

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.338 of 2019

Arising Out of PS. Case No.-389 Year-2016 Thana- KRITYANAND NAGAR District-
Purnia

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Babul Kumar @ Bablu @ Bablu Kumar Son of Prahlad Yadav Resident of
Village - Tetrahi, P.S.- Jankinagar, Distt - Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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with
CRIMINAL REVISION No. 187 of 2019

Arising Out of PS. Case No.-389 Year-2016 Thana- KRITYANAND NAGAR District-
Purnia

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Prakash Kumar Yadav Son of Late Bijendra Yadav Resident of Village-
Tetrahi, P.S.- Janki Nagar, District- Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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with
CRIMINAL REVISION No. 302 of 2019

Arising Out of PS. Case No.-389 Year-2016 Thana- KRITYANAND NAGAR District-
Purnia

- =====
1. Shashi Bhushan @ Lutan Yadav @ Luttan Son of Mr. Yogendra Prasad
Yadav @ Yogendra Prasad Resident of Village-Tetrahi P.S.-Janki Nagar,
Dist.-Purnea
 2. Kundan Kumar Son of Late Subhash Chandra Yadav Resident of Village-
Tetrahi, P.S.-Janki Nagar, Dist.-Purnea

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL REVISION No. 338 of 2019)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate



For the State : Mr. Zainul Abedin, APP
(In CRIMINAL REVISION No. 187 of 2019)
For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
For the State : Mr. Jitendra Kumar Singh, APP
(In CRIMINAL REVISION No. 302 of 2019)
For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
For the State : Mr. Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 28-11-2024

All three criminal revision petitions have been taken up together as they have preferred against the same impugned judgment dated 17.01.2029 passed by learned Additional Sessions Judge-III, Purnea in Cr. Appeal No. 33 of 2018 whereby learned Appellate Court has upheld the judgment of conviction and order of sentence passed by learned Trial Court dated 07.06.2018 and 08.06.2018 respectively in G.R. Case No. 3532 of 2016 arising out of K. Nagar P.S. Case No. 389 of 2016 whereby all the petitioners were found guilty under Sections 394 and 411 of the Indian Penal Code and sentenced to rigorous imprisonment for 6 years under Section 394 of the Indian Penal Code and simple imprisonment for 3 years under Section 411 of the Indian Penal Code along with fine of Rs. 10,000/- each and in default to pay fine, the convicts were further directed to undergo simple imprisonment for one year.

2. The prosecution case as emerging from the written



report is that the petitioners had committed robbery and caused hurt in the course of robbery.

3. On the basis of the written report, F.I.R. bearing K. Nagar P.S. Case No. 389 of 2016 was registered on 24.10.2016 against unknown persons for offence punishable under Section 394 of the Indian Penal Code and Section 27 of the Arms Act.

4. After the investigation, charge sheet was submitted under Sections 394 and 411 of the Indian Penal Code and Section 27 of the Arms Act, cognizance was taken and charge was framed under Sections 394 and 411 of the Indian Penal Code and Section 27 of the Arms Act against all the petitioners.

5. During trial, altogether 6 prosecution witnesses, namely, P.W.-1- Gaurav Kumar Jha, who had accompanied the informant, P.W.-2- Birendra Thakur, P.W.-3 Firoj Alam, P.W.-4- Kumar Basant (wrongly mentioned as P.W.-3), P.W.-5- Subhash Chandra Mandal, I.O. (wrongly mentioned as P.W.-4), P.W.-6- Binay Kumar (informant), who has been wrongly mentioned as P.W.-4, were examined.

6. The prosecution has also brought on record the following documentary evidences:

- i. **Ext. 1-** Signature of informant on the written report
- ii. **Ext. 2-** Writing and signature of I.O. on seizure list of Bablu Kumar
- iii. **Ext. 2/1-** Writing and signature of I.O. on seizure



list of Prakash Kumar

iv. **Ext. 2/2-** Writing and signature of I.O. on seizure list of Kundan Kumar

7. After the trial, learned Trial Court found all the petitioners guilty only under Sections 394 and 411 of the Indian Penal Code. The petitioners were acquitted of the charge under Section 27 of the Arms Act.

8. In Criminal Appeal No. 33 of 2018 filed by the petitioners before learned Sessions Court was also dismissed upholding the judgment of conviction and order of sentence as passed by learned Trial Court. Hence, the present petitions have been preferred by the petitioners.

9. I heard learned counsel for the petitioners and learned APP for the State.

10. Learned counsel for the petitioners submits that the impugned judgments passed by learned Appellate Court as well as learned Trial Court are not sustainable in the eye of law. There are not only errors of law, but even perversity of findings in the judgments passed by both the Courts below. To substantiate his submissions, he submits that the findings of the Courts below are contrary to the evidence on record. The informant Binay Kumar (P.W.-6) in his cross-examination has clearly deposed that he does not know who had caused the



occurrence. Even in his examination-in-chief, he has not identified the accused persons as offenders of the alleged offence. He also submits that even T.I.P. was not conducted prior to the trial.

