

Shambhu Chaudhary Vs The State of Bihar (Now Jharkhand)

Court: Jharkhand High Court

Date of Decision: Jan. 17, 2014

Acts Referred: Penal Code, 1860 (IPC) - Section 147 341 353 427

Hon'ble Judges: H.C. Mishra, J

Bench: Single Bench

Advocate: Biman Bihari Sinha, Mr. B.K. Pathak and Mr. Siddhartha Berlia, for the Appellant;

Final Decision: Allowed

Judgement

H.C. Mishra, J.

All these three revision applications arise out of the same case and as such, these are being disposed of by this common

Judgment. Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners are aggrieved by the Judgment dated 1st March 2000 passed by the learned 1st Additional Sessions Judge, Hazaribag, in Cr.

Appeal No. 70 of 1994, whereby, the appeal filed against the Judgment of conviction and Order of sentence dated 25th March 1994, passed by

Sri Arun Kumar Gupta, learned Judicial Magistrate, 1st class, Hazaribag, in G.R. Case No. 1564 of 1990/T.R. No. 103 of 1994, convicting and

sentencing the appellants, has been dismissed by the learned Appellate Court below.

3. It may be stated that all the accused petitioners were acquitted of the charge u/s 147 of the Indian Penal Code and the petitioners Bishwa Nath

Choudhary and Sushil Choudhary were also acquitted of the charge u/s 427 of the Indian Penal Code by the Trial Court below. The petitioners

Biswanath Choudhary and Sushil Choudhary were found guilty and were convicted for the offence under Sections 341 and 353 of the Indian Penal

Code, whereas the petitioner Shambhu Choudhary was found guilty and convicted for the offence under Sections 341, 427 and 353 of the Indian

Penal Code. Upon hearing on the point of sentence, the petitioners Biswanath Choudhary and Sushil Choudhary were sentenced to undergo

simple imprisonment for one month each for the offence u/s 341 of the Indian Penal Code and six months each for the offence u/s 353 of the Indian

Penal Code, whereas the petitioner Shambhu Choudhary was sentenced to undergo S.I. for one month for the offence u/s 341 of the Indian Penal

Code, six months for the offence u/s 353 of the Indian Penal Code and three months for the offence u/s 427 of the Indian Penal Code. Upon

appeal, the Appellate Court below has upheld the conviction and sentence passed by the Trial Court and has dismissed the appeal filed by the

petitioners.

4. The petitioners were facing the trial in connection with G.R. Case No. 1564 of 1990/T.R. No. 103 of 1994, arising out of Ramgarh P.S. Case

No. 217 of 1990, which was instituted on the basis of written information given before the Officer In-charge, Ramgarh Police Station by the

informant, Munilal Pandey, According to the prosecution case, the informant who was an officer in the Sales Tax Department, was going along-

with other officials of the Department to Rajrappa washery, on the orders of the Deputy Commissioner, Sales Tax, Hazaribag, on their official

jeep. On the way to Rajrappa washery, in front of a shop, namely, M/s. Madanlal Prahalad Rai, on Ramgarh Gola Road, they found a truck

bearing No. BRV-7284 standing loaded with some articles, whereupon, the informant asked the office peon, Md. Raja and other two officials

namely, J.K. Jha and Madhukar Sinha to inquire about the papers with regard to the articles loaded on the truck. When those three persons did

not return for quite some time, the informant came down from the jeep and saw that the accused-petitioners, along with other persons, had

surrounded the officials and were abusing them. Sensing the situation, the informant signaled them to return back and they sat on the jeep. In the

meantime, the petitioner, Shambhu Nath Choudhary along-with one unknown person came near the jeep and tore the shirt of the informant and

smashed the wind screen of the jeep. They also assaulted R.N. Mishra, another Sales Tax Officer and threatened to set the jeep on fire. In the

meantime, the police arrived and they were rescued With these allegations, the F.I.R. was lodged, on the basis of which, Ramgarh P.S. Case No.

