

Tapan Kumar and Anr. Vs. State of Jharkhand and Anr.

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Court : Jharkhand

Decided On : Jul-10-2017

Appellant : Tapan Kumar and Anr.

Respondent : State of Jharkhand and Anr.

Advocate for Pet/Ap. : Mr. Vijay Gopal

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 186 of 2004 ----- 1. Tapan Kumar Banerjee, S/o Prabhakar Banerjee 2. Praveer Kumar Roy, S/o Late Sushil Roy Both resident of Giddi A, P.S.- Giddi, District- Hazaribagh ... Petitioners Versus 1. The State of Jharkhand 2. Jitendra Singh, S/o Late Prem Singh, R/o Giddi A P.S.- Giddi, District- Hazaribagh. ... Opposite Parties ----- