

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.627 of 2015

Arising Out of PS.Case No. -2 Year- 2012 Thana -KATIHAR GRP CASE District- KATIHAR

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1. Meena Devi W/o Shankar Sah, R/o Gauridih, P.S. - Barari, District - Katihar.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Navin Kumar, Amicus Curiae

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 16-08-2018

None appears on repeated call on behalf of appellant whereupon, Mr. Navin Kumar, Advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Meena Devi has been found guilty for an offence punishable under Section 379 IPC and sentenced to undergo SI for 2 years vide judgment of conviction and order sentence dated 19.12.2014 by Additional Sessions Judge-3rd, Katihar in Sessions Trial No. 324/2012.

3. The persisting controversy which the learned lower court had also perceived under para-2 of the judgment and which requires in depth scrutiny, but for the same first of all, fact is to be taken note of. PW-2, Jagdish Ram who boarded Kamakhya Gaya Express at Kishanganj in a way to his house, fell prey at the hands of train robbers who succeeded in taking away 2 ATMs, diary, cash



appertaining to Rs. 1500/- and mobile by way of administering sedative in a cup of tea. Through ATM Cards Rs. 78500/- had already been withdrawn. It is further evident that while PW-2, Jagdish Ram had come to the office of Superintendent of Police, Katihar and during course of returning, when he came to Katihar Junction, he boarded at a passenger train from Katihar to Barsoi wherein he found and identified the aforesaid miscreants, seeing whom they hurriedly got down from the bogie and ran, during course of chase, the male member succeeded in his escape while female was apprehended who disclosed her identity as Meena Devi, the appellant. She was produced before GRP Katihar along with written report which was transmitted to Kishanganj GRP whereupon 2/2012

4. It is apparent that PW-3, Parsu Kumar Ram son of PW-2, Jagdish Ram had filed written report on 18.01.2012 disclosing the facts as narrated by his father, PW-2 Jagdish Ram regarding the mishappening he faced during course of journey by Kamakhya Gaya Express whereunder he was deprived of cash, two ATM Cards, diary. Through the ATM Cards Rs. 78,500/- had already been withdrawn whereupon Kishanganj Rail PS Case No. 00/2012 is found to be that means to say no serial number has been given thereupon, nor there happens to be discloser at the end of the prosecution that case was registered and being investigated upon although there happens to be



two kinds of endorsement made over written report by the same police official, A.K. Ojha. At one place it has been registered “shadow Case No. 00/2012 dated 18.01.2012 under Section 328, 379/34 IPC, I have taken preliminary investigation”. At the other place, it has been incorporated “forwarded to SHO Rail PS Barharwa as P.O. lies in your jurisdiction for necessary action”. But presence of original written report (Ext-1) speaks a lot otherwise, that neither the same was transmitted nor substantial case was registered thereupon.

5. Be that as it may, the fact remains no case was registered, no investigation was taken up. As is evident on another application filed by Jagdish Ram, PW-2 dated 31.01.2012, Rail Thana PS Case No. 02/2012 was registered and instant trial commenced on the basis thereof.

6. In order to substantiate its case, prosecution had examined altogether 4 PWs out of whom, PW-1 is Bhola Mahto, Investigating Officer of the case who took up investigation right from 03.02.2012, Jagdish Ram (PW-2), Parsu Kumar Ram (PW-3) and Awadhesh Kumar Sah (PW-4) as well as had also exhibited written report filed by Parsu Kumar Ram, Ext-1, Written report filed by Jagdish, Ext-2, Formal FIR, Ext-3 and Charge-sheet-Ext-4.

7. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313



CrPC is that of complete denial. Furthermore, it has been pleaded that there was some sort of delicate relation amongst the parties which later on turned sour resulting institution of this case.

8. It is needless to say that whenever there happens to be information conveyed to the police with regard to commission of a cognizable offence, then in that event, it is mandatory for the police to register the case. Even Constitution Bench of the Hon'ble Apex Court in *Lalita Kumari v. Govt of U.P.* reported in (2014)2 SCC 1 as well as in *State of Telangana v. Habib Abdullah Jeelani* reported in (2017)2 SCC 729 had directed the same. So, it was incumbent upon the Rail Police Kishanganj to have registered the case on the written report filed by PW-3, Parshu Kumar Ram on 18.01.2012. If that was not done, then in that circumstance, the aforesaid written report would not have been exhibited nor the formal FIR having prepared on that very basis, would have been exhibited. Once it has been exhibited, that means to say, with regard to commission of a cognizable offence the matter was already communicated, then in that circumstance, the subsequent eventuality would be hit by Section 162 CrPC, that means to say, the written report filed by PW-2 whereupon Kishanganj PS Case No. 02/2012 has been registered loses its identity. That means to say, there was no FIR. When there was no FIR, the whole trial vitiates.



