

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No.503 OF 2003

RAM SUNDER MAHTO & ORS.

... Appellant(s)

Versus

STATE OF BIHAR

... Respondent(s)

J U D G M E N T

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 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 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 .

2. Considering the overall circumstance, we are of the opinion that the accused persons deserves lenient treatment. In that, we have considered that the 28 years have already elapsed since the offence took place and the accused persons 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, i.e. Arun Kumar Singh, the original A-2.

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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 warrants shall be issued against them by the concerned court for their arrest.

JUDGMENT

**New Delhi,
October 07, 2009.**