# Radha Sah @ Radha Saha, Chhabi Lal Saha, Nagendra Saha and Janardan Sah @ Janardan Saha Vs State of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Feb. 6, 2007

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€" Section 397, 401, 43
Penal Code, 1860 (IPC) â€" Section 225, 354, 379

**Citation:** (2007) 3 EastCric 300 : (2007) 2 JLJR 75 : AIR 2007 Jhar 265 : (2007) 2 BLJR 922 : (2007) CriLJ 2805 : (2007) 4 JCR 615

**Hon'ble Judges:** Rakesh Ranjan Prasad, J

**Bench:** Single Bench

**Advocate:** Rajeeva Sharma and D. Singh, for the Appellant; T.N. Verma, APP, for the Respondent

**Final Decision:** Allowed

## Judgement

R.R. Prasad, J.
This revision application filed u/s 397/401 of the Code of Criminal Procedure is directed against the judgment dated

16.8.2001 passed by Additional Sessions Judge, Pakur in Cr. App. No. 13/16 of 1994 whereby learned Additional Judge affirmed the judgment

passed by Sub-divisional Judicial Magistrate, Pakur in G.R. Case No. 557 of 1990/T.R. No. 704 of 1994 whereby he convicted the petitioner

No. 1 Radha Sah @ Radha Saha under Sections 354 and 379 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for

six months u/s 354 of the Indian Penal Code and further to undergo rigorous imprisonment for one year u/s 379 of the Indian Penal Code whereas

petitioner Nos. 2 to 4 were convicted u/s 225 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for six

months.

2. The case of the prosecution is that on 23.10.1990 at about 11 A.M. Sabita Devi, the informant (P.W.6) had gone to a well with her maternal

aunt Champa Devi and then Sabita Devi alone went for easing herself and while she was returning, petitioner No. 1 Radha Sao @ Radha Saha in

order to outrage her modesty caught hold of her and when she raised alarm, some persons rushed to that place but in the meantime, the said

Radha Sao fled away by snatching golden chain from her. Subsequently, she as well as villagers caught hold of Radha Sao and handed over him to

the custody of Chaukidar Barka Tudu (P.W.5) and while the Chaukidar as well as the witnesses were taking Radha Sao to the police station, the

other petitioners, namely, Chhabi Lal Saha, Nagendra Saha and Janardan Sah @ Janardan Saha got Radha Sao rescued from the custody of the

Chaukidar.

3. Thereafter the informant Sabita Devi submitted written report to the Officer-in-Charge, Maheshpur Police Station, upon which a case was

registered and the matter was taken up for investigation. After completion of investigation, charge sheet was submitted and cognizance of the

offence was taken and the accused persons were put on trial. The learned Sub-divisional Judicial Magistrate having found the petitioner No. 1

Radha Sao guilty for the offences under Sections 354 and 379 of the Indian Penal Code sentenced him as aforesaid and other petitioners were

found to be guilty for an offence u/s 225 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for six

months.

4. Being aggrieved with that the appeal was preferred which was dismissed and the judgment passed by the trial court was affirmed.

5. Now this revision application has been preferred by the petitioners.

6. Learned Counsel appearing for the petitioners submits that he is quite aware that it is impermissible for the revisional court to reappreciate the

evidences upon which the order of conviction and sentence has been recorded but where finding of guilt recorded by the court below is manifestly

perverse and patently erroneous, there is no bar for the High Court under revisional power to interfere with the finding for the sake of justice.

7. Learned Counsel appearing for the petitioners further submits that it is the case where the court below has failed to consider certain important

evidence going root of the case and has relied upon inadmissible evidence and, therefore, for the sake of justice this Court by exercising revisional

jurisdiction can certainly reappreciate the evidence adduced on behalf of the prosecution. In order to substantiate his submission that on account of

non-consideration of important piece of evidence and putting reliance on inadmissible evidence, there has been flagrant miscarriage of justice it was

pointed out that P.W.6, the informant though in her written report has named petitioner No. 1 Radha Sah as the person who with ill motive caught

hold of her and snatched her golden chain but in cross-examination she has said that before the occurrence she was not knowing the name of the

petitioner No. 1 nor she had had any occasion previously to come across with him and on the day of occurrence it was first occasion for her to see

petitioner No. 1 Radha Sah. If that was the situation, then it appears quite strange as to how name of petitioner No. 1 Radha Sah did figure in the

written report. The prosecution has completely failed to put any explanation to this vital aspect of the matter. But none of the courts below did take

into consideration this aspect of the matter. It was also submitted that though the courts below did accept the versions of P.W.1 Rajendra Sah and

P.W.2 Sitaram Sah on account of being the eye witnesses, but none of them in view of other evidences such as evidence of P.W.4 Chhabi Lal

Saha and P.W.6 Sabita Devi is an eye witness. That apart, P.W.1 Rajendra Sah never claimed before the Investigating Officer to have seen the

occurrence though claimed to be an eye witness before the court and, therefore, suggestion to that effect was given to P.W.1 to which he denied,

still the courts below have taken him as an eye witness. Thus it was submitted that it is a fit case where the court in exercise of revisional jurisdiction

needs to reappraise evidence adduced on behalf of the prosecution for the sake of justice.

8. As against this, learned Counsel appearing for the State submits that though the court may have overlooked those evidences but the defect is not

so glaring that this Court in exercise of revisional jurisdiction should go for reappraisal of the evidence.

9. Having heard learned Counsel appearing for the parties and on perusal of the records I do find that P.W.6 Sabita Devi submitted a written

report before the Maheshpur Police Station alleging therein that while she was returning after easing herself, petitioner No. 1 Radha Sah caught

hold of her with ill motive and when she raised alarm, Radha Sah after snatching golden chain from her neck fled away. But in course of cross-

examination she said that she for the first time had had occasion to see Radha Sah on that day and before that she had no occasion to see him. This

piece of evidence certainly poses a question mark as to how she named the accused Radha Sah as the person who caught hold of her and

snatched away her golden chain. The prosecution does not seems to have thrown any light on it. However, one can foresee in the facts and

circumstances of the case that name must have been disclosed by other witnesses such as P.W.1 and P.W.2, who claimed to have seen the

occurrence but the evidence of P.W.6 seems to be otherwise as she has said that when she raised alarm P.W.1 and P.W.2 came over there to

whom she disclosed about the act committed by Radha Sah, The doubt which has arisen on account of the aforesaid fact deepens further in the

fact of the case that Radha Sah was apprehended at about 2-2.30 P.M. whereas occurrence took place at 11 A.M. and at that time P.Ws.1 and

2 claimed to have seen the occurrence and at one point of time they were just 5 ft. away from the petitioner Radha Sah but strangely none of them

chased and tried to catch hold of him, but all these aspects of the matter were never considered by the trial court.

10. Coming further I do find that P.W.1 and P.W.2 have claimed to have seen Radha Sao catching hold of Sabita Devi (P.W.6) and snatching

golden chain but they never seem to be the eye witnesses. So far P.W.1 is concerned, his attention was drawn towards the earlier statement made

before the police not claiming to be eye witness, rather claimed to have knew about the occurrence subsequently. Further claim of P.W.1 and

P.W.2 of being eye witnesses is belied by the evidence of P.W.4 Chhabi Lal Saha, who has testified that P.W.1 Rajendra Sah, P.W.2 Sitaram

Sah came along with others and told him that Sabita Devi (P.W.6) had disclosed them that when she had gone to ease herself Radha Sah caught

hold of her and when she raised alarm he fled away after snatching golden chain. This fact certainly belies the claim of P.W.1 and P.W.2 of being

the eye witnesses. It further gets strengthened from the evidence of P.W.6 Sabita Devi where she has disclosed in her evidence that when she

raised alarm P.W.1 and P.W.2 came and then she told about the occurrence to them. Those evidences go to show conclusively that P.W.1 and

P.W.2 were never eye witnesses. All these aspects of the matter raises a grave doubt over the prosecution case that Radha Sao did commit

offence under Sections 354 and 379 of the Indian Penal Code and hence both the courts below wrongly found him guilty for the aforesaid charges.

