

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

CRIMINAL APPEAL No. 1470 of 2015

BETWEEN:-

**BHIMA @ BHIMSINGH S/O GOVIND
MAKWANA, AGED ABOUT 22 YEARS,
OCCUPATION: AGRICULTURIST
VILLAGE SALWA, P.S. RAJOD, DISTT.
DHAR (MADHYA PRADESH)**

.....APPELLANT

***(MS. SHARMILA SHARMA, LEARNED COUNSEL FOR THE
APPELLANT)***

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THRU. P.S.
MANAK CHOWK, RATLAM (MADHYA
PRADESH)**

.....RESPONDENT

***(K. K. TIWARI APPEARING ON BEHALF OF ADVOCATE
GENERAL)***

CRIMINAL APPEAL No. 1531 of 2015

BETWEEN:-

KRISHNAGOPAL S/O SHREE RAMLAL VYAS, AGED ABOUT 30 YEARS, OCCUPATION: PHOTOGRAPHER R/O.-16 BRAHMANO KA VASS, RATLAM, DISTRICT – RATLAM (MADHYA PRADESH)

.....APPELLANT

(SHRI HIMANSHU THAKUR, LEARNED COUNSEL FOR THE APPELLANT)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU. P.S. MANAK CHOWK, RATLAM (MADHYA PRADESH)

.....RESPONDENT

(K. K. TIWARI APPEARING ON BEHALF OF ADVOCATE GENERAL)

CRIMINAL APPEAL No. 1600 of 2015

BETWEEN:-

1. NANDU S/O SHREE DHULAJI, AGED ABOUT 25 YEARS, OCCUPATION: AGRICULTURE R/O.-GRAM SANDLA, THANA AND TEHSIL BADNAWAR, DISTRICT – DHAR (MADHYA PRADESH)

2. BHERU S/O. SHREE NAGU GARWAL, AGED – 27 YEARS, OCCUPATION – AGRICULTURE, R/O. - GRAM SANDLA,

**THANA AND TEHSIL BADNAWAR,
DISTRICT – DHAR (MADHYA PRADESH)**

.....APPELLANTS

***(SHRI HIMANSHU THAKUR, LEARNED COUNSEL FOR THE
APPELLANTS)***

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THRU. P.S.
MANAK CHOWK, RATLAM (MADHYA
PRADESH)**

.....RESPONDENT

***(K. K. TIWARI APPEARING ON BEHALF OF ADVOCATE
GENERAL)***

CRIMINAL APPEAL No. 534 of 2016

BETWEEN:-

**DILIP S/O SHREE LAXMINARAYAN JI
SHARMA, AGED ABOUT 25 YEARS,
OCCUPATION: AGRICULTURE, R/O.-
UMARTHANA, THANA BILPANK,
DISTRICT – RATLAM (MADHYA
PRADESH)**

.....APPELLANT

***(SHRI ANSHUL SHRIVASTAVA, LEARNED COUNSEL FOR THE
APPELLANT)***

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THRU. P.S.
MANAK CHOWK, RATLAM (MADHYA
PRADESH)**

.....RESPONDENT

(K. K. TIWARI APPEARING ON BEHALF OF ADVOCATE GENERAL)

Reserved on : 13/03/2024

Pronounced on : 25/04/2024

These appeals coming on for reference this day, Justice Devnarayan Mishra passed the following:

JUDGMENT

These Criminal Appeals have been filed under Section 374(2) of the Cr.P.C. being aggrieved by judgment dated 15.09.2015 passed by IVth Session Judge, Ratlam in Sessions Trial No.57/2012 by which the appellants have been convicted for the offence punishable under Sections 363, 365, 324, 324/34, 364-A, 120-B of the IPC and sentence to rigorous imprisonment of three years, six months and life imprisonment and fine of Rs.500/- respectively with default stipulations.

2. The prosecution case before the Trial Court was that the complainant Rajendra (PW-23) an autoricksaw driver used to lift children from their homes and dropped them to St. Joseph's Convent School, Ratlam. On 25.11.2011, he lifted the children along with the abducted child Kunal, his sister Nandini from their house and seven children was sitting on the auto and going towards the school. When the auto reached Neemchowk corner, two persons came there on motorcycle and stopped the auto and asked the complainant how he is operating the auto, slapped him and another person thrown the chilly power on the face of the driver. At the same time, he heard Nandini

that her brother Kunal was lifted from his auto on that the auto driver chased the kidnappers came towards Nalaipura. One person was tall and second person was short. Both were dark complex and wearing black color T-shirt and muffler in their neck. The child Huzefa (PW-2) told the complainant that kidnappers has put the child on Gama Jeep and ran towards Nalaipura. On Rajendra's information, FIR was lodged in the P.S. Manak Chowk, Ratlam as a crime no.530/2011 under Sections 341, 325, 365/34 of the IPC. The driver Rajendra was medically examined. The auto bearing registration no.MP-11-T-0090 was recovered from the spot. The statements of the children sitting on the auto were recorded on the same day. SHO, Bilpank, M.L. Purohit informed that the kidnapped child Kunal was recovered from appellants Bhairu and Dinesh. Seizure memo (Ex.P-4) was prepared. Both of the persons Bhairu and Dinesh were arrested. Other accused persons were also arrested. Motorcycle, jeep and mobile phones of accused persons were recovered and seized. The calls details were obtained from the mobile service provider companies and after investigation, the charge sheet was submitted before the CJM, Ratlam. After committal, the case was transferred to Trial Court.

3. The Trial Court framed the charges punishable under Sections 363 r/w Section 365, 324 r/w 324/34, 364-A r/w Section 120 B of IPC. The accused persons pleaded their innocence and abjured the guilt and prayed for a trial.

4. The Trial Court examined the prosecution witnesses. Appellants were examined. The accused Jitendra was acquitted from all the charges. Rest of the accused persons/appellants were convicted and punished for the offence as mentioned above.

5. Learned counsel appearing on behalf of the appellant has submitted that in this case, no demand of ransom was made and the prosecution case was not proved that any ransom was demanded or the kidnapped child was harassed or beaten or any cruelty was made with him. Thus, no case of Section 364-A of IPC is made out but the Trial Court has erroneously convicted the appellants for that offence. To substantiate the argument, learned counsel for appellants relied on the judgment of the Apex Court in **Shaik. Ahmed v. State of Telangana, (2021) 9 SCC 59**.

6. Learned counsel for appellant has also submitted that in this case, the Trial Court has passed the conviction on identification report but as per the statement of V.P. Saxena (PW-27), the witnesses have also identified the accused-appellants were not present on the spot as per the prosecution and further argued that the witness Rajendra (PW-23) has not identified the appellant Krishnagopal and has identified only appellants-Bhima @ Bhimsingh and Nandu but in the Court, he has not identified the appellant-Nandu and has identified the appellant-Krishnagopal. Thus, whole of the identification parade is suspicious and on that basis, no conviction can be sustained. Learned counsel for the appellants has also submitted that the Trial Court has relied on the evidence of call details but the call details report has not been filed with a certificate required under Section 65-B of Evidence Act. Hence, call details cannot be used against the appellants. Thus, the evidence of call details is inadmissible evidence and on that basis, the conviction cannot be maintained.

7. Shri K.K. Tiwari, learned counsel for Government has submitted that the Trial Court has in right prospective appreciate the evidence.

The eye-witnesses had clearly stated against the appellants. The appellants were identified by the children travelling in the auto. At the time of incident, the vehicles used in the offence were recovered on the instance of the appellants and appellants have not submitted any explanation to that. Hence, no interference is required, in the well reasoned judgment of the Trial Court and appeal be dismissed.

