

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.557 of 2015

Arising Out of PS.Case No. -133 Year- 2012 Thana -MADHEPURA District- MADHEPURA

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1. Md. Ziyafil @ Md. Ziyapil, S/o Md. Israil, resident of Saharsa Ward No. 6, P.S.-
Saharsa, District- Saharsa. Appellant/s

Versus

1. The State of Bihar Respondent/s

with

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Criminal Appeal (SJ) No. 632 of 2015

Arising Out of PS.Case No. -133 Year- 2012 Thana -MADHEPURA District- MADHEPURA

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1. SANJIT KUMAR son of Ram Khelawan Mehta, resident of village- Maheshwar
Tola Chousar, P.S. Madhepura, (Bharrahi), District- Madhepura Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

(In CR. APP (SJ) No.557 of 2015)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv
Mrs. Meena Singh, Adv.
Mr. Bhaskar Shankar, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP
(In CR. APP (SJ) No.632 of 2015)

For the Appellant/s : Mr. Praveen K. Agrawal,
Mr. Santosh K. Singh, Advocates.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-08-2018

Appellant, Md. Ziyafil @ Md. Ziyapil (Criminal

Appeal (SJ) No.557 of 2015) has been found guilty for an offence punishable under Section 412 IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 25,000/- in default thereof, to undergo RI for two years, appellant, Sanjit Kumar (Criminal Appeal (SJ) No.632 of 2015) has been found guilty for an offence punishable under Section 395 IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 25,000/- in default thereof, to undergo RI for two years with a further direction to run the sentences concurrently



(wrongly directed) vide judgment of conviction dated 11.08.2015 and order of sentence dated 13.08.2015 passed by Sessions Judge, Madhepura in Sessions Trial No.180/2012, on account thereof, have been heard together and are being decided by a common judgment.

2. The prosecution case, as is evident from the written report submitted by Mahesh Kumar Singh is to the effect that on 28.03.2012 at about 8.30 PM while his son, Sachin Kumar and son-in-law, Ravi Shankar Singh were coming to the house over a motorcycle and as soon as reached at Road No.8, fell prey at the hands of miscreants, who on the pretext of fire arm, managed to decamp them with mobile, ATM card, driving license, voter ID card, cash and golden chain. At that very time, one another passersby namely, Ashok Sharma was also victimized. It has also been disclosed that his son Sachin as well as Ashok Sharma identified three persons out of them, namely, 1. Kailash Sah son of Jai Narayan Sah @ Jailo Sah, 2. Sanjit Kumar son of Ram Khelawan Mehta and 3. Munna Sah son of Nageshwar Sah, all residents of Village-Mahesua, Tola-Chausar, PS-Madhepura. Then thereafter, his son Sachin and Ashok Sharma had gone to the place of Mukhiya, Deo Narayan Sharma, they had also informed Superintendent of Police, they had also gone to village-Chausar where guardians of miscreants undertook to refund the booty but, failed and began to delay the matter on one pretext or the other whereupon lastly, written report is being placed. As is



apparent from the lower court record after registration of Madhepura (Bharrahi) PS Case No. 133/2012 investigation commenced and during course thereof, Kailash Sah and Md. Ziyafil were charge-sheeted whereupon, Sessions Trial No. 180/2012 commenced after commitment. Ashok Sharma (PW 1) and Ravi Shankar Singh (PW 2) got examined.

3. It is also evident from the lower court record that subsequently, supplementary charge-sheet has been submitted against accused, Manikant Kumar @ Munna Sah, Sanjit Kumar whose cases were also committed and on account thereof, Sessions Trial No. 180A/2012 was drawn up wherein Ravi Shankar Singh was examined as PW-1, Ashok Sharma as PW-2. Then thereafter, as is evident from order dated 23.09.2013 Sessions Trial No. 180A/2012 has been amalgamated with Sessions Trial No. 180/2012 at the request of learned counsel for the accused as, it was submitted that status of both the sessions trial happen to be the same. It is also evident from the judgment impugned that the aforesaid eventuality has been explained under para-6.

4. Section 273 CrPC speaks about conduction of the trial in the presence of an accused unless and until absence of an accused is properly acknowledged either under Section 317 CrPC or under Section 205 CrPC, as the case may be or the accused has been declared absconder in accordance with Section 299 CrPC. Certainly,



while PWs-1 and 2 of Sessions Trial No. 180/2012 were examined and their evidences were against the accused, Md. Ziyafil @ Md. Ziyapil and Kailash Sah while the examination of PWs-1 and 2 relating to Sessions Trial No. 180A/2012 was against accused, Sanjit Kumar and Munna Sah. That being so, evidence of these PWs relating to Sessions Trial No. 80/2012, would not be considered against the accused of Sessions Trial No. 180A/2012 and vice versa.

5. That being so, if the learned lower court was very much eager to amalgamate the trials, then in that event, there should have been fresh examination of Ashok Sharma and Ravi Shankar Singh against all the four accused in a common trial on recall which the learned lower court failed to exercise.

6. Now coming to the propriety of the judgment impugned, it is apparent that para-9-10 of the judgment impugned deal with the evidence of PWs 1 and 2 relating to Sessions Trial No. 180/2012 while paragraphs-11 and 12 deal with the evidence of PW-1, Ravi Shankar Singh and PW-2, Ashok Sharma relating to Sessions Trial No. 180A/2012. However, after going through the aforesaid paragraphs coupled with paragraphs-17, 18 and 19, of the judgment impugned the evidence against the appellants which stood independently under both Sessions Trial. i.e. 180/2012 and 180A/2012 had conjointly been considered, scrutinized, analyzed and accepted whereupon, convicted. That being so, irrespective of the



situation as discussed hereinabove, ultimately, the evidence of both the sessions trial, though separately recorded, have been conjointly considered.

7. In the aforesaid facts and circumstances, it is found that the learned lower court had committed error in amalgamating both the sessions trials and then, proceeded conjointly causing miscarriage of justice. That being so, the judgment is set aside. Both the Appeals are allowed. The matter is remitted to the learned lower court to proceed afresh right from examination of PW-2 of both the Sessions trials i.e. 180/2012 and 180A/2012 against the concerned accused in accordance with law.

8. The bail bonds of appellants are hereby cancelled directing them to surrender before the learned lower court within a fortnight failing which, the learned lower court will proceed against them in accordance with law.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
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