

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1225 of 2016

Arising Out of PS.Case No. -115 Year- 2013 Thana -PATNA GRP CASE District- PATNA

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Sunil Kumar, S/o- Shri Jai Mangal Rai, Resident of Village-Dighi
Kala, P.S.-Sadar (Hajipur), District-Vaishali.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent
with

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Criminal Appeal (SJ) No. 1055 of 2016

Arising Out of PS.Case No. -115 Year- 2013 Thana -PATNA GRP CASE District- PATNA

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Aman Kumar @ Aman Kumar Choudhary, Son of Late Shanker
Prasad Choudhary, Resident of Village-Tetri, P.S.-Naugachhiya,
District-Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In both the Appeals)

For the Appellants : Mr. Ramakant Sharma, Sr. Adv.
Mr. Lakshmi Kant Sharma, Adv.
Mr. Premshanker Kumar, Adv.
Mr. Manoj Kumar, Adv.

For the State : Ms. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 12-07-2018



Both the appeals have been heard together and are being disposed of by this present common judgment.

2. The appellants/Sunil Kumar and Aman Kumar @ Aman Kumar Choudhary have been convicted for the offences under Sections 489B, 489C and 120B of the Indian Penal Code (*in short the I.P.C.*) and Sections 25(1-B)a and 26 of the Arms Act, by judgment dated 30.09.2016, passed by the learned 1st Addl. Sessions Judge, Patna in Sessions Trial No. 1378 of 2013, arising out of Patna Rail P.S. Case No. 115 of 2013, and by order dated 01.10.2016, they have been sentenced to undergo rigorous imprisonment for three (3) years, to pay a fine of Rs. 3,000/- each and in default of payment of the same to further suffer imprisonment for three (3) months for the offences under Sections 25(1-B)a and 26 of the Arms Act; rigorous imprisonment for ten (10) years, to pay a fine of Rs. 10,000/- each and in default of payment of the same to further suffer imprisonment for six (6) months for the offence under Section 489B of the I.P.C. and rigorous imprisonment for five (5) years, to pay a fine of Rs. 5,000/- each and in default of payment of the same to further suffer imprisonment for four (4) months for the offence under Section 489C of the I.P.C. The sentences have, however, ordered to run concurrently.

3. The appellants were found to be in possession



of counterfeit currency-notes and firearm weapons without any valid reason.

4. The prosecution case rests on the self-statement of Ram Pukar Singh (P.W. 1), who has alleged that on 27.04.2013, he received confidential information that some unknown persons are bringing counterfeit currency-notes and illegal arms in the city. On such information, the members of the Special Task Force, Patna and the police personnel of R.P.F. moved towards Patna Junction area and waited for the miscreants to arrive. At about 5 O'clock in the evening, two persons started moving in a suspicious manner, giving clue to P.W. 1 that perhaps they were the persons who were in possession of the counterfeit currency-notes. On chase, both of them were arrested and they disclosed their names as that of the appellants. From the possession of appellant/Aman Kumar @ Aman Kumar Choudhary (Cr. Appeal (SJ) No. 1055 of 2016), two country made pistols with magazines fitted in them and 96 counterfeit currency-notes of Rs. 1000 denomination were recovered, whereas from the possession of appellant/Sunil Kumar (Cr. Appeal (SJ) No. 1225 of 2016), again, two country made pistols fitted with magazines in them and 188 counterfeit currency-notes of Rs. 500 denomination were recovered. All the articles were seized on the failure of the appellants to state the reason for



being in possession of such articles. On probe, the appellants are said to have disclosed before the aforesaid witness that the currency-notes belong to somebody else who had instructed it to be delivered to appellant/Sunil Kumar.

5. On the basis of the aforesaid statement made by P.W. 1, a case *vide* Patna Rail P.S. Case No. 115 of 2013, dated 27.04.2013, was instituted for investigation under Sections 419, 420, 467, 468, 471, 489A, 489B, 489C and 120B of the I.P.C. read with Sections 25(1-B)a, 26 and 35 of the Arms Act.

6. The police, after investigation, submitted charge-sheet, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

7. The Trial Court, after examining ten (10) witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

8. Mr. Ramakant Sharma, learned Senior Advocate appearing for the appellants, while assailing the judgment and order of conviction, has submitted that one of the prosecution witnesses, who is none else but a member of the raiding party and a Constable, has not supported the prosecution case and has been declared hostile. He has further submitted that at the time of arrest of the appellants, their signatures on the seized counterfeit currency-notes were



not taken and since the raid was conducted on secret information, no information in that regard was written down by him nor the appellants were brought before any gazetted officer for recording of their statement.

9. Mr. Ramakant Sharma, learned Senior Advocate, has further argued that the Investigating Officer of this case (P.W. 6) could not state whether there were any identification mark put on the seized currency-notes and also denied of his having put any such mark on such currency-notes. In that event, it was canvassed that in the absence of any identification mark over such counterfeit currency-notes, it could not be stated with certainty that the same were seized from the possession of the appellants. The seized notes, though are stated to have been deposited in the *malkhana*, but there is no proof of such deposit and even the *moharrir* of the *malkhana* has not been examined in this case. Similarly, it has been argued that the Senior Scientist (P.W. 7) also did not find any marking on the box which contained the seized firearms, magazines and cartridges. Though, P.W. 7 claims to have put his own identification mark, but, it has been argued, it would be of no value, as the very source of those firearms became suspect.