11. Coming to the case of other petitioners it be noticed that it is the case of the prosecution that when P.W.1, P.W.3, P.W.4, P.W.6 and other

persons (not examined) apprehended the petitioner Radha Sah at about 2-2.30 P.M. from a field, custody of the petitioner was given to

Chaukidar Barka Tudu (P.W.5) for taking him to police station and while they (P.Ws 1,3,4, 5 and 6) were taking to police station on Bus,

petitioner Nos. 2 to 4, namely, Chhabi Lal Saha, Nagendra Saha and Janardan Sah @ Janardan Saha, who were also sitting in the same Bus got

down from the Bus along with Radha Sah at village Bella Patra and in this way accused persons as per prosecution case rescued Radha Sah from

the custody of the Chaukidar and other witnesses. It may be relevant to point out here that all the witnesses, namely, P.W.1, P.W.3, P.W.4,

P.W.5 and P.W.6 have testified that petitioner Nos. 2 to 4 took away Radha Sah but none of them has said about any overt act committed by the

petitioner Nos. 2 to 4 in getting Radha Sah rescued. Therefore, in this backdrop it is to be seen whether any offence is made out u/s 225 of the

Indian Penal Code. Section 225 of Indian Penal Code reads as follows:

Resistance or obstruction to lawful apprehension of another person - Whoever intentionally offers any resistance or illegal obstruction to the lawful

apprehension of any other person, for an offence, or rescues or attempts to rescue any other person from any custody in which that person is

lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine,

or with both;

12. From bare perusal of the provision it appears that the person from whose custody the rescue is effected must have authority to detain lawfully

the person rescued. Otherwise, no offence is committed for effecting the rescue. It is not necessary that the custody from which offender is rescued

should be that of a police man, it is enough that the custody is one which is authorized bylaw and it must be proved that the person rescued was in

lawful custody at the time. It would be very apt to mention that u/s 43 of the Criminal Procedure Code even a private individual can have authority

to take culprit in custody. But that power is not unlimited, rather it is a limited which would be evident from the provision as enshrined in Section 43

of the Code of Criminal Procedure, 1973 which reads as follows:

Arrest by private person and procedure on such arrest -Any private person may arrest or cause to be arrested any person who in his presence

commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made

over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the

nearest police station.

13. From perusal of the provision it is evidently clear that it empowers a private person to arrest or cause to be arrested (i) a proclaimed offender

(ii) any person, who in his presence commits non-bailable and cognizable offence but not after the completion of such offence.

14. Here in the instant case admittedly Radha Sao was not arrested by the witnesses at the time of commission of the offence, i.e. at 11 A.M.,

rather as per the evidence of the, witnesses Radha Sah was arrested at 2-2.30 P.M. much after the occurrence. Moreover, P.W.1 and P.W.2

who claimed to have seen the occurrence have not found to be the eye witnesses hereinbefore and, therefore, none of the witnesses who claimed

including P.Ws 1 and 2 to have arrested Radha Sao had authority to arrest him as neither the occurrence took place in presence of them nor as

per their own version arrested the accused at the time of occurrence. Therefore, the petitioner No. 1 Radha Sao can never be said to have been

lawfully detained by the witnesses and once detention of the accused was not lawful, question of committing offence by other accused for rescuing

Radha Sah u/s 225 of the Indian Penal Code never arises. That apart, one can be held guilty for an offence u/s 225 if he rescues a person who was

detained lawfully. Here the word ''rescue'' though not defined in the code will always mean an act of getting a person free forcibly from custody

against the will of person in whose lawful custody he was. Therefore, some overt act needs to be there if one is said to have rescued a person from

the lawful custody. But here prosecution has not come with a case that in what manner petitioner Nos. 2 to 4 got petitioner No. 1 rescued. In other

words, no overt act if any played by the petitioners has been alleged. In this view of the matter, petitioner Nos. 2 to 4 cannot be said to have

committed offence u/s 225 of the Indian Penal Code. All these aspects of the matter were not taken into consideration by the courts below. Thus, I

do find that this is a fit case where this Court does not interfere with the finding given by the courts below, there would be miscarriage of justice.

Accordingly, the order of conviction and sentence passed by both the courts below are hereby set aside and the petitioners are hereby acquitted of

the charges levelled against them.

15. In the result, this revision application is allowed.