

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2 of 2001

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Umeshwar Kumar Verma @ Umesh Kumar son of late Ram Charitar Prasad,
resident of village-Kankarbagh (Hanuman Nagar) P.S. Patrakar Nagar,
Distt-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 10 of 2001

- =====
1. Yugal Kishore Sharan son of Late Shiv Kumar Sahay resident of village-
Sahwajpur, P.S. Taraiya, Distt- Saran, Chapra.
 2. Keshav Prasad son of late Rajeshwari Prasad resident of Village-Chiktola, P.S.
Town, P.S. Arrah, Distt- Bhojpur.

... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) Nos. 2 & 10 of 2001)

For the Appellant/s : Mr. Md. Faiz Ahmad, Adv.

Mr. Amit Prakash, Adv.

Mr. Ganesh Prasad Singh, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 13-01-2015

Cr. Appeal (SJ) No. 2/2001 wherein Umeshwar
Kumar Verma @ Umesh Kumar is the appellant while Cr. Appeal
(SJ) No. 10/2001 wherein Yugal Kishore Sharan and Keshav Prasad
are the appellants commonly originate out of judgment of conviction
and sentence dated 30.11.2000 passed by Special Judge, Vigilance,
South Bihar, Patna in Special Case No. 146/83 arising out of
Vigilance P.S. Case No. 11/82 convicting all the appellants for an



offence punishable under Sections 420/34 IPC directing each of them to undergo RI for one year, 409/34 IPC sentencing each of them to undergo RI for one year, 120B IPC directing each of them to undergo RI for one year, 467/34 IPC directing each of them to undergo RI for one year as well as also fined them Rs 500/- in default thereof, to undergo imprisonment of one month and further appellant, Yugal Kishore Sharan and Keshav Prasad have been convicted for an offence punishable under Sections 13 (2) read with 13(1) (c) (d) of new P.C. Act, 5(2) read with 5(1) (c) (d) of the old P.C. Act and each one has been directed to undergo RI for a year with a further direction to run the sentences concurrently.

2. PW 1, Shardanand Singh, a Police Inspector, Vigilance filed a written report disclosing therein that in preliminary investigation it has been found that for the purpose of electrification around the statue of late Dr. Rajendra Prasad installed in front of Raj Bhawan in the financial year of 1976-1977, estimate was passed to the tune of Rs. 12,400/- and accordingly, fund was allotted and Sri Yugal Kishore Sharan, the then SDO, Electricity was entrusted with the work to pursue departmentally. Mr. Sharan had withdrawn Rs. 1380/- as an advance to be spent over manual work. Executive Engineer, Electricity had ordered M/s Associated Engineering Centre, Chandni Chowk, Patna to supply the necessary items. Though, the materials



were supplied but it was supplied in the month of April 1978. Before supply of the articles during financial year of 1976-1977 in connivance of Storekeeper as well as Mr. Sharan, the proprietor of M/s Associated Engineering Centre had obtained the amount. It has also been disclosed that the advance was withdrawn for the financial year 1976-1977 and further the full payment was received in the month of March 1977, although the work was not at all completed during financial year of 1976-1977. After hue and cry raised on the aforesaid lapses, the work was completed in the year 1979.

3. It has further been disclosed that in the midst thereof, Mr. Sharan was transferred and he handed over charge retaining Rs. 1380/- which he had received as an advance during financial year of 1976-1977. After completion of the work in the year 1979, Mr. Sharan had deposited the aforesaid amount on 28.04.1980. Accordingly, all of them were booked for creating forged and fabricated document and on account thereof, managed to withdraw the amount.

4. After having registration of Vigilance Case No. 11/82 the investigation commenced and concluded by way of submission of charge-sheet under different sections of Penal Code as well as P.C. Act whereunder cognizance was taken and the trial commenced, concluded in a manner, the subject matter of instant

appeals.

5. Defence as pleaded by appellant/convict during course of trial is of complete denial. However, neither any DW nor exhibit has been brought on record on their behalf.

6. In order to substantiate its case the prosecution had examined altogether nine PWs out of whom PW-1 is Shardanand Singh, PW-2 is Sheonath Ram, PW-3 is Gandeshwar Pd. Sinha, PW-4 is Hemraj Prasad, PW-5 is Vijay Kumar Pandey, PW-6 is Prem Nath Mishra, PW-7 is Vinod Shankar, PW-8 is Jorawar Pd. Singh and PW-9 is Prem Nath Mishra as well as had also exhibited Ext-1, written report, Ext-2, Enquiry report, Ext-3, sanction order, Ext-4, formal FIR, Ext-5, measurement book, Ext-6, Muster roll, Ext-7, record of B.S. No. 110/89, page 28, Ext-8 is page no. 47, Ext-9 is page 33, Ext-10 is page 24, Ext-11 is receipt book, Ext-12, estimate, Ext-13, page no. 41 of file no. 32, Ext-14, cash book, Ext-15, estimate, Ext-16, file of page 1 to 128 and Ext-17 production-cum-seizure list dated 27.02.1984.

7. Heard learned counsel for the appellants as well as learned APP for the State and also gone through the records.

8. After perusal of the record, it is evident that prosecution had proceeded with the trial in most casual manner. Save and except PW 7, Vinod Shankar who had exhibited sanction granted



by him, no other officials of the concerned department had been examined in this case and on account thereof, there happens to be absence of substantial evidence which could have proved its case. The prosecution, as is evident from the evidence of respective Investigating Officers, even failed to produce the concerned officials for their statement under Section 161 Cr.P.C. and that happens to be reason behind non figuring thereof, in charge-sheet. At the other hand, the prosecution sailed the boat with the assistance of police officials who during course of investigation, seized documents and deposed in formal way and on account thereof, they failed to even grill the appellants. In likewise manner, the concerned presiding officer also acted and exhibited the documents contrary to spirit of evidence Act as none of the PWs was in a position to explain over the same.

9. Coming to the status of witnesses, PW 1, the informant had submitted that on the basis of preliminary enquiry, he had prepared written report and submitted on the basis of which the instant case has been registered. Therefore, his status is nothing beyond formal. PW-2 is Sheonath Rai, a part Investigating Officer who had submitted that in spite of his repeated request, the relevant documents were not made available to him and in likewise manner is the evidence of PW-3, Gandeshwar Pd. Sinha. PW-4 also deposed in same way adding that on production of documents, he had seized and

exhibited the same though failed to depose, in whose pen those documents were written, as well as his objective finding based thereupon. PW-5 is another part Investigating Officer who had stated that he, after taking charge of the case, gone through the case diary, obtained sanction order and then submitted charge-sheet. PW-6 is Prem Nath Mishra, another formal witness who had simply exhibited preliminary enquiry report. PW-7 had exhibited the sanction order issued by him. PW-8 is another formal witness who had exhibited formal First Information Report. PW-9 had produced the relevant document before the Court. That means to say, the present proceeding on account thereof, lapses on the part of prosecution became misadventurous.

10. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court did not justify its prevalence and on account thereof, is set aside. The appeal is allowed.

11. Appellants, being on bail, are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court,
January 13th 2014
Perwez/AFR

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