

(2011) 08 PAT CK 0177

Patna High Court

Case No: Criminal Revision No. 402 of 2008

Anwar Mallik

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Aug. 29, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 409
- Railway Property (Unlawful Possession) Act, 1966 - Section 3

Hon'ble Judges: Amaresh Kumar Lal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amaresh Kumar Lal, J.

All the accused Petitioners were convicted and sentenced to rigorous imprisonment for one year u/s 3(a) of the Railway Property (Unlawful Possession) Act and the accused Petitioner Ganesh Rajak was further convicted and sentenced to rigorous imprisonment for one year u/s 409 of the I.P.C. Both the sentences to run concurrently. The accused Lalan Rajak and Ganesh Rajak filed Criminal Appeal No. 152/01 and the accused Anwar Mallik filed Criminal Appeal No. 155/01 in the court of learned Sessions Judge, Munger. Both the appeals have been dismissed. The accused Lalan Kumar Rajak and Ganesh Rajak have filed Cr. Revision No. 733/03 and Anwar Mallik has filed Cr. Revision No. 402/08. Both these applications arising out of the common judgment and order dated 8.08.2001 passed by the learned Railway Judicial Magistrate Ist class, Keul in R.P.F. Jhajha 4 (7)/92 and as such, both these revision applications have been heard together and are being disposed of by this common order.

2. The prosecution case, in brief, is that on 26.07.1992 at about 6.00 P.M. after getting information that a boy was sitting on platform No. 4 at Keul Junction and the employee of the Railway used to give some railway property to the boy for selling

them out. The informant went there and seized two dry cells (Battery) from the possession of the accused Lalan Rajak. The relative of Ganesh Rajak (petitioner No. 2) on interrogation, the informant was told that the batteries have been given to him by Ganesh Rajak. Lalan Rajak was brought to the R.P.F. Office where a case was registered against him. Lalan Rajak disclosed that the dry cells were given to him by Ganesh Rajak, and an employee of railway, who also informed that the Petitioner No. 2 Ganesh Rajak had gone to Jhajha. Thereafter the Inspector I/c R.P.F. Jhajha was requested on telephone for his arrest. The Inspector, R.P.F., Jhajha arrested Ganesh Rajak on 27.09.1992, who also confessed his guilt. It was further stated that he has kept some railway property in concealment in the store of railway canteen in collusion with the Manager. On his confessional statement, the store of railway canteen was searched and Ganesh Rajak showed the S.I. one bag containing 7 telephone sets, one two way station selector and two wires. The recovered articles were seized. After inquiry, the charge-sheet was submitted. Cognizance was taken against the accused on 2.11.1992. The charge was framed on 8.07.1997 against the accused. After the trial, all the three accused Petitioners have been held guilty for the offence punishable under Sections 3(a) of the Railway Property (Unlawful Possession) Act and Ganesh Rajak was further held guilty u/s 409 of the I.P.C. and they were sentenced to the imprisonment, as aforesaid. They filed the appeal and the appeal has been dismissed confirming the sentence passed by the learned trial court vide the impugned orders.

3. Heard learned Counsels for the Petitioners and the learned Counsel for the State.

4. The learned Counsel for the Petitioners has very fairly submitted that both the courts below have held guilty the accused. The occurrence is alleged to have taken place in the year 1992 and more than 19 years have passed. The Petitioners have been suffering from mental agony. The stolen article was also valued at Rs. 7000/-. They have also been in custody for some time. There is no material on the record to show that the accused have any criminal antecedent.

5. The learned Counsel for the State could not controvert the contention of the Petitioner while opposing the prayer of the Petitioners.

6. After hearing the learned Counsel for both the parties and on perusal of the material on record, it appears that the contention of the learned Counsel for the Petitioners is correct. It appears that the occurrence has taken place on 26.07.1992 and more than 19 years have passed. The accused have been suffering from mental agony. They have also been in custody for some time. It is not just and proper to send the Petitioners in custody after the expiry of 19 years.

7. Considering the facts and circumstances stated above, in my opinion, it is fit case in which sentence can be modified. The sentence of the Petitioners is modified and reduced to the period already undergone in custody. With this modification in the sentence, both theses revision applications are dismissed.