8. We have gone through the record. On the point of the kidnapping, witness Rajendra (PW-23) has stated that he was operating the auto of his friend Sameer. In the year 2011, he was lifting the children from their homes and dropped them to St. Joseph's Convent School, Ratlam. On the date of incident, he has lifted the children from their respective homes and he was going through Chandni Chowk to Topkhana. Near Neemchowk corner, two persons came on two wheeler and stopped him and one of them asked him how he is operation the auto? One of them slapped him and just after that another person thrown the chilly power on his face. At that time, the witness Nandini (PW-6) the sister of Kunal cried that they have lifted Kunal. He again started the auto and chased the kidnappers. But when he reached Ganesh Devari, he felt burning sensation in his eyes so stopped auto. One person present there and told that the Kidnapper has carried a kid on four wheeler. On that he ran to Police Station Manak Chowk and lodged an FIR (Ex.P-26). He was medically examined. Police prepared spot map and seized the autoricksaw.

9. Witnesses Huzefa (PW-2), Nandini (PW-6), Jayesh (PW-5), Taher (PW-7), Burhanuddeen (PW-28) and Kunal (PW-32) have supported the statement of witness Rajendra (PW-23) and the children have clearly stated that on that day, they were going to school on auto and

Kunal alongwith his sister Nandini were going to school on the same auto and two persons came on the motorcycle/vehicle and slapped the auto driver and thrown the chilly power on his face and kidnapped the child Kunal. Thus, the statements of Rajendra are corroborated by these witnesses.

10. Witness Krishnadas Pujari (PW-4) in his statement has stated that that day was the Amawashya Tithi, Friday. He was coming toward the Sabji Mandi. When he reached Ganesh Devari met with the auto driver having chilly power on his eyes. He cleaned his face and went with him to Police Station.

11. Kamlesh (PW-16) has also supported that auto driver Rajendra is real brother. His brother was carrying the children to St. Joseph's Convent School on auto. On the date of incident, Rajendra informed him by a phone that someone has thrown chilly power on his face and kidnapped a child. On that he reached a Police Station, he also accompanied Rajendra to hospital. Police recovered the autoricksaw and prepared the seizure memo (Ex.P-4).

12. The Investigation Officer R.P. Rawat (PW-29) has stated that on 25.11.2011, he was posted as SHO, Manak Chowk, Ratlam. On that day, complainant Rajendra (PW-23) lodged an FIR that when he was going to drop the children by his autoricksaw, two unknown persons on motorcycle have kidnapped the child Kunal (PW-32). On that, he registered an FIR (Ex.P-26).

13. Dr. Bharat Neenama (PW-26) on 25.11.2011 has examined the complainant Rajendra and has stated that on examination, he found that both eyes of the complainant were burning and he was

complaining of pain. Eyes were red and he prepared medical examination report (Ex.P-28).

14. Thus, on the material points, it is clearly proved that on 25.11.2011, the morning time when the complainant Rajendra was carrying children lifting from their homes to drop them to St. Joseph's Convent School, when the auto reached near Manak Chowk, the two persons on the motorcycle came there and after asking how he is operating the autoricksaw? And one of them slapped Rajendra thrown chilly power on his face and kidnapped the child Kunal (PW-32) from autoricksaw. Thus, it is clear that the child Kunal was kidnapped.

15. Thus, the offence of the kidnapping has been committed. Regarding the offence punishable under Section 363 of I.P.C., in the case of **Shaik Ahmed (supra)**, the Apex Court has explained the ingredients to complete the offence punishable under Section 364 of IPC as under:-

“33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the abovenoted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other

person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.”

16. Thus, from the above ingredients, in this case only the kidnapping has been proved that the child was kidnapped. The prosecution has not proposed to prove that the kidnapers had threatened to cause death or hurt to Kunal or by their conduct has given rise to reasonable apprehension that kidnapped child be put to hurt or death of such person or in order to compel the Government organizations, State or any other person to do or to abstain from any act or demanded to pay ransom. Thus, in this case, as no demand of ransom was made and also in this case, no harm was done to the kidnapped child. Thus, rest of the ingredients to complete the offence punishable under Section 364-A has not been proved in the case.