217 of 1990 corresponding to G.R. No. 1564 of 1990 was instituted against the accused persons for the offence under Sections 147, 341, 427

and 353 of the Indian Penal Code and the investigation was taken up. After investigation, the police submitted charge-sheet in the case and

ultimately, the petitioners were put to trial for the said offences.

5. It appears from the Lower Court Records that during the trial, six witnesses were examined by the prosecution, who are P.W. 1 Munilal

Pandey, the informant of the case, P.W. 2, Rajendra Narain Mishra, P.W. 3 Jitendra Kr. Jha and P.W. 4 Madhukar Sinha, who all were the Sales

Tax Officials present in the jeep. P.W. 5 Ashok Kumar, was the driver of the jeep and P.W. 6. Sita Ram Singh is the Police Officer who had only

submitted the charge-sheet. He has stated in his evidence that he had not made any investigation in the case, though he has proved the formal

F.I.R. which was marked Exhibit The I.O. of the case has not been examined The office peon namely Md. Raja has also not been examined in the

case, even though he had been made a charge-sheet witness. The witnesses examined by the prosecution have supported the prosecution case.

6. Learned counsel for the petitioners has submitted that only the interested witnesses have been examined in the Court below and even though the

occurrence had taken place in the market place before a shop in the day time, the statement of no independent witness was recorded by the police

during the investigation. The prosecution case has been supported only by the interested witnesses and no independent witness has come forward

to support the prosecution case. It is further submitted that even the investigating officer has not been examined in the case which has caused

serious prejudice to the defence. Learned counsel has also submitted that there are material discrepancies in the evidence of the witnesses

examined by the prosecution. Learned counsel also submitted that in any view of the matter, since no independent witness has come forward to

support the prosecution case and even the I.O. has not been examined in the case, it is a fit case in which the petitioners ought to have been given

the benefit of doubt and ought to have been acquitted of the charges.

7. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that the witnesses have fully supported the

prosecution case. The witnesses are the Government Officials and they were assaulted and misbehaved by the petitioners while they were

discharging of their official duties. It is submitted by the learned counsel for the State that the petitioners have been rightly convicted and sentenced

by the Court below.

8. After having heard the learned counsels for both the parties and upon going through the record, I find that the occurrence is said to have been

taken place in the market place on 25.8.1990 at 12.20 P.M. This clearly shows that there must have been independent witnesses to the

occurrence, but no independent witness had been examined in the case. The prosecution has examined five material witnesses who are highly

interested witnesses, who were present in the official jeep and were allegedly misbehaved and assaulted while they were discharging their official

duty. Even the office peon who was present with other P.Ws and who was sent to inquire about the materials of the truck, was not been examined

in the case and even the Investigating Officer has not been examined.

9. In my considered view, even though the prosecution witnesses have supported the case, but in absence of corroboration of evidence of the

interested witnesses by any independent witness, which in the facts of this case must be available in the market place at the time of the occurrence,

and also in absence of examination of the Investigating Officer, I am of the considered view that the prosecution has not been able to prove the

charges against the accused petitioners beyond all reasonable doubts, and in the facts of this case, the petitioners were entitled at least to the

benefit of doubt as such, the impugned Judgments passed by both the Courts below, cannot be sustained in the eyes of law.

10. In view of the aforementioned discussions, the Judgment and Order dated 25th March 1994 passed by Sri Arun Kumar Gupta, learned

Judicial Magistrate, 1st class, Hazaribag, in G.R. No. 1564 of 1990/T.R. No. 103 of 1994, as also the Judgment dated 1st of March 2000 passed

by the learned 1st Additional Sessions Judge, Hazaribag, in Cr. Appeal No. 70 of 1994, are hereby, set aside. The petitioners are given the benefit

of doubt and they are acquitted of the charges. The petitioners are on bail and they are also discharged from the liabilities of their respective bail

bonds. Accordingly, all these three revision applications, are hereby, allowed. Let the Lower Court Records be sent back forthwith.