10. On top of it, Mr. Sharma, learned Senior Advocate, has argued that Ramakant Kumar and Ranjan



Kumar, P.W. 8 and P.W. 9 respectively, who are the seizure-list witnesses have completely denied of there being any recovery from the appellants in their presence and, therefore, they were declared hostile. Lastly, it has been argued that the Assistant Director of the Forensic Science Laboratory, viz. Umesh Kumar Singh, who has been examined as P.W. 10, has not given any details of the numbers of the currency-notes or any description and, therefore, his impression that the notes were counterfeit does not appear to be scientific and, therefore, correct.

11. Thus, it was argued that the evidence with respect to possession of counterfeit currency-notes is very weak and, therefore, the conviction and sentence of the appellants is highly unwarranted.

12. So far as the charge under the Arms Act is concerned, Mr. Sharma, learned Senior Advocate, has submitted that there is nothing on record to establish that after the seizure of the firearms, they were marked or were examined by the arms expert and there is also no evidence with respect to the fact as to where those arms were kept. The evidence with respect to the production of the firearms before the Court also does not find mention in the records of the case.

13. In order to appreciate the contentions of the



appellants, it would only be apt to refer to the deposition of the witnesses offered on behalf of the prosecution.

14. Ram Pukar Singh (P.W. 1), who is the informant of this case, has completely supported the prosecution version and has stated that there was recovery of counterfeit currency-notes from each of the appellants. Both the appellants were in possession of two country made pistols with magazines fitted in them. The appellant disclosed before him and the police party that they were involved in the transaction of fake currency-notes. The pistols, magazines and the cartridges have been marked as Ext. 1 to 1/4 and they were produced in Court also.

15. Rakesh Kumar (P.W. 2), who is a Constable, though has been declared hostile, but has admitted that on 27.04.2013, he was posted at the Railway Police Station.

16. Anugrah Narain Singh (P.W. 3) was the Sub-Inspector of G.R.P. at the relevant time. He has deposed that at the time of raid at the platform, he was present and saw that a huge crowd had gathered. In his presence, counterfeit currency-notes were recovered from the possession of the appellants. Both the appellants disclosed their respective names. From their possession, firearms were also recovered. Though, he has admitted that the seized articles were not sealed in his presence and the numbers of the recovered



notes were also not noted down and no identification mark was put on the articles. But the fact remains that the recovery was made in his presence and there was no reason for him to falsely implicate or depose against the appellants.

17. Mukesh Kumar (P.W. 4) is the body-guard of P.W. 1 and, therefore, his presence at the time of raid, search and seizure is established. He has also deposed that the appellants were caught near Hanuman Temple at the Railway Station and from them, counterfeit currency-notes and firearms were recovered.

18. Similarly, recovery has been made in presence of Manoj Kumar (P.W. 5) also, who was posted in the G.R.P. at Patna Junction.

19. The Investigating Officer of this case, viz. Gautam Kumar has been examined as P.W. 6. He received the records for investigation on 27.04.2013. He has proved the formal F.I.R. (Ext.-3). He claims to have sent the counterfeit currency-notes to F.S.L. for examination and after receiving the report from the F.S.L., he also obtained sanction order from the District Magistrate, Patna. He has admitted that some kind of identification mark was put on the seized articles. The firearm weapons, which were examined by Satish Kumar (P.W. 7), were found to be in working condition. The currency-notes were examined by Umesh Kumar Singh



(P.W. 10), who, at the relevant time, was posted as Assistant Director, F.S.L., Patna. He, in his examination-in-chief, has stated that the currency-notes, which he examined, were seized in connection with Rail P.S. Case No. 115 of 2013 and he found the notes to be fake/counterfeit.

20. Thus from the perusal of the deposition of the witnesses, it stands established that the appellants were in possession of the counterfeit currency-notes and firearms. No doubt, there have been certain irregularities in the investigation with respect to the seized articles being sealed, numbered and marked for identification, but that by itself would not render the prosecution case totally doubtful. There is no reason whatsoever for the aforesaid witnesses to have falsely implicated the appellants. The appellants have also not stated anything in their statement recorded under Section 313 of the Code of Criminal Procedure, which could show that they have falsely been implicated in the present case.

21. As such, the conviction of the appellants/ Sunil Kumar and Aman Kumar @ Aman Kumar Choudhary, under the aforesaid sections of the I.P.C. and the Arms Act, are sustained and upheld.

22. Mr. Ramakant Sharma, learned Senior Advocate, has, however, submitted that the appellants are persons of young age and do not have any criminal



antecedents. They are required to feed many mouths and their conduct during the trial proceedings has also been satisfactory. In the jail also, their conduct had been satisfactory and they have remained in custody continuously for more than five (5) years. There is also no evidence of any prior use or circulation of counterfeit currency-notes by them or use of firearms. It was, therefore, argued that seeing their age and they are being the first offenders, their sentence be reduced to the period of custody which they have already undergone.

23. Considering the aforesaid facts as also taking into account that the appellants have remained in jail continuously for more than five (5) years, without getting any parole or furlough, this Court is of the view that the interest of justice would be sufficiently met, if the sentence imposed upon them, for each of the offences, is reduced to the period of custody which they have already undergone.

24. Thus, both the appeals are partly allowed.

25. The judgment of conviction dated 30.09.2016, passed by the learned 1st Addl. Sessions Judge, Patna in Sessions Trial No. 1378 of 2013, arising out of Patna Rail P.S. Case No. 115 of 2013, is upheld but the order of sentence dated 01.10.2016 is modified to the extent that the sentences imposed upon the appellants are reduced to the



period of custody which they have already undergone.

26. Appellant/Sunil Kumar (Cr. Appeal (SJ) No. 1225 of 2016) and the appellant/Aman Kumar @ Aman Kumar Choudhary (Cr. Appeal (SJ) No. 1055 of 2016) are in custody. They are directed to be released forthwith from jail, if not wanted in any other criminal case.

27. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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