17. Now the question is who kidnap the child? Whether the offence of the kidnapping was committed after conspiracy to that. On this point, it has come on the record and the FIR (Ex.P-26) the two persons came and stopped the autoricksaw and it has also come that the witness Huzefa told that the motorcycle which the kidnapper has put the child seated in Gama vehicle and ran towards to Nalaipura. On this point, the witness Rajendra (PW-23) in his deposition has stated that two persons who kidnapped the child of well built up and he has identified Krishnagopal and also identified Bhima @ Bhimsingh and stated that Bhima was driving the motorcycle and Krishnagopal was in the back

seat and Krishnagopal has thrown the chilly power in his face. Thus, except these two persons, he has not stated that he saw other accused and further stated that the person has told in that the kidnapper has put the child on four wheeler vehicle and carried that. This witness in the chief-examination has also stated that he identified the accused persons in identification parade arranged in Ratlam Jail that was conducted by Tehsildar and also stated that he has identified accused Krishnagopal and Bhima. He has signed the identification memorandum (Ex.P-1). But the witness V.P. Saxena (PW-27) who has arranged the T.I. parade in his examination itself has stated that the witness Rajendra has identified Bhima @ Bhimsingh and Nandu. As per Ex.P-1, this witness Rajendra (PW-23) has identified Bhima @ Bhimsingh and Nandu. Thus, he identified Krishnagopal before the Court, whom he has not unidentified in the Test Identification Parade. Identification before the Court is substantial evidence.

18. As per the statement of this witness V.P. Saxena (PW-27), the witness Nandini (PW-6) and Taher Ali (PW-7) have also identified the witness Krishnagopal. This witness Taher Ali (PW-7) had denied the Court that he saw the kidnappers. Witness Nandini (PW-6) in the Court has identified the accused Krishnagopal and stated that he has identified the accused persons wrongly. She has identified Jitendra. The children Nandini, Taher Ali had identified the Krishnagopal.

19. Witness Anuj Singh (PW-3) has also stated that he was learning the video shooting from the accused Krishnagopal and at the time of incident he was not at Ratlam. The accused Krishnagopal has narrated him that they had to kidnap this child. Thus, from the evidence, it is clear that the two persons Krishnagopal and Bhima @ Bhimsingh

came on the spot and stopped the auto and slapped the auto driver Rajendra (PW-23) and thrown the chilly power on his face.

20. Regarding the involvement of the accused Bheru, the witness Krishna (PW-1) has stated that he received phone from his brother-in-law and by that he came to know that child has been kidnapped from Ratlam and his brother-in-law also told him that accused-Bheru and absconding accused Dinesh has rescued the kidnapped child from the possession of the kidnappers and the kidnapped child told his name Kunal S/o. Kamal R/o. Chandini Chowk, Ratlam and told her mother's mobile number and on that he informed his brother Balram as he was working in Police Department and posted as S.P. Office, Ratlam and has informed his brother Balram and asked his brother Balram to get the information from Rameshwar and on that his brother Balram has called Rameshwar. The witness Rameshwar (PW-11) has supported Krishna (PW-1) and has stated that Bheru Singh called on phone that they has rescued a child and the child has told his name Kunal and Bheru asked him that inquire whose child is kidnapped in Ratlam and caller has also made the child to talk and on that the child told him that he is Kunal R/o. Chandini Chowk Ratlam and also told his mother's mobile number. He passed the information to Krishna Patidar (PW-11) and Balram called him and he informed that they are coming alongwith Police force till then keep the child safe and Police came and Police carried the child and Bheru and Dinesh alongwith them and prepared the seizure memo. In the cross-examination, he has clearly stated that till the police came on the spot, Dinesh and Bheru kept the child safe.

21. The Investigating Officer R.P. Rawat (PW-29) has stated that on 25.11.2011 SHO P.S. Bilpank, M.L. Purohit informed that they recovered the kidnapped child Kunal and also handed over him to his father the recovery memo (Ex.P-4). M.L. Purohit has brought the accused Bheru alongwith child. He has arrested accused Dinesh and Bheru and prepared the memo Ex.P-29 and Ex.P-30.