9. Now second aspect should be seen. Admitting that earlier information with regard to commission of cognizable offence was ignored irrespective of its presence, the subsequent written report regarding the same occurrence was entertained after so many days. The same happens to be Exhibit-2. From perusal of the same, it is evident that it was addressed to Rail Thana Katihar. There happens to be endorsement at the end of Rail Thana, Katihar that it was sent to Kishanganj Rail Thana. In spite of presence of Section 183 CrPC allowing prosecution of an accused for commission of an occurrence during course of journey or voyage at any place through which the journey continued and irrespective of the fact that some sort of relaxation is found in terms of Section 462 CrPC on that very score, in the facts and circumstances of the case, the aforesaid provisions has to be seen in the background of lapses having been committed at the end of prosecution.

10. Because of the fact that there was no registration of the case on the basis of earlier information divulging the commission of cognizable offence, although the written report was along with police personnel (Ext-1). The same was ignored till the date on which Jagdish Ram had filed written report, that means to say, dated 31.01.2012 and so, subsequent institution of a case, if the earlier information is accepted is found barred under Section 162 CrPC and if



ignored, there happens to be inordinate delay without any cogent reason/explanation. It is needless to say that it has been settled at rest that version and counter version of an occurrence is admissible but institution of subsequent FIR on the same version is not at all permissible in the eye of law as has been held in ***Kuldeep Singh v. State of Maharashtra*** as reported in (2017) 13 SCC 764.

11. Now coming to the factual aspect, it is evident that four witnesses have been examined out of whom PW-4 had not spoken anything over occurrence whereupon he was declared hostile. PW-1 is the Investigating Officer who had exhibited the report submitted by Parshu Kumar Ram dated 18.01.2012 ((Ext-1), 31.01.2012 filed by Jagdish Ram (Ext-2) and the formal FIR, (Ext-3) which happens to be based on Ext-1. Then thereafter, he had stated informant produced Meena Devi at Karihar GRP wherefrom she was sent to Kishanganj. After investigation, he submitted charge-sheet against the accused, Meena Devi. During cross-examination, he had stated that no FIR was instituted over the written complaint filed by Parshu Kumar Ram.

12. PW-2 is Jagdish Kumar Ram who had, during in his examination-in-chief, substantiated his case by stating that while he was coming from the place of his son over Kamakhya Gaya Express, one female and one male developed friendship and during



course thereof, offered tea. After sipping the same, he became unconscious. Then thereafter, they slipped along with his mobile, ATM Cards, cash appertaining to Rs. 1500/-. Though, operation of ATM was stopped, till then, miscreants had withdrawn through both the ATMS Rs. 78,500/-. He had further stated that on 31.01.2012 while he had come to Katihar had seen the female and male accused in a bogie of Katihar Barsoi passenger and during course thereof, he had caught hold of Meena Devi, produced her in GRP where he had also filed a written report. During cross-examination, he had stated that he had handed over Meena Devi to police in the night of 31.01.2012. He had further stated that he remained with Meena Devi for two days though he had denied intimate relationship.

13. PW-3 is his son who had reiterated the prosecution version on the basis of discloser made by his father whereunder his father was relieved with two ATM cards, money, diary, as well as withdrawal of Rs. 78,500/- through stolen ATM Cards. He had also identified the written report having at his end.

14. From the evidence available on the record, it is evident that it happens to be the case of single identification. Moreover, considering the cross-examination of PW-2, the victim wherein he had admitted that he remained with Meena Devi for two days before producing her to GRP on 31.01.2012 is a circumstance



which speaks otherwise and in the aforesaid background as well as considering the legal infirmity persisting in the prosecution case as stated hereinabove, the finding recorded by the learned lower court is not at all found to be legally maintainable whereupon, the same is set aside. Appeal is allowed.

15. Since the appellant is on bail, she is discharged from the liability of bail bond.

16. Let a copy of this judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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