

**(2007) 02 PAT CK 0181**

**In the Patna High Court**

**Case No :** Criminal Appeal (SJ) No. 214 of 1992

Radhe Shyam Prasad Jaiswal and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 21-02-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 360  
Penal Code, 1860 (IPC) — Section 328, 394

**Citation :** (2007) PLJR 783

**Hon'ble Judges :** I.P. Singh, J

**Bench :** Single Bench

**Advocate :** Punita Kumari Singh Amicus Curiae, for the Appellant; Dilip Kumar Sinha, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

I.P. Singh, J.—Both the appellants have been convicted under Sections 394 and 328 of the Indian Penal Code. They were sentenced to undergo R.I. for 5 years on both counts. However, both the sentences were ordered to run concurrently. The prosecution case, as disclosed from the fard beyan of the informant Kamla Kant Singh, is that on 2.5.88 the informant came to Chapra Railway Station to board train number 67 Up bound for Balia, but he missed the train on the platform. In the meantime, he occupied a bench on the platform and saw 2-3 persons already sitting there and they were gossiping. He learnt from them that they were also going to Balia and they were waiting for arrival of 15 Up train which reported running late by three hours. At that time the informant wanted to have his dinner and expressed his desire to go out of the platform whereupon one of the passengers namely, Satendra Kumar Yadav requested him to purchase a railway ticket and gave the train fare of Rs. 7/- to the informant. The informant returned to the platform after having his dinner at about 11.30 P.M. and found that the said Satendra Kumar Yadav was sleeping after resting his head on a box and the remaining two passengers were sitting by his side. The informant checked his Brief-case which he had left, with the aforesaid passengers and

found the same to be intact. It has been submitted that after sometime one of the other passengers offered the informant a cream biscuit and when he took it the taste of biscuit was bitter and thereafter he threw the same. It has been alleged that the informant felt giddiness and he became unconscious thereafter. It has further been alleged that when he woke up at 2 O'clock in the night he found that his wrist watch was missing and the lock of the Briefcase was open. On verification, he found that a sum of Rs. 142/- which was kept in his pocket and another sum of Rs. 600/- which was kept in his V.I.P. Brief-case alongwith a rubber pillow and a ring containing the keys of the V.I.P. brief-case was missing. The informant tried to wake up his co-passenger Satendra Kumar Yadav who was also sleeping on the bench but he could not wake up. Thereafter the informant saw that the lock of the suitcase of Satendra Kumar Yadav was also broken. He started searching them with the help of some persons who were on the platform. In course of search he and other two persons who accompanied him went in a compartment of the train which was going for Balia and saw both the accused persons sitting in the compartment. They succeeded in apprehending both the aforesaid accused persons and on search of their individual person the articles belonging to the informant and his co-passenger Satendra Kumar Yadav were recovered from their possession. It has been stated that besides the stolen articles small phial containing some liquid substance as well as a powder of Surbex tablet were also recovered from the possession of one of the miscreants who disclosed his name as Kailash Pd. Jaiswal. The other apprehended miscreant disclosed his name as Radhe Shyam Jaiswal. Both the aforesaid miscreants confessed their guilt before the informant and other witnesses. In the meantime, the Police had arrived and both the miscreants were arrested and the articles recovered from their respective possession were seized. Thereafter the fard beyan of the informant was recorded and he put his signature over it. The Police started investigation and after completion of investigation charge-sheet was submitted against the appellants, and accordingly, case was committed to the Court of Sessions for trial.

2. The appellants pleaded not guilty and have stated that they have falsely been implicated in this case due to enmity.

3. The prosecution, in support of its case, examined altogether 12 witnesses,

4. P.W. 1 is Shiv Shankar Tiwary. He is a formal witness and he has proved writings of Police Officer on the F.I.R. (Ext. 1). P.W. 2 is Ramnaresh Rai. He is a constable and he was on duty at the time of occurrence. P.W. 3 is Suraj Nath Ram. P.W. 4 is Shivji Rai. He has been declared hostile. P.W. 5 is Kamla kant Singh, he is the informant of this case and victim himself. P.W. 6 is Dr. K. Nand who had examined the informant and one another person. P.W. 7 is Manoj Kumar Tiwary. He claims to be the eye-witness of the occurrence. P.W. 8 is Triyugi Narain Dubey is a constable who was also on duty at the time of occurrence. P.W. 9 is Surendra Kumar Pandey. He also claims to be an eye-witness of the occurrence. P.W. 10 is Satendra Kumar Yadav. He is also one of the victims. P.W.