22. Though, the prosecution has not examined SHO Bilpank but Ex.P-4 is attached with the charge sheet and as per that on 25.11.2011 at 14:30 the kidnapped child was recovered from the possession of the Bheru and Dinesh in the presence of witness Rameshwar (PW-11) and Bharat (PW-31). Thus, the kidnapped child just after the incident was recovered from the possession of the appellant Bheru and as the prosecution case, the accused Behru @ Bharat has not submitted any explanation how the child came in his custody and how he rescued the child from the custody of the kidnappers. On the same day, he was arrested and on that basis the Investigating Officer made him accused.

23. Thus, from the above discussion and no explanation is submitted by the appellant accused Bheru how the child came in their custody. The presumption would be drawn against the appellant Bheru that he got the custody of the child in furtherance of the offence.

24. Other accused persons have not been identified and no active participation of the other accused persons have been found in the case. The Investigating Officer R.P. Rawat (PW-29) in his statement has stated that he seized the mobile phones from Bheru, Dinesh, Krishnagopal, Dilip, Bhima @ Bhimsingh, Nandu, Jitendra and the Police Officer has also stated that he recovered motorcycle MP-09-

MD-6181 from Krishnagopal and scooter MP-14-M-0977 on 28.11.2011 a platina motor cycle MP-11-MF-4287, Yamaha motorcycle MP-43-MD-3029 from the possession of the Dilip, on 26.11.2011 from the accused Jitendra four wheeler vehicle Mahindra Gama car MP-09-V-5795 but in the statement of witness it has not been established that these vehicles were used while committing the crime on transporting the child on these vehicles. So the recovery of the vehicles do not support the prosecution case.

25. The Police Officer while recovering the mobiles phones has submitted the mobile phones before the Court from Articles B to K 10 mobiles and SIM M1 & M2.

26. Witness Saidatta Bohare (PW-30) has stated that he provided the call details of the mobile no.81391495 and 9685111458, 9893586158. The information from the computer was recovered by the his Subordinate Krishna Sharma in the letter by which the information was passed to the S.P. Ratlam is Ex.P-32 and the call details of 24.11.2011 to 25.11.2011 of these numbers Ex.P-33, P-34 and P-35.

27. In the same way, Santosh Jatav (PW-33) in his statement has stated that he was working as Assistant Nodal Officer in Reliance Communication and on the request of the S.P., Ratlam, he has provided the call details of the Mobile No.8103696183 IMEI No.910601700957720 the letter of the SP Ratlam (Ex.P-36) and he prepared hard copy from the soft copy and forwarded it through Ex.P-37. He has also stated that by the letter 2895/2011 the call details of other mobile numbers was called. The letter is Ex.P-39 and by that letter the call details of the phone no.9770536946, 9770203321,

8817230373 on 25.11.2011 and through letter (Ex.P-40) he sent the information on 22.11.2011. The call details are Ex.P-41, 42 and 43.

28. In the same way, Rajesh Kumar Singh (PW-34) has stated that in the year 2011, he was working as a Nodal Officer in Idea Cellular Company Indore. From the letter no.350/2011 dated 22.11.2011 call details of the mobile no.9827093143, 7697986817, 9977457336, 9009313858 from 24.11.2011 to 25.11.2011 was required in response to that letter, he has provided the call details and KYC of the concerned holders of the mobile number through Ex.P-45.

29. The Trial Court in para no.37 to 49 has discussed the call details but in the judgment of **Harpal Singh v. State of Punjab, (2017) 1 SCC 734** in the case of the same nature in paras 56 and 57 as held as under:-

“56. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and stored in a hard disc of the company server, to co-relate the calls made from and to the cellphones involved including those, amongst others recovered from the accused persons, the prosecution has failed to adduce a certificate relatable thereto as required under Section 65-B(4) of the Act. Though the High Court, in its impugned judgment, while dwelling on this aspect, has dismissed the plea of inadmissibility of such call details by observing that all the stipulations contained under Section 65 of the Act had been complied with, in the teeth of the decision of this Court in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] ordaining an inflexible adherence to the enjoinders of Sections 65-B(2) and (4) of the Act, we are unable to sustain this finding. As apparently the prosecution has relied upon

the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of Section 65-B(2) had been complied with, in the absence of a certificate under Section 65-B(4), the same has to be held inadmissible in evidence.

