

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.547 of 2012

Arising Out of PS. Case No.-11 Year-2012 Thana- KATIHAR GRP CASE District- Katihar

Ajay Kumar Sah S/O Madhu Prasad Sah R/O Khuskibagh, Milanpara, P.S.
Sadar, Distt. - Purnea Appellant

Versus

1. The State Of Bihar
2. The Union Of India

... .. Respondents

Appearance :

For the Appellant/s : Mr. Arun Kumar Mandal, Adv.
For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 26-09-2019

Appellant Ajay Kumar alongwith other co-accused, namely, Hridaya Kumar Singh, Beni Choudhary, Praween Kumar Mandal, Kari Sahni @ Phagu Sahni and Umesh Yadav was convicted for an offence punishable under section 22(b) of the N.D.P.S.Act alongwith Sections 328/34. 379/34, 41//34, 414/34 of the I.P.C. and accordingly, sentenced vide judgment of conviction dated 14.5.2012 and order of sentence dated 19.5.2012 passed by the Sessions Judge cum Special Judge, N.D.P.S., Katihar in connection with G.R.Case No. 16/2012, Katihar Rail P.S.Case No. 11/2012.

Against the judgment of conviction and sentence Cr.Appeal (SJ) No. 577/2012 (Kari Sahani @ Phagu Sahani). Cr.Appeal (SJ) No. 558/2012 (Hriday Kumar Singh and Beni Choudhary), Cr.Appeal (SJ) No. 567/2012 (Umesh Yadav) and



Cr.Appeal (SJ) No. 595/2012 (on behalf of Praveen Kumar Mandal) were also filed. When the matter came up for conjoint hearing on 5.7.2016, it has been reported that the appellant Ajay Kumar Sah escaped from the judicial custody whereupon, instant criminal appeal has been segregated from the conjoint hearing alongwith concerned appeals as referred to hereinabove which ultimately decided on 5.7.2016. It is further evident that the report was called for and as per report communicated vide letter No. 190/18 dated 9.5.2018, appellant escaped from the judicial custody on 14.7.2013. Another report has been received relating thereto and the same is available vide letter No. 396/19 dated 8.8.2019 of the learned lower court wherefrom it is evident that the appellant had surrendered on 5.8.2019 and since then he is in custody. That means to say, when the appeal has been taken up for hearing, appellant is under custody.

It is further evident that at an earlier occasion in a case of **Daya Shankar Singh & Anr. v. State of Bihar**, reported in 2004(4) PLJR 51, appeal having on behalf of the absconding appellant was dismissed when, his appearance was not at all procured on the date of hearing of the appeal and that has again been reaffirmed in another Division Bench decision in the case of **Dhananjay Rai @ Guddu Rai vs. State of Bihar**, reported in



2015(4) PLJR 764. That means to say, when the appeal has been taken up for hearing, there is requirement of presence of the appellant and only thereafter hearing could be allowed. Moreover, Chapter XII Rule 8 of the Patna High Court Rules also enlightens the issue speaking about maintainability of the appeal in case, there happens to be presence of the appellant by way of having been on bail or under custody. So, today, there happens to be maintainability of this appeal whereupon, learned counsel for the appellant as well as learned A.P.P. have been heard. L.C.record has been gone through in consonance of the judgment dated 5.7.2016 passed by a co-ordinate Bench allowed the appeals by way of acquitting the concerned appellants in connection with the relevant appeals so detailed hereinabove against the judgment impugned.

It would be a fruitless effort if the whole case is ascribed in consonance of the deposition of the witnesses which has been considered properly by a co-ordinate Bench and that too, when the case of the appellant stood on similar footing.

For the brevity, the case of the prosecution is to be noted down in order to suggest the case of parity. Lotan Paswan (P.W.1) Officer In-charge, Rail P.S., Purnea alongwith other police personnel while was on patrolling, they saw one person having staggering, subsequently, fell down on the ground was lifted by six



persons put on a bench having over the platform and then, they took away his bag, also searched out his body. During course of fleeing, one person was apprehended who disclosed his identity as Hirday Kumar Singh who was searched out in presence of two independent witnesses, namely, Matuk Deo Rai and Devendra Sahani and a bag, cash appertaining to Rs.615/- and one sachet containing cream colour intoxicant alongwith other articles were recovered, for that search cum seizure list was prepared. On interrogation, he disclosed the names of the members of the gang including the appellant and also confessed that they are engaged in looting an innocent passenger by administering seedative. It has also been disclosed that remaining accused including the appellant were apprehended at the instigation of aforesaid Hirday Kumar Singh and then, they looted belongings. Further more, considering recovery of single sachet of narcotic substance, he was taken before Md. Nayeem, gazetted officer being Assistant Commandant, R.P.F. and during course of search, Ativan tablet (psychotropic substance) were seized whereupon, after institution of Katihar Rail P.S.Case No. 11/2012 investigation commenced and concluded by way of submission of charge sheet followed with trial meeting with ultimate result, subject matter of the instant appeal.



Defence case as is evident from the mode of cross-examination as well as statement of the accused recorded under section 313 Cr.P.C. is that of complete denial. Oral as well as documentary evidence have been adduced in defence.

From the record it transpires that altogether 11 P.Ws. have been examined. They are P.W.1 Lotan Paswan, the informant of this case, P.W.2 Md. Jakir, the victim, P.W.3 Ram Pravesh Singh Yadav, P.W.4 Shailendra Kumar Singh, P.W.5 Nagendra Kumar Singh, P.W.6 Arun Kumar Prasad, P.W.7 Dr. Bani Kumar, P.W.8 Rabindra Mohan, P.W.9 Md. Nayeem, Assistant Commandant, R.P.F. Post, P.W.10 Ramdeo Paswan, the I.O. of the case and P.W.11 Ashok Kumar, S.D.J.M., Katihar.

The exhibit of the prosecution case is that Ext.1 is the written report, Ext.2 series are the production cum seizure list, Ext.3 is the Fard Beyan of victim Md. Jakir recorded at Sadar Hospital, Purnea on 15.3.2012 and Ext.3/1 is the signature on the endorsement of the said Fard Beyan, Ext.4 is the injury report of the victim, Ext.5 is the opinion of Drug Inspector, Ext.6 series are the signature on the production cum seizure list, Ext.7 series are the signature on the seizure cum production list prepared on 15.3.2012 at 13.45 P.M., Ext.8 series are the memo or arrest, Ext.9



is the report of F.S.L. and Ext.10 is the statement of the victim recorded under section 164 Cr.P.C.

On behalf of the defence four witnesses have been examined. They are D.W.1 Ram Gopal Mandal, D.W.2 Manju Devi, D.W.3 Dharendra Kumar Sah and D.W.4 Harkeshwar Sharma. The exhibit of the defence is Ext.A agreement paper, Ext.B acknowledgment (Part II) and Ext.C receipt of Prakash Telecom.

It is needless to say that the case of the appellant stood on parity with the other co-convicts whose appeal has already been allowed vide judgment dated 5.7.2016 on the ground of non-production of narcotic/ psychotropic substance in court with regard to N.D.P.S.Act and in likewise disbelieving the evidence so far other sections are concerned which would have same implication against the appellant also. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court relating to the appellant Ajay Kumar Sah is hereby set aside. Appeal is allowed. Appellant is in custody, hence is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.09.2019
Transmission Date	30.09.2019