11 is Jitendra Prasad Singh, the Officer-Incharge in G.R.P. He had recorded the fard beyan of the informant and P.W. 12 is Shyam Kishore Singh, the I.O. of this case.

5. P.W. 1 Shiv Shankar Tiwary is a formal witness and he has proved Ext. 1.

6. P.W. 3 Suraj Nath Ram and P.W. 4 Shivji Rai have been declared hostile.

7. P.W. 5 is the informant Kamla Kant Singh. He has fully supported the case of prosecution as stated in his fard beyan. According to him, in the night of 1/2.5.88 at 9.00 p.m. he came to Chapra Railway Station to catch the train for Balia but he missed the train. Thereafter he came on the platform where he was expecting for arrival of next train. He saw three persons sitting on a bench and they were gossiping. He learnt that they were also going to Balia and were waiting for arrival of the 15 Up train which was reported to be running late by 2/3 hours. Thereafter he went to take his dinner and one of the passengers Satendra Kumar Yadav requested him to purchase a railway ticket for him and gave Rs. 7/- for the same. He left his suitcase with them having good faith and went out from the platform to have his dinner. He has stated that on his return he saw that Satendra Kumar Yadav was sleeping on the bench while the remaining two passengers were sitting on the bench. When he wanted to wake up Satendra Kumar Yadav for giving him railway ticket, the remaining two co-passengers, out of whom one was a squint eyed told the informant, let him sleep because the train is late and he offered a cream biscuit. When he took the biscuit he felt the taste of biscuit was unusually bitter and he enquired about the taste of biscuit then the person who had squint eyed explained that the biscuits might have been stale and hence the taste has become bitter. He however threw away the remaining piece of same. After some time he felt giddiness and was advised by the two co-passengers to sleep. He stated that he became unconscious and he woke up after about two hours in the night and found that his Citizen wrist watch was also missing from his hand and a sum of Rs. 142/- which he had kept in the back pocket of the trouser was missing. He also found his brief-case unlocked and on inspection he found that a sum of Rs. 600/-, a V.I.P. key ring and a green colored air pillow as well as a Kurta were missing from his V.I.P. brief-case. He also found that a wooden box belonging to the co-passenger Satendra Kumar was also broken. He wanted to wake up him but he was in sound sleep so he did not wake up. He thought that it were the two co-passengers who had taken away the articles kept in his brief-case. With the help of the other passengers who were on the platform he went to search the two co-passengers. He found that the train which was going to Balia had already been arrived at the platform and with the help of three persons, whose names were Manoj Kumar Tiwary, Jai Prakash Singh and Surendra Kumar Pandey, they went in the last boggy of the said train where the two miscreants were sitting. He has stated that he immediately identified them particularly the person who had squint eyed who was sitting on the lower berth. According to him, on seeing the informant the squint eyed person attempted to throw away a wrist watch but both the

miscreants were intercepted by him and the other witnesses. They were caught hold by the members of the public and both the miscreants disclosed their names as Radhe Shyam Prasad Jaiswal and Kailash Prasad Jaiswal. He has stated that from the possession of both the miscreants the articles belonging to him namely, Citizen wrist watch, Kurta, V.I.P. Key ring as well as cash and the articles belonging to another co-passenger Satendra Kumar Yadav were also recovered. Apart from that the cream biscuits alongwith its packet were also recovered from the possession of the accused Kailash Prasad Jaiswal. Meanwhile the Police had arrived and both of them were arrested. The fard beyan of the informant was recorded by the Police and it was counter-signed by the witnesses Manoj Kumar Tiwary and Surendra Kumar Pandey. In cross-examination suggestion was put forth that on account of business rivalry the appellants have been implicated but this suggestion was denied by him.

8. P.W. 6 is Dr. K. Nand. He has examined both the victims, namely, Kamla Kant Singh and Satendra Prasad Yadav. He found the following injuries on the person of Kamla Kant Singh:--

According to him, the patient was unconscious and it was a case of suspected poisoning.

He also examined Satendra Kumar Yadav and found the following injuries on his person:--

I. Patient was unconscious.

II. It was a case of suspected poisoning.

9. P.W. 7 Manoj Kumar Tiwary, P.W. 9 Surendra Kumar Pandey and P.W. 10 Satendra Kumar Yadav have supported the case of prosecution.

