

Chandan Kumar Singh Vs. State of Bihar

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Court : Jharkhand

Decided On : Mar-22-2017

Appellant : Chandan Kumar Singh

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Revision No. 295 of 2000 (R) With Criminal Revision No. 298 of 2000 (R) --- Ganesh Prajapati @ Ganeshia, son of Shri Shyam Deo Prajapati, Deori Road, Jabla, P. S. Hussinabad, District Palamau (Petitioner in Cr. Rev. No. 295 of 2000 (R) Chandan Kumar Singh, son of Sri Deo Kumar Singh, resident of village Saidabad, P. S. Hussainabad, District - Palamau (Petitioner in Cr. Rev. No. 298 of 2000 (R) Versus The State of Bihar (Opp. Party in both the cases) --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioners : Mr. P. C. Tripathy, Sr. Advocate (In Cr. Rev. No. 295 of 2000 (R) : Mr. P. S. Dayal, Advocate (In Cr. Rev. No. 298 of 2000 (R) For the Opp. Party : Mr. Satish Kumar Keshri, A.P.P. --- C.A.V. on 06.03.2017 Pronounced on 22.03.2017 Heard Mr. P. C. Tripathy, learned senior counsel appearing for the petitioner in Criminal Revision No. 295 of 2000 (R), Mr. P. S. Dayal, learned counsel appearing for the petitioner in Criminal Revision No. 298 of 2000 (R) and Mr. Satish Kumar Keshri, learned A.P.P., for State. These revision applications are directed against the judgment dated 08.08.2000 passed by the learned Sessions Judge, Palamau at Daltonganj in Criminal Appeal No. 78 of 2000 whereby and whereunder the

judgment and order of conviction and sentence passed by the learned SDJM, Daltonganj in G. R. Case No. 1147 of 1999 convicting the petitioner for the offence punishable under Sections 377 and 341 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for three years and one month simple imprisonment respectively has been affirmed. It has been submitted by the learned counsel for the petitioners that no offence under Section 377 of the Indian Penal Code is made out against the petitioners in view of the contrary statement given by the victim (P.W. -

12) as also the injury report which did not find any injury relating to commission of unnatural offence upon the victim (P.W. -12). Learned counsel further submits that the witnesses who -2- have supported the prosecution case are all interested witnesses and, therefore, their evidence cannot be relied upon. Furthering their argument it has been stated that none of the independent witnesses have supported the prosecution case. Learned counsel also submits that the statement of the victim (P.W. -

12) also cannot include an offence for wrongful confinement as it is alleged that the petitioner in Criminal Revision No. 298 of 2000 (R) had fled away while accompanying the victim (P.W. - 12). It has, therefore, been submitted since the prosecution had failed to prove its case beyond all reasonable doubts the question of convicting the petitioners for the offence punishable under Sections 377 and 341 of the Indian Penal Code does not arise. Learned A.P.P. has opposed these applications. It appears that a First Information Report was instituted by P.W. - 9 who happens to be the father of the victim to the effect that on 15.10.1999 at about 7:00 P.M. while P.W. - 12 was playing with his sister and other children of the locality the petitioner in Criminal Revision no. 298 of 2000 (R) had allured the victim and had taken him near the bush where he was sodomised. The victim returned to his house after half an hour and disclosed about the occurrence to his father who on the next morning had made a complaint to the father of the petitioner in Criminal Revision No. 298 of 2000 (R) but since his complaint was not accepted, a First Information Report was instituted which was registered as G. R. Case no. 1147 of 1999 against the petitioner in Criminal Revision No. 298 of 2000 (R). After institution of the case, the victim was sent to the hospital where he

