

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2172 of 2017

Arising Out of PS.Case No. -69 Year- 2015 Thana -SAMSTIPUR RAIL P.S

District- SAMASTIPUR

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1. Devendra Mahto @ D. Marka, Son of Subey Lal Mahto Mahto,
R/o Village- Badiya Tola, P.S.- Garhpura, District- Begusarai.

2. Govind Kumar Mahto @ Natwar @ Govind Mahto, Son of Dip
Narayan Mahto, R/o Village- Bardaha, P.S.- Khodabandpur,
District- Begusari.

.... Appellants

Versus

The State of Bihar

.... Respondent/Opposite Party

WITH

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Criminal Appeal (SJ) No. 2220 of 2017

Arising Out of PS.Case No. -69 Year- 2015 Thana -SAMSTIPUR RAIL P.S

District- SAMASTIPUR

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Babu Saheb Mahto, Son of Ganesh Mahto, R/o Village- Bhakhari
Bazar, P.S.- Bhakhari, District- Begusarai.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

WITH

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Criminal Appeal (SJ) No. 2493 of 2017

Arising Out of PS.Case No. -69 Year- 2015 Thana -SAMSTIPUR RAIL P.S

District- SAMASTIPUR

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1. Md. Shamsul, Son of Late Md. Kaiyum, R/o Village- Bara, P.S.-
Khodawandpur, District- Begusarai.

2. Md. Masum, Son of Late Md. Yunus, R/o Village- Mobarakpur



Phulkari, P.S.- Birpur, District- Begusarai.

.... Appellants

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

(In CR. APP (SJ) No.2172 of 2017)

For the Appellant/s : Mr. Mukesh Kumar-1, Adv.

For the State : Mr. Zeyaul Hoda, APP

(In CR. APP (SJ) No.2220 of 2017)

For the Appellant/s : Mr. Mukesh Kumar-1, Adv.

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.2493 of 2017)

For the Appellant/s : Mr. Manish Kumar-13, Adv.

Mr. Rohit Kumar, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 30-08-2018

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

2. The appellants have been convicted for the offences under Sections 401 and 414/34 of the Indian Penal Code and Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by judgment dated 13.06.2017, passed by the learned Special Judge, N.D.P.S. Act, Samastipur in Case No. 1501 of 2016, arising out of



Samastipur Rail P.S. Case No. 69 of 2015 (N.D.P.S. Case No. 01 of 2016), and by order dated 16.06.2017, they have been sentenced to undergo rigorous imprisonment for seven years, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer rigorous imprisonment for six months for the offence under Section 401 of the I.P.C.; rigorous imprisonment for three years, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer rigorous imprisonment for six months for the offence under Section 414 of the I.P.C. and rigorous imprisonment for ten years, to pay a fine of Rs. 1,00,000/- each and in default of payment of fine, to further suffer rigorous imprisonment for one year for the offences under Sections 21 and 22 of the N.D.P.S. Act. The sentences have been ordered to run concurrently.

3. The case of the prosecution is based on the self-statement of Sanjay Kumar Singh (informant/P.W. 2), the Officer-in-Charge of G.R.P. Samastipur, which was lodged on 06.11.2015. He has alleged that on 05.11.2015, he was informed that appellant/Md. Shamsul (*Cr. Appeal (SJ) No. 2493/2017*) along with two other members of his team, viz. appellant/Md. Masum (*Cr. Appeal (SJ) No. 2493 of 2017*) and Devendra Mahto @ D. Marka (*Cr. Appeal (SJ) No. 2172/2017*), have boarded Jan Sadharan Express for the purposes of sedating and, thereafter, robbing the



passengers. The aforesaid information was noted down in the station diary and the escort team in the train was alerted. A seize was laid at the Samastipur Railway Station at Platform No. 1. The informant (P.W. 2) along with the police party boarded the train. Three of the appellants, viz. Md. Shamsul, Md. Masum and Devendra Mahto @ D. Marka were searched and from their possession mobile telephones, Ativan, Etizolam and Almox tablets and biscuits were recovered. The aforesaid three appellants informed the police party that they were accompanied by the other two appellants, viz. appellant/Babu Saheb Mahto (*Cr. Appeal (SJ) No. 2220/17*) and Govind Kumar Mahto @ Natwar @ Govind Mahto (*Cr. Appeal (SJ) No. 2172/17*), who could manage to escape at Rosera Station. They further disclosed that they had boarded the train at Hajipur. Some of the fellow passengers informed the police party that the appellants were eating biscuits and were also persuading the other passengers to consume the same. Two of the passengers, viz. P.Ws. 8 and 9 did not accept the biscuits and informed the police about the attempt of the appellants to feed the passengers with biscuits. After alighting from the train at Hasanpur and on the pointing of the appellant/Md. Shamsul, a raid was conducted, whereafter appellants/Babu Saheb Mahto and Govind Kumar Mahto @ Natwar @ Govind Mahto were arrested. However, nothing



was recovered from the possession of the aforesaid two persons.

4. On the basis of the aforesaid self-statement, Samastipur Rail P.S. Case No. 69 of 2015, dated 06.11.2015, was registered for investigation for the offences under Sections 401 and 414/34 of the I.P.C. and Sections 20 and 22 of the N.D.P.S. Act, 1985.

5. The police, after investigation, submitted charge-sheet, whereafter cognizance was taken and the case was committed to the Special Court for trial and disposal.

6. The learned Trial Court, after having examined ten witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

7. While assailing the judgment and order of conviction and sentence, the learned Advocates appearing for the appellants have submitted that the prosecution/conviction/sentence of the appellants are based on presumption of the informant/P.W. 2 that they had boarded the train for purposes of robbing the passengers. It has further been submitted that only because of their not having clean background, they have been made accused in this case. So far as the evidence against them is concerned, it was canvassed that the recovery of the drugs, for which they have been convicted and sentenced under



the N.D.P.S. Act, 1985, was doubtful inasmuch as there is no record of the same having been kept in any safe custody before the samples were drawn and sent to the Forensic Science Laboratory for ascertaining whether it contained psychotropic substances. Apart from this, it has further been argued that the biscuits, which were recovered from the possession of the appellants, were not found to be containing any basic drug. The incriminating articles were seized on 06.11.2015, but the samples were drawn only on 23.11.2015 and were dispatched to the F.S.L. on 30.11.2015. For such period, it is not known where those articles were kept and whether they remained inviolate in the interregnum. Lastly, it has been submitted that no offence under Section 401 or for that matter under Section 414 of the I.P.C., can at all be said to be made out as nobody was cheated/robbed and no stolen article was recovered from the possession of the appellants.

8. P.W. 10 is only a formal witness, who has proved the seizure-list and his signature over the same (Exhibit-7).

9. P.Ws. 8 and 9 are students, who claimed to have travelled in the train. P.W. 8 has deposed that when the appellants wanted to make him consume biscuits, he refused and reported about the matter to the G.R.P. Though, he has proved the prosecution version, but has not



been able to identify the appellants. P.W. 9, another student, has not supported the prosecution version and has been declared hostile.

10. P.Ws. 1, 2, 3, 4, 5 and 7 are the police witnesses. P.W. 2 is the informant of this case, who led the team comprising P.Ws. 1, 3, 4, 5 and 7. All of them have supported the prosecution version in as much as they have testified to the fact that three of the appellants were arrested from the train and on the pointing of one of the appellants, two other appellants, viz. Babu Saheb Mahto and Govind Kumar Mahto @ Natwar @ Govind Mahto were arrested. The aforesaid witnesses have testified to the fact that nothing incriminating was recovered from the possession of the appellants/Babu Saheb Mahto and Govind Kumar Mahto @ Natwar @ Govind Mahto.

11. The informant/Sanjay Kumar Singh/P.W. has though stated in detail about the recovery of Ativan, Etizolam and Almox tablets as well as biscuits, but has not said anything which could throw light on whether the seized articles were kept in safe custody or in the *Malkhana*.

12. In the absence of any such endorsement, the very seizure becomes doubtful.

13. The Investigating Officer of this case, viz. Jai Prakash Narayan has been examined as P.W. 6. He has deposed that he had sent the seized articles to Muzaffarpur



F.S.L. for which he had obtained permission on 23.11.2015.

The consignment was sent on 30.11.2015, which was received in the Laboratory on 04.12.2015.

14. Thus, from the conspectus of deposition of the aforesaid witnesses, the following facts emerge :

(a.) The three of the appellants, viz. Devendra Mahto @ D. Marka, Md. Shamsul and Md. Masum were arrested from running train, whereas the two other appellants, viz. Babu Saheb Mahto and Govind Kumar Mahto @ Natwar @ Govind Mahto were arrested on the pointing of the aforesaid three appellants;

(b.) Admittedly, nothing was recovered from the possession of the appellants, viz. Babu Saheb Mahto and Govind Kumar Mahto @ Natwar @ Govind Mahto;

(c.) Whatever was recovered from the possession of the appellants, though are stated to have been seized, but there is no evidence with regard to their sealing or keeping in safe custody;

(d.) The samples from the seized psychotropic medicines were taken only on 23.11.2015, i.e. after about 17 days of the seizure.

(e.) There is no evidence of the seized items being kept in the *Malkhana* or in safe custody; and

(f.) No stolen article was recovered from the possession of the three appellants, viz. Devendra Mahto @ D. Marka, Md. Shamsul



and Md. Masum, who were arrested from the running train.

15. On an analysis of the aforesaid materials through the mouth of witnesses, it becomes very clear that the prosecution of the appellants for the offence under Section 401 of the I.P.C. is only on the basis of the presumption of the witnesses that the appellants are members of a gang of robbers and have tainted background. However, nothing has been brought on record to indicate that because of their being members of the gang, anyone of the appellants had been convicted in the past. Since no stolen article was recovered from the possession of anyone of the appellants, their conviction and sentence under Section 414 of the I.P.C. is also highly presumptuous and avoidable.

16. With respect to the conviction and sentence of the appellants under Sections 21 and 22 of the N.D.P.S. Act, 1985, the mandatory requirements under Sections 42(2), 50 and 52-A of Act have not been complied with. In the absence of any proof of the compliance of the aforesaid mandatory requirements, the case of the prosecution has become absolutely doubtful.

17. Apart from this, the biscuits, which were found to be in possession of the appellants, were not found to be containing any basic drug for the prosecution to infer



that the biscuits were meant to be infused with psychotropic substance for the purposes of sedating the passengers and, thereafter, robbing them. Thus, only for the possession of biscuits, the offence for which the appellants have been charged cannot be made out.

18. For the aforesaid reasons, the judgment and order of conviction and sentence dated 13.06.2017 and 16.06.2017 respectively, passed by the learned Special Judge, N.D.P.S. Act, Samastipur in Case No. 1501 of 2016, arising out of Samastipur Rail P.S. Case No. 69 of 2015 (N.D.P.S. Case No. 01 of 2016), cannot be said to be sustainable in the eyes of law. The same is, accordingly, set-aside. The appellants, above named, are acquitted of the charges.

19. All the three appeals stand allowed.

20. Appellant/Devendra Mahto @ D. Marka (*Cr. Appeal (SJ) No. 2172/2017*) and appellants/Md. Shamsul and Md. Masum (*Cr. Appeal (SJ) No. 2493/2017*) are in custody. They are directed to be released forthwith from Jail, if not required in any other case.

21. Appellant/Babu Saheb Mahto (*Cr. Appeal (SJ) No. 2220/2017*) is on bail. Hence, he is discharged from the liabilities of his bail-bonds.

22. This Court has been informed by the learned counsel appearing for the appellant/Govind Kumar



Mahto @ Natwar @ Govind Mahto (*Cr. Appeal (SJ) No. 2172/2017*) that though he was granted bail during the pendency of the appeal by a Bench of this Court, but he has, till date, not furnished the bail-bonds. In case, he has not been released from Jail, he is also directed to be released forthwith, if not required in any other case. If at all, the aforesaid appellant has been released on bail, he would be deemed to have been discharged from the liabilities of his bail bonds.

23. Let a copy of this judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and records.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.09.2018
Transmission Date	04.09.2018