10. P.W. 8 Triyugi Narain Dubey is a constable. According to him he and two other constables were the Escort Party of 15 Up train. On hearing hulls towards the eastern side of Chapra M.G. persons were surrounded by the members of the public while two more persons were found in unconscious condition. Out of them the person who was conscious was narrating before the public that the two persons who were caught hold by the public had taken his belongings. On interrogation, the restrained persons disclosed their individual names as Radhe Shyam Jaiswal and Kailash Prasad Jaiswal, respectively. According to him, from the possession of Radhe Shyam Jaiswal one wrist watch and a key ring and some cash were recovered while an open packet of biscuit and small packet containing some white powder, cash and wrist watch were recovered from the possession of accused Kailash Prasad Jaiswal. He has further stated that both the accused persons as well as the unconscious persons were brought to G.R.P. Police Station.

11. P.W. 11 Jitendra Prasad Singh is the Officer-Incharge of the Chapra G.R.P. Police Station who was posted on the date of the occurrence at the said Police Station. According to him on 2.5.1988 he had recorded the fard beyan of the informant Kamla Kant Singh and had instituted the case on the basis of the

same. The investigation of the case was entrusted by him to S.I. Shyam Kishore Singh. He had proved the fard beyan of the informant as well as formal F.I.R. drawn by him.

12. P.W. 12 Shyam Kishore Singh is the Investigation Officer of this case. He has proved the fard beyan of the informant as well as the seizure list of the articles recovered from the possession of the accused persons. He has given the full description of the specific articles recovered from the possession of the two miscreants. He has stated that he had sent the biscuit alongwith its open packet as well as tablet powder which was recovered from the possession of the accused persons for chemical examination. According to him, both the victims referred to the hospital for medical examination under Police escort. He has also stated that he had taken both the accused persons into custody and forwarded them in judicial remand.

13. Learned counsel for the appellants has submitted that the Court below has not considered that the appellants have falsely been implicated in this case due to business rivalry. It has been submitted that both the appellants and informant belong to same place and there were inimical term between both the parties. It has also been submitted that evidence of medical expert does not support the case of prosecution as he did not find external symptoms of poisoning. It has further been submitted that the Court below has not considered the provision of Section 360 of the Code of Criminal Procedure (in short "the Code") and also the provision of Offenders Act as there is no criminal antecedent against the appellants and they are the first offenders.

14. The submission of learned counsel that there was business rivalry between the appellants and the informant but it appears from the evidence of the informant that he was a student at that time and as such he cannot have any business rivalry with the appellants, as such the submission of learned counsel about the business rivalry does not have any sense.

15. So far the submission of learned counsel is concerned that there was inimical term between the informant (sic--appellants) and the informant, but it was denied by the informant during his cross-examination.

16. The submission of learned counsel that the medical expert did not find external symptoms of poisoning but the informant and another victim were examined by the doctor in the early hour of the day of occurrence and allegedly it was found that the informant was offered biscuit at about 10.00 p.m. as such after six hours of the administration of the seopax that too in small quantity no symptoms was expected and thus treatment was not required and specific treatment are not discussed in detail by the doctor. The biscuit which was offered to the informant by the appellants, some pieces of the biscuit was recovered from the possession of the appellants and it was sent for chemical examination which contained "Oxazepam". It is seopax drug and produces hypnotic effect on the person.

17. The submission of learned counsel that the Court below has not considered the benefit of Section 360 of the Code and also the provision of Offenders Act as both the appellants have been convicted under Sections 328 and 394 of the Indian Penal Code under which the maximum sentence is 10 years, as such they are not entitled to get the benefit of Section 360 of the Code and provision of Offenders Act.

18. The learned Court below on appreciation of evidence on record has rightly found the appellants guilty for the offence punishable under Sections 328 and 394 of the Indian Penal Code.

19. I do not find any reason to interfere with the conviction of the appellants.

20. Considering the fact that the occurrence took place in 1988 i.e. about 19 years and the appellants have been harassed and punished during the prolong litigation. I am of the view that it will be expedient in the interest of justice if their sentence of R.I. for 5 years each is reduced R.I. for three years each.

21. With the aforesaid modification in the sentence this appeal is dismissed. Since learned counsel Mrs. Punita Kumari Singh has assisted the Court as Amicus Curiae, she will be paid her remuneration by the Patna High Court, Council of Legal Aid & Advice Committee, in accordance with law.