was examined by the Doctor P.W. - 5 and the statement of the victim under Section 164 Cr.P.C. was also recorded by the learned Judicial Magistrate (P.W. - 13). It was disclosed by the victim that the petitioner in Criminal Revision No. 295 of 2000 (R) was also an accomplice and since during investigation the allegations were found to be true charge-sheet was submitted under Sections 377 and 412 of the Indian Penal Code. After cognizance was taken by the learned CJM, Daltonganj the case was transferred to the court of learned SDJM, -3- Daltonganj for trial and disposal. In course of trial prosecution had examined as many as thirteen witnesses in support of its case. P.W. - 1, Pankaj Kumar, P.W. - 3, Hanuman, P.W. - 4, Surendra Mahto and P.W. - 6, Munif Dhobi were declared hostile by the prosecution. P.W. - 2 Angad Kumar was tendered whereas P.W. - 7 Ayodhaya Sao is a hearsay witness. P.W. - 9, Ramayan Thakur, is the informant, P.W. - 10, Smt. Lalita Devi, is his wife, P.W. - 11, Karuna Kumari, is his daughter whereas the victim (P.W. -

12) is the son of the informant. P.W. - 5 is the doctor who had examined the victim and P.W. - 13 is the Judicial Magistrate who had recorded the statement of the victim under Section 164 Cr.P.C. P.W. - 9, Ramayan Thakur, had stated that on 15.10.1999 when he returned to his house at 08:00 P.M. he found his son weeping. On enquiry he could come to know about the incident. P.W. - 10 is the mother of the victim who had stated that her daughter (P.W. -

11) had informed her about the petitioner in Criminal Revision No. 298 of 2000 (R) taking away the victim. P.W. - 11, Karuna Kumari, is the sister of the victim who was playing along with the victim and other children of the locality when he had seen the petitioner in Criminal Revision 298 of 2000 (R) taking away the victim and this information was immediately communicated to her mother. P.W. - 13, Vijay Pratap Singh, was the Judicial Magistrate who had recorded the statement of the victim under Section 164 Cr.P.C. Although P.W. - 9, P.W. - 10 and P.W. - 11 have stated about the disclosure and the incident as narrated by the victim P.W. - 12 but it has to be seen from the evidence of P.W. 12 as to whether the petitioners indeed played a concerted and active role in committing an unnatural offence upon the victim. P.W. -12 although in his examination in chief had stated about the alleged act of the petitioners but in Paragraph - 5 of the cross-examination this

witness who was competent enough to depose has given a completely different version which virtually demolishes the prosecution case if the said statement is taken into consideration along with medical report and the evidence of the Doctor. P.W. - 12 in his cross-examination has stated that when the -4- petitioner in Criminal Revision No. 298 of 2000 (R) was taking him away he had raised an alarm and seeing the person assembling the said petitioner had fled away. The injury report of the victim has been marked as Exhibit - 1 from which it could be deciphered that there was no sign of committing sodomy upon the victim. The Doctor who had been examined as P.W. - 5 has also stated in similar terms which runs contrary to the allegation made by P.W. - 12. Although P.W. - 12 had given a statement under Section 164 Cr.P.C. but the evidence before the court is categorical in the sense that the incident as alleged seems to have been extinguished in view of what has been stated by P.W. - 12 in his cross-examination. The Investigating Officer of the case has not been examined by the prosecution and such non-examination has greatly prejudiced the defence as the place of occurrence could not be established in view of such non-examination. The evidence of P.W. - 12 coupled with the evidence of P.W. - 5 and the injury report is suggestive of the fact that no such occurrence as alleged seems to have taken place. Learned courts below have overtly relied upon the evidence of P.W. - 9, P.W. - 10 and P.W. -11 but has not considered this aspect of the matter that all the witnesses are related with P.W. - 12 and are, therefore, interested witnesses. No corroboration of the evidence of P.W. - 9, P.W. - 10, P.W. -11 and P.W. 12 have been brought forward by the prosecution by way of any independent witnesses who would support the factum of occurrence and such circumstance does entitle the petitioners to be given the benefit of doubt. Consequent to the discussions made hereinabove, this application is allowed and the impugned judgment dated 08.08.2000 passed by the learned Sessions Judge, Palamau at Daltonganj in Criminal Appeal No. 78 of 2000 and order of conviction and sentence passed by the learned SDJM, Daltonganj in G. R. Case No. 1147 of 1999 are, hereby, set aside. The petitioners are discharged from the liabilities of their bail bonds. (Rongon Mukhopadhyay, J.) Umesh/-