34 and 120-B IPC. This finding does not appear to suffer from any legal flaw and therefore it is maintained.

13. As regards conviction of the accused/appellants under Section 397/34 IPC, though there is evidence that while committing dacoity the deadly weapon like gun was used causing injuries to Jasaldas (PW-2), Simran Swarnkar (PW-11), Rajkumari Swarnkar (PW-9), but no specific role has been assigned by any of the witnesses as to which of the accused had used such deadly weapon or caused the grievous hurt.

Thus, the prosecution has not been able to prove its case under Section 397/34 IPC beyond reasonable doubt and being so the accused/appellants are entitled to receive the benefit leading to acquittal of the said charge. Likewise, there is no specific evidence to show as to which of the accused/appellants used the arms in contravention of Section 5 of the Arms Act and therefore, their conviction under Section 25 of the Arms Act is also not sustainable in the eye of law.

14. As regards accused Ritesh Sahu - the appellant in Criminal Appeal No. 1065/2014, he has just been identified in the Court to be resident of the same area, and the witnesses have categorically stated that he was not present at the time of incident with the people who committed dacoity and no overt act has been attributed to him. Further, there is no evidence against him that he in any manner hatched the alleged criminal conspiracy. Therefore, the ingredients of Section 120-B/34 IPC are not attracted to the case in hand and being so, conviction of accused Ritesh Sahu being not well-founded is liable to be set aside.

15. In sum and substance, conviction of accused/appellants Sanjay Pradhan, Mahesh Bagarti, Navin Thakur, Munna Sahu, Satish Kumar Sahu, Vikas Chand Rai and Amit Das under Sections 395/34 and 120-B/34 IPC is maintained. They however are acquitted of the charge under Section 397/34 IPC and 27 of the Arms Act for the reasons adumbrated above. As regards sentence imposed on the accused/appellants under

Section 395/34 and 120-B/34 IPC, keeping in mind the facts and circumstances of the case and the decisions of the Apex Court referred to by the counsel for the accused/appellants, this Court deems it proper to reduce the same to rigorous imprisonment for seven years by enhancing the fine to Rs. 5,000/- each from what has been imposed by the Court below. Criminal Appeal No. 1228/2014 is thus partly allowed with the modifications as above.

16. Criminal Appeal No. 1065/2014 preferred by accused Ritesh Sahu is allowed, judgment impugned pertaining to his conviction under Section 120-B/34 IPC is set aside and he is acquitted of the charge levelled against him. Since he is already on bail, no further order regarding his release etc. is needed.

17. As regards Criminal Appeal No. 428/2015 preferred by complainant for enhancement of the sentence, we do not see any adequate reason to do so and accordingly the same being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Sanjay Agrawal)

Judge