11. He further submits that even recovery of knives from the Petitioners is not legally proved by the witnesses. There is no seizure witnesses examined except the Investigating Officer himself who has only identified his signature on the seizure list, but he has not deposed in his examination-in-chief that the seized articles were properly sealed and safely kept in *Malkhana*. The seized articles were also not produced in the Court. Only identification of the signature on the seizure list does not prove that the same articles were recovered or seized from the possession of the petitioners.

12. Referring to evidence on record, he further submits that Gaurav Kumar Jha (P.W.-1), who had accompanied the informant at the time of alleged occurrence has also not identified the petitioners in the dock. He has, in fact, deposed in his cross-examination that it was night at the time of occurrence and hence, he could not see the face of the accused persons. P.W.-2 Birendra Thakur has also not supported the prosecution case at all, deposing that he knows nothing about the



occurrence. Similarly P.W.-3 Firoj Alam also knows nothing about the occurrence as per examination-in-chief, in which he has clearly deposed that he had not seen the occurrence. Even P.W.-4 (Kumar Basant) has clearly deposed that he knows nothing about the offenders. P.W.5, Subhash Chandra Mandal is I.O. of the case. He has only identified the signature on the seizure list. He has not deposed that the seized articles were properly seized and kept in the Malkhana. P.W.6 is Binay Kumar, who is the informant himself, but he himself has deposed that at the time of occurrence, the accused persons had covered their face by handkerchief and it was night at that time and he could not identify the offenders and till date he could not know who had committed the occurrence.

13. Learned counsel for the petitioners further submits that as such, it is a case of no evidence, but both the learned Trial Court and learned Appellate Court have found the petitioners guilty. It is nothing but perversity of finding.

14. He further submits that there is even error of law committed by learned Trial Court as well as learned Appellate Court. Both the Courts have found the petitioners guilty under Sections 394 and 411 of the Indian Penal Code. Such conviction itself is contradictory in nature. Without finding the accused



guilty for committing robbery or attempt to commit robbery, he cannot be found guilty under Section 394 of the Indian Penal Code which provides for punishment for causing hurt in committing robbery or attempt to commit robbery. Moreover, conviction under Section 411 IPC is also contradictory because if someone has been found guilty under Section 394 IPC, he cannot be guilty under Section 411 IPC because Section 411 IPC provides for punishment for dishonestly receiving or retaining any stolen property. If the accused has personally committed robbery, he cannot be guilty under Section 411 IPC. Hence, there is misapplication of penal provisions also.

15. As such, as per learned counsel for the petitioners, both the judgments impugned as well as the judgment of the learned Trial Court are full of perversity of finding and error of law and no way sustainable in the eye of law.

16. However, learned APP for the State defends the impugned judgments passed by learned Appellate Court and the Trial Court submitting that there is no illegality or infirmity in it and there is no requirement of any interference by this Court in the impugned judgment.

17. I considered the submissions advanced by both the parties and perused the material on record including the lower



Courts records.

18. I find that the F.I.R. was lodged against unknown persons but during investigation, no T.I.P. was conducted and even during trial, no witnesses have identified the accused persons who have committed the alleged offence. I further find that the prosecution could not prove that the seized articles were recovered from the possession of the petitioners, because in the course of the trial, only evidence adduced by prosecution is that Investigating Officer had made the seizure list and he has identified his signature on it, but he has not deposed that the seized articles were properly sealed and kept in *Malkhana* safely with identification mark regarding the case in which the articles were seized. Nor such articles have been produced in the Court. As such, seizure of the goods from the possession of the petitioner could not be legally proved against the petitioners beyond reasonable doubts.

19. I further find that there is also an error of law while applying the penal provisions against the petitioners. Without finding the petitioners guilty under Section 392 of the Indian Penal Code, both Courts below have found Petitioners guilty under Section 394 of the Indian Penal Code which is contradictory. Moreover, once the petitioners are found guilty of



robbery, they could not be held under Section 411 of the Indian Penal Code.

20. As such, I find that the judgments passed by learned Appellate Court as well as learned Trial Court are full of perversity of findings and error of law and not sustainable in the eye of law. Accordingly, the impugned judgment along with judgment of the learned Trial Court are set aside acquitting the petitioners of all charges.

21. The petitions stand allowed.

22. The records of the Courts below be sent back to them, along with a copy of the judgment.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	02.12.2024
Transmission Date	02.12.2024

