

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.527 of 2002

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Kuldeep Prasad Sah, son of late Sant Lal Sah, Resident of Bishanpur, PS-
Kahalgaon in the district of Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan, Advocate

Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-01-2015

Heard learned counsel for the appellant as well as learned
APP for the State.

2. Sole appellant, Kuldeep Prasad Sah who has been found
guilty for an offence punishable under Section 412 of the IPC and has
been directed to undergo RI for five years vide judgment of
conviction and sentence dated 20th day of August 2002 passed by Shri
Vijay Kumar Sinha, Additional District & Sessions Judge, Fast Track
Court, Bhagalpur in Sessions Case No. 424 of 1989/342 of 2002 has
challenged the same by way of instant appeal.

3. Briefly stated, the case of the prosecution as is evident
from Fard-e-beyan of Munna Singh (PW 5), one of the passengers of
338 DN (Gaya to Siyaldah) recorded on 27.03.1987 at about 2:30 a.m.
before ASI (GRP), Sahebganj disclosing therein that he along with his
co-villagers, Hari Lal Sao, Uma Shankar Sao, Pramila Devi and



Manoj Kumar Singh were in a way to Calcutta and accordingly, had boarded the aforesaid train. As soon as the train steamed off Vikramshila station, he found four persons boarded therein. Two persons had boarded at Sabaur station. Then thereafter, they inspected the bogie and then, on the point of fire arm, looted away his belongings and that of his companions and other passengers present in the bogie. He had listed those articles which was decamped by the miscreants. As soon as the train reached near Shiv Narayanpur outer signal, all of them got down. Having been instituted as Bhagalpur GRP Case No. 13/87, investigation commenced and concluded by way of filing charge-sheet against three, Sanjay Goswami, Kuldeep Prasad Sah (appellant) and Vijay Kumar Sah while others were shown as suspects and accordingly trial commenced. It is apparent that on account of death of Vijay Kumar Sah proceeding was dropped. After concluding trial, by the judgment impugned, appellant has been convicted while co-accused, Sanjay Goswami has been acquitted.

4. The defence case, as is evident from the mode of cross-examination as well as statement under Section 313 Cr.P.C. is of complete denial relating to involvement as well as recovery. One DW has also been examined on such plea.

5. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW-1, Dilip Kumar



Chaudhary, PW-2, Bhuneshwar Yadav, PW-3, Ram Nagina Goswami, PW-4, Bijay Kant Singh, PW-5, Munna Singh, PW-6, Hari Lal Sah, PW-7, Md. Ayub Alam, PW-8, the same Md. Ayub Alam and PW-9, Murshid Alam. Side by side, prosecution had also exhibited Ext-1, Signature of PW-3, Ext-1/1 Signature of Bijay Kant Singh on seizure list, Ext-2, signature of Munna Singh on Fard-e-beyan, Ext-3, Formal FIR, Ext-2/A, endorsement on written report, Ext-4, Case diary, Ext-5, Search list, Ext-2/B, Fard-e-beyan and Ext-6, list of house search. Defence had also examined a single witness, Naresh Goswami, however, had not exhibited any king of document.

6. Now coming to the status of witnesses, it is apparent that PW-1 being a Station Master posted at the relevant time at Shiv Narayanpur station had simply stated regarding occurrence as hearsay witness as well as escaping of miscreants by 333 UP which he had not seen. PWs-2 and 6 have been tendered while PWs-7,8 and 9 are formal witnesses.

7. Now remains the testimony of PWs 3 and 4, seizure list witnesses and PW-5, the informant. From the evidence of PW-5, it is apparent that neither he claimed identification of accused nor the article, on the other hand, had simply deposed regarding commission of dacoity in the train through which he was traveling as well as deprivation of his belongings during course thereof.



8. Now coming to the evidence of PWs-3 and 4, it is evident that they both have admitted their presence over the seizure list but have denied to the extent of recovery from the possession/house of appellant. At the present crucial moment evidence of DW is also to be looked into in the background of the fact that much emphasis has been drawn up by the learned trial court while identifying the appellant guilty for an offence punishable under Section 412 IPC.

9. DW-1 had simply stated presence of appellant along with police officials at his house and as he remained outside, he shown his inability with regard to the happenings having been effected inside the house. Furthermore, like PWs-3 and 4 had stated that Investigating Officer had taken signature of Kuldeep Sah as well as PWs-3 and 4 at their flour mill.

10. It is apparent from the lower court records that neither the Investigating Officer had been examined nor the seized article, if any, were produced before the Court and on account thereof, even assuming for a moment that signature of seizure list witnesses led an inference against the accused/appellant, that would have been corroborated by way of production of the seized article, more particularly, with a relevance with those articles which were recovered from the house/possession of appellant. Therefore, even accepting the



status of PWs-3 and 4 as well as seizure list, it remained a paper work on account of non production of seized article and in likewise manner, on account of non examination of Investigating Officer which could have inter-connected the seized article with the appellant, gave another jolt to the prosecution. Not only this, on account of non examination of Investigating Officer, the conclusive evidence remained out of record to the effect that the seized articles were the subject matter/case property of the present case as well as were identified during course of investigation by the witness in presence of Magistrate under TIP. In likewise manner, on account of non examination of Investigating Officer, the whole episode of search and seizure of the articles from the house of appellant as well as apprehension of appellant remained the duly wrapped which, even having admission on the part of DW-1 is not going to improve the fate of the prosecution because of the fact that on account of non production of seized article, the matter remained unexplained as well as being booty of the occurrence whether there was bona fide conduct at the end of the prosecution over search and seizure and in the aforesaid background, the appellant is found entitled for benefit of doubt.

11. Consequent thereupon, the judgment of conviction and sentence recorded by learned trial court is set aside. The appeal is

allowed.

12. Since appellant is on bail, he is discharged from the liability of the bail bond.

(Aditya Kumar Trivedi, J)

Patna High Court
January 30th 2015.
Perwez/AFR

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