

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.811 of 2019

Arising Out of PS. Case No.-68 Year-2004 Thana- SUGAULI RAIL P.S. District- West
Champaran

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1. Umesh Rai Son of Late Daroga yadav, Resident of Village- Veer Chhapra (Pipra Kothi), P.S.- Pipra Kothi, Dist.- East Champaran.
 2. Bharat Rai Son of Fulena Rai, Resident of Village- Veer Chhapra (Pipra Kothi), P.S.- Pipra Kothi, Dist.- East Champaran.
 3. Subesh Rai Son of Late Mitlall Rai, Resident of Village- Veer Chhapra (Pipra Kothi), P.S.- Pipra Kothi, Dist.- East Champaran.

... .. Petitioners

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioners : Mr. Aditya Nath Jha, Advocate

For the State : Md. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 27-11-2024

Present criminal revision petition has been preferred against the judgment dated 09.05.2019 passed by learned Additional Sessions Judge-II, Bettiah, West Champaran in Cr. Appeal No. 72 of 2018 whereby learned Appellate Court has upheld the judgment of conviction and order of sentence both dated 01.12.2018 passed by learned A.C.J.M., Railway, Narkatiyaganj (Bettiah), West Champaran in G.R. No. 4428 of 2004 (Tr. No. 034 of 2018). Learned Trial Court has found the revisionists guilty of charge under Section 392 of the Indian Penal Code and sentenced them to Simple Imprisonment for 3 years along with a fine of Rs.10,000/- each and in case of default to pay the fine, the revisionists were directed to undergo additional imprisonment for 2 months.



2. The present proceeding arises out of Sugauli Rail P.S. Case No. 68 of 2004 registered on 28.10.2004 for offence punishable under Section 392 of the Indian Penal Code against the revisionists.

3. The F.I.R. was lodged on a written report of Railway Protection Force, Raxaul. The prosecution case as per the written report is that on 27.10.2004 they were on duty to protect the route of Train No. 524 down/2557 UP and the informant alongwith some other RPF constables had proceeded from their post Raxaul to Muzaffarpur for protection of railway route of Train No. 524 down. They were in the bogie just following the engine. When the train stopped near bridge No. 202, they heard noise from the train which was standing behind. Thereafter, he alongwith other persons went to that bogie where the passengers stated that money and goods are being snatched by showing the fear of knife. Then they proceeded further and in bogie No. 98530GS, they found the crime being committed. They attempted to surround the criminals and caught three of them. The apprehended persons disclosed their names as Subodh Kumar, Bharat Rai and Umesh Rai and one of the criminals was successful to escape. The victim passengers disclosed their names as Akbar Ansari, Mahesh Kumar and Kanhaiya Singh. It is



further stated that two knives were recovered from the apprehended persons.

4. After the investigation, charge sheet was submitted, cognizance was taken and charge was framed under Section 392 of the Indian Penal Code against all the revisionists.

5. During trial, altogether 6 prosecution witnesses namely, P.W.-1- Shyamkishore Singh (informant), P.W.-2- Devendra Pratap Singh, P.W.-3- Nawalkishore Paswan, P.W.-4- Vishnudeo Sah, P.W.-5- Sikandra Sah and P.W.-6- Srikant Ram (I.O.) were examined.

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

- i. **Ext. 1** : Handwriting and signature of P.W.-1 Shyamkishore Singh on written report,
- ii. **Ext. 1/a-** forwarding by Officer in charge Srikant Ram,
- iii. **Ext. 1/b-** registration in handwriting by Yashwant Kumar singh,
- iv. **Ext. 2-** seizure-list in handwriting and signature of P.W.-1 Shyamkishore Singh
- v. **Ext. 2/1-** Signature of P.W.-4 Vishnudeo Sah on endorsement
- vi. **Ext. 2/2-** Signature of P.W.-5 Sikander Sah on endorsement,
- vii. **Ext. 3-** memo no. 349/2016
- viii. **Material Ext. I and II-** Knives.

7. Learned counsel for the petitioners submits that the impugned judgment is not sustainable in the eye of law in view of error of law and perversity of finding. Learned Trial Court as



well as learned Appellate Court has convicted the petitioners without any cogent evidence on record. To substantiate his submissions, he further submits that as per the evidence of the informant himself, he did not find any money from the possession of the petitioners, nor even seizure of knives has been proved. Seizure list witnesses have clearly deposed in their evidence that nothing was seized from the petitioners in their presence. No passengers or victims have been examined to prove that petitioners have committed any robbery in the train. In view of such evidence, the prosecution has badly failed to prove its case beyond reasonable doubts against the petitioners but learned Trial Court and learned Appellate Court have committed error of law and perversity of finding by convicting the accused/petitioners under Section 392 of the Indian Penal Code.

8. Learned APP for the State defends the impugned judgment passed by learned Appellate Court and the Trial Court.

9. I considered the submissions advanced by both the parties and perused the material on record.

10. From perusal of the judgment of Trial Court as well as the Appellate Court, it transpires that both the Courts below have clearly found that informant had not found any money from the possession of the petitioners after apprehending them. Even



seizure witnesses (P.W.-4 and P.W.-5) have clearly deposed that nothing was recovered from the possession of the petitioners in their presence. Hence, seizure of knives from the petitioners could not be proved. Moreover, neither any victim nor any fellow passengers have been examined in support of the prosecution case.

11. In view of the aforesaid facts and circumstances, I find that prosecution could not have proved its case against the petitioners beyond reasonable doubt. Learned Trial Court as well as learned Appellate Court have committed error of law as well as perversity of finding, convicting the petitioners under Section 392 of the Indian Penal Code.

12. As such, judgments passed by learned Trial Court as well as Appellate Court are not sustainable in the eye of law. Accordingly, the impugned judgments are set aside allowing the petition.

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

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.11.2024
Transmission Date	27.11.2024