57. This Court in Anvar P.V. [Anvar P.V. v. P.K. Basheer; (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] has held in no uncertain terms that the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Act would have to yield thereto. It has been propounded that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of Section 65-B are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to Sections 65-A and 65-B of the Act as above.”

30. The witness Santosh Jatav (PW-33), Saidatta Bohare (PW-30) and Rajesh Kumar Singh (PW-34) have not stated that they have annexed the certificate required under Section 65-B of Evidence Act. Thus, the evidence cannot be used being hit by not following the provisions of Section 65-B of Evidence Act.

31. The witness Santosh Jatav (PW-33) in para no.14 of the cross-examination has stated that the information of CDR is provided by his office at Mumbai and it came in the Excel format and the excel format can be edited and he has also admitted in para no.15 that the person having user name and password can change the excel sheet and he has also admitted that the printout which is submitted alongwith the charge sheet, there is no seal and signature of him by which it can be authenticated that he was printed in their office.

32. Thus, the part of the evidence cannot be used and there is no direct evidence against the rest of the appellant.

33. From the above discussion, except the appellant Krishnagopal, Bhima @ Bhimsingh and Bheru, no incriminating material is found against the Dilip and Nandu. The Trial Court had already acquitted the accused Jitendra.

34. Now the offence which proved against the appellants is that Krishnagopal and Bhima @ Bhimsingh stopped the Rajendra's auto and slapped the driver and thrown the chilly power on his face and lifted the child Kunal without the permission of the auto driver and his parents. Thus, the accused Bheru was also involved as the child was recovered from the possession and he has not explained the circumstances the child came in his custody. Thus, the appellants committed the offence of causing injury by throwing the deleterious substance and committed offence under Sections 324 and 363 of I.P.C.

35. Thus, the offence of Section 365 and 364-A of IPC is not proved against the appellants. The active participation of the appellants to the offence under Sections 324 and 363 of IPC is proved and the offence of Section 120-B of IPC is separate and distinct offence in that sense, the conviction of the appellants under Section 120-B of IPC is not proved. Hence, the conviction of appellants Bheru, Bhima @ Bhimsingh and Krishnagopal under Section 120-B of IPC is not required. Thus their conviction under Sections 363, 324, 324/34 of the IPC is maintained and they are acquitted from rest of the charges.

35-A. Thus, Dilip and Nandu are acquitted from all the charges under Sections 363, 365, 324, 324/24, 364-A and 120-B of the IPC.

36. Thus, in this case, appellant Krishnagopal was in jail during the trial and after conviction since 28.11.2011 to 20.07.2018 more than six

year, Bhima @ Bhimsingh during Trial and after conviction since 27.11.2011 to 06.09.2018 was more than six years and Bheru is in custody since date of arrest 26.11.2011 and the maximum punishment provided under Section 363 of IPC is seven years. Maximum imprisonment punishment provided for Section 324 of IPC is three years. The appellants Bhima @ Bhimsingh, Krishnagopal have suffered more than six and half years of jail sentence and their jail sentence for the offence punishable under Sections 365 and 324 of IPC is limited up to the period already undergone. The appellant-Bheru is sentenced for the above offence for rigorous imprisonment of seven years as he has completed that period. Hence appellant Bheru S/o. Nagu be released from the Jail immediately if not required in any other case.

37. The bail bonds of Dilip, Nandu, Bhima @ Bhimsingh and Krishnagopal are discharged.

38. The order of Trial Court regarding the case property is upheld as one accused person is absconding.

39. Thus, the appeals filed by the appellants are **partly allowed**.

40. A copy of this judgment be sent to Jail Authority where the appellant Bheru is detained for the information and necessary action.

41. With the copy of this order, the record of the trial Court be returned back.

42. Copy of this order be placed in other connected criminal appeals.

(S. A. DHARMADHIKARI)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE