(2008) CrLJ 315

Jharkhand High Court

Case No: None

Nil Kant Singh Munda		APPELLANT
	Vs	
Satroghan Singh Munda		RESPONDENT

Date of Decision: April 18, 2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 360, 361#Penal Code, 1860 (IPC) â€" Section 354, 448

Citation: (2008) CrLJ 315

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.
Petitioner has filed the instant revision application against the judgment dated 28-7-1998 passed by the learned Judicial

Commissioner, Ranchi in Cr. Appeal No. 19 of 1998 (K), whereby the petitioner"s prayer against the judgment of his conviction and sentence

passed by Sri R.K. Tuli, Judicial Magistrate, 1st Class, Khunti in G.R. No. 277 of 1996 was dismissed.

2. Heard learned Counsel for the petitioner and the learned Counsel for the State.

3. Petitioner was charged with, tried and convicted for the offence under Sections 448 and 354 IPC and was sentenced to undergo imprisonment

for one year for the offence u/s 448 IPC and two years for the offence u/s 354 IPC.

4. The case of the prosecution in brief is that in the afternoon of 8-5-1996 the prosecutrix after taking her bath, was drying her clothes in the

courtyard, At that time, the present petitioner entered into her courtyard and caught hold of the hands of the prosecutrix and dragged her inside the

room and closed the doors. The prosecutrix raised alarms which attracted her neighbouring residents living near the vicinity namely PW1 and

PW4. The husband of the prosecutrix was away from the house and he was informed about the occurrence after he returned home.

5. At the trial, as many as six witnesses including the prosecutrix were examined by the prosecution. The trial Court placing reliance upon the

testimony of the prosecutrix and that of PW 1, recorded its finding of guilt against the petitioner for the aforementioned offences and convicted and

sentenced him accordingly. The appeal preferred by the petitioner against the impugned judgment of his conviction and sentence was dismissed by

the Judicial Commissioner, observing that there was no infirmity or illegality in the impugned judgment of the trial Court.

6. Learned Counsel for the petitioner while assailing the impugned judgment of the trial Court as also the appellate Court, submits that both the

Courts have committed gross error and miscarriage of justice on account of the fact that neither Court has appreciated the evidences on record in

proper perspective. Learned Counsel submits that the Courts below have failed to consider that there is no corroborative evidence in respect of

the testimony of the prosecutrix and, therefore, case of the prosecution having rested entirely on the sole testimony of the prosecutrix, placing

implicit reliance on her testimony was against the principles of appreciation of evidence. Learned Counsel explains further that that the learned

Court below ought to have considered that admittedly, there was previous enmity between the husband of the prosecutrix and the present

petitioner on account of the land dispute and this was the possible reason for false implication of the petitioner. Learned Counsel adds further that

the learned trial Court has erred in failing to extend the benefit of the provisions of Section 360 Cr. P.C. and has also failed to observe the

mandatory provisions of Section 361 Cr. P.C. which stipulates that the trial Court should record special reason for not extending the benefits of the

provisions.

7. On going through the evidence of the prosecutrix (PW3), I find that she has stated in categorical and specific terms, narrating the manner in

which the petitioner had entered into the courtyard of her house on finding her alone and had caught hold of her hands and dragged her inside the

room and closed the doors with intent to outrage her modesty.

8. The testimony that she has raised alarm which had attracted her next door neighbour namely Jasoda Devi, is corroborated by the testimony of

PW1 and PW4. Both of whom stated that on hearing alarms of the prosecutrix, they arrived at the house of the prosecutrix and found the present

petitioner inside the house and on seeing them, he ran out of the room and escaped. Both these witnesses have affirmed that on their arrival at the

house of the prosecutrix, she narrated the incident to them. The trial Court and the appellate Court have rightly inferred that the testimony of the

prosecutrix finds ample corroboration from the testimony of PW1 and PW4. It also appears that though the petitioner had taken a plea of previous

enmity behind his false implication, but there is no specific and definite defence taken by him, as indicated by various kinds of suggestion put to the

witnesses, all of which have been firmly denied by the witnesses.

9. Considering the aforesaid facts and circumstances and materials on record, I do not find any infirmity or illegality in the finding recorded by the

trial Court against the petitioner for the aforesaid offence.

10. However, I find substance in the submission of the learned Counsel for the petitioner that the trial Court has committed an error of law by

failing to record special reasons for not extending the benefit of the provisions of Section 360 Cr. P.C. Provisions of Section 361 Cr. P.C. lay

down mandate upon the trial Court to consider, in appropriate cases, as to whether benefit of provisions of Section 360 Cr. P.C. could be

extended to the accused and if such benefit is not extended, the trial Court has to record special reasons for refusing the benefit. This essential

requirement in the procedural law is conspicuously lacking in the impugned judgment of the trial Court and it appears that even the appellate Court

has not adverted to this issue. As such, the sentence imposed upon the petitioner without complying with the provisions of Section 361 Cr. P.C.

cannot be sustained.

11. It is informed at the Bar that the petitioner had already suffered detention for four months after his appeal was dismissed by the appellate Court

and was later released on bail by the order of this Court.

12. Considering the aforesaid facts and circumstances, though there is no reason for interfering with the judgment of conviction of the petitioner by

the trial Court, the order of sentence is hereby set aside. The petitioner having already suffered detention for four months, there does not appear

necessity to remand the case back to the trial Court for considering the matter in terms of provisions of Section 361 Cr. P.C. For the reasons

mentioned above, this application is dismissed with modification in sentence limiting it to the period already undergone by the petitioner in custody.

Since the petitioner is on bail, he is absolved from the liability of his bail bond.