

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.370 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- KATIHAR

- =====
1. Ranjeet Kumar Singh @ Ramna Singh son of Ram Snehi Singh, resident of village- Amni, P.S.mansi, District Khagaria.
 2. Umakant Singh son of Devendra Singh, resident of village Bangaliya P.S. Mansi, District Khagaria

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Parmeshwar Mehta, Adv.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT

Date: 19-03-2018

Heard the parties.

2. Both the appellants stand convicted under Sections 392 and 411 of the Indian Penal Code and also under Sections 25(1)(1-A), 25 (1)(1-B) & Section 26(I)/35 of the Arms Act, sentenced to undergo R.I. for five years under Section 392 of the IPC and no separate sentence under Section 411 of the IPC and under Sections 25(1)(1-A), 25 (1)(1-B) & Sections 26(I)/35 of the Arms Act sentenced to undergo R.I. for five years. Both the sentences were directed to run concurrently.

3. The prosecution case as stands from the written report of Yadunandan Kumar Singh (P.W.3) in short is that on 22.6.2002 at about 07:00 P.M. he was coming from his house on motorcycle



Suzuki bearing No.BR 11B-7595 for some work to Gerabari, after ten minutes when he reached at distance of 100 yard north from Prem Hotel on N.H.31, he saw three boys, who stopped him by showing 3 nut country-made fire arm and stones and thereafter one of the boys caught hold collar of the informant and started pulling him from motorcycle and two others started abusing him and they were pressing 3 nut *Katta* on his head. His written report further discloses that they pulled the informant from the motorcycle and took him to the ditch towards east and they tried to start the motorcycle. In the meantime the informant finding opportunity fled away from the place of occurrence and raised *hulla*. Further case is that in the meantime one jeep arrived there and in the light of Jeep the informant saw that criminals started fleeing away and he heard noise and in the meantime, the police party caught one of the criminals with motorcycle red-handed, which the informant identified as the person who had snatched his motorcycle and the Officer Incharge of the Police Station also arrived after getting informantion and the police party on chase caught criminals among whom one was caught and another became succeeded in fleeing away and the person caught with motorcycle disclosed his name as Ranjeet Kumar Singh @ Ramna Singh and other accused was caught on chase, disclosed his name as Umakant Singh. Further case of the prosecution is that from Ranjeet



Kumar Singh on search two live cartridges of 3 nut were was recovered and the seizure list was prepared and from Umakant Singh a country-made loaded pistol was recovered and the motorcycle bearing No.BR11B 7595 has also been recovered and the seizure list was prepared.

4. On the basis of the written report, a case was registered under Sections 392 and 411 of the IPC and Sections 25(1)(1-A), 25 (1)(1-B) and Section 26(I)/35 of the Arms Act and the police after investigation submitted charge-sheet against them, cognizance of the offence was taken and the case was committed to the court of Sessions which ultimately came to the file of Sri B.K. Pandey, 2nd Additional Sessions Judge, Katihar for trial and disposal.

5. In order to substantiate his case, the prosecution has examined altogether 12 witnesses, they are – P.W. 1 Nagendra Prasad Mehta seizure list witness declared hostile, P.W.2 Rakesh Kumar seizure list witness declared hostile, P.W.3 Yadunandan Kumar Singh informant, P.W.4 Ranjeet Pandey, Sergeant major who has examined the seized arms and ammunition, P.W.5 Ram Nath Prasad P.W.6 Anant Ram S.I., P.W.7 Jai Shankar Kumar declared hostile, P.W.8 Gupteshwar Singh declared hostile, P.W.9 Ashok Kumar declared hostile, P.W.10 Surendra Kumar Saroj Investigating Officer of the case, P.W.11 Binay Chandra Chaudhary Officer Incharge and P.W.12



Birendra Nath Pathak examined under Section 311 of Cr.P.C. on the summon.

6. On behalf of the prosecution, following documents have been brought on record : Exts. 1 to 1/2 Signature of Nagendra Prasad Mahto, Ext. 1/3 to 1/5 Signature of Rakesh Kumar, Ext. 2 written report, Ext. 3 verification report of Arms by Sergeant Major, Ext. 2 to 2/2 signature of Binay Chaudhary and Ext. 4 sanction order of D.M.

7. The defence of the accused persons is of false implication and of innocence. The learned trial court on conclusion of the trial has convicted the appellants under Sections 392 and 411 of the IPC and Sections 25(1)(1-A), 25 (1)(1-B) and Section 26(I)/35 of the Arms Act and sentenced as stated above.

8. The learned counsel for the appellants has assailed the aforesaid judgment on the ground that the seized articles have not been produced in the court and almost all the witnesses have been declared hostile and P.W.5 has not identified the accused persons in court and further the Sergeant Major has found the seized country-made pistol not in working condition and as such conviction of the appellants is not sustainable in the eye of law. However, the learned trial court has not considered the aforesaid aspect of the matter and convicted the appellants under Sections 392 and 411 of the IPC and different Sections of the Arms Act. On the other hand the learned



counsel for the State has defended the judgment stating that all the materials show that accused persons were arrested at the spot after snatching the motorcycle of the informant and country-made Pistols and cartridges were also recovered and the evidence remains un rebutted, as such their conviction under Sections 392 and 411 of the IPC and under different Sections of the Arms Act does not suffer from any infirmities and inconsistencies and it is sustainable in the eye of law.

9. In the background of the argument of both the parties and considering evidence on record, it appears that P.W.3 is the informant in this case and on his written statement, the prosecution was initiated as stated in his evidence that on 22.6.2002 at about 7:00 .P.M. while he was going by his motorcycle BR 11B 7595 to Gerabari and when he reached near Prem Hotel, three persons stopped him on the point of Revolver and one of the persons tried to hold his collar. His evidence further discloses that on the point of pistol they snatched his motorcycle and took him in a ditch and a boy tried to start the motorcycle, in the meantime, finding opportunity the informant fled away from the place of occurrence and raised *hulla*. His evidence further disclosed that the police party chased and caught hold the accused persons who had snatched the motorcycle and he disclosed his name as Ranjeet Kumar Singh and on search two live



cartridges were recovered from his possession and another accused person was arrested, who disclosed his name as Umakant Singh and on his search, from his pocket one country-made pistol was recovered. He has not identified the accused persons in the dock. It further appears from perusal of the evidence that P.Ws. 1 and 2 who are seizure list witness and 7, 8 and 9 have been declared hostile in this case. It further appears that P.W.5 who is a police constable though supported the occurrence but he has not identified the accused persons in dock. However, it further appears that Anant Ram, S.I. (P.W.6) has supported the occurrence in the FIR and he has identified the accused persons also in the dock and there is nothing in his cross examination to doubt his testimony. Similarly P.W.10 Surendra Kumar Saroj who is Officer Incharge, also reached at the place of occurrence, has supported the manner of occurrence and also identified the accused persons in dock.

10. P.W.5 is the Sergeant Majour who has examined also the arms and ammunition, found the pistol not in working condition and cartridges in working condition and he has also given his findings that cartridges were used for firing.

11. P.W. 12 is the witness examined under Section 311 of the Cr.P.C. and he has proved the sanction letter issued by the District Magistrate.



12. Considering the entire evidence as stated above it appears that no doubt the informant has supported the prosecution case but not identified the accused persons in dock and other witnesses have also not identified them except P.W.6, 10 and 11 but P.W.6 is the member of the raiding party and P.Ws. 10 and 11 were also police personnel who reached at the place of occurrence and they have supported the prosecution case and also identified the accused persons in dock and the Sergeant Major has not found the pistol in working condition but he has stated that cartridges were used for firing. The cartridges were found in working condition.

13. Submission of the learned counsel for the appellants is that the police personnel are highly interested persons and their evidence can not be relied upon in absence of corroboration by the informant whose motorcycle was snatched and no other independent witness has been examined in this case, however, the presence of police personnel is not under challenge. It is the prosecution case that the police party reached there and arrested the accused persons on chase and the motorcycle was recovered.

14. Considering the entire circumstances so far conviction of the appellants under Sections 392 and 411 is concerned that appears to be free from any infirmities, however so far conviction of the appellants under Section Sections 25(1)(1-A), 25 (1)(1-B) and



Section 26(I)/35 of the Arms Act is concerned I find that there is nothing available on the record to show that arms and ammunition were prohibited arms as defined under Section 2(I) of the Arms Act, as such conviction of the appellants under Section Sections 25(1)(1-A) does not appear to be sustainable in the eye of law. Similarly there is no evidence available on the record to show that those arms and ammunition were concealed in such a manner to escape the glare of police officials, as such conviction of the appellants under Sections 26(I)/35 of the Arms Act also does not appear to be sustainable in the eye of law, however, so far conviction under Section Sections 25 (1)(1-B) of the Arms Act is concerned on the basis of the evidence available on the record that appears to be just and proper and does not require any interference by this Court.

15. Considering the entire discussions made above, so far conviction of the appellants under Section 392 and 411 and Sections 25 (1)(1-B) of the Arms Act is concerned, they are affirmed, however conviction of the appellants under Sections 25 (1)(1-A) & 25 (1)(1-B) are set aside.

16. Submissions of the learned counsel for the appellants is that the appellants remained custody for more than three years and the occurrence is of the year, 2002 as such more than 15 years have passed and the appellants have faced rigors of the trial and agony as



such their conviction may be reduced to the period already undergone, as minimum sentence as provided under Section 25(1)(1-B) of the Arms Act is 3 years.

17. On perusal of the record, it appears that appellants have remained in custody for more than three years. Considering the fact that they have remained in judicial custody for more than three years and the occurrence is of the year, 2002, their sentence is reduced to the period already undergone in custody under Section 392 and 411 of the IPC and under Section 25(1)(1-B)) of the Arms Act and both the sentenced were directed to run concurrently.

18. Accordingly, this appeal is disposed of with the aforesaid modification in the conviction and sentence.

(Vinod Kumar Sinha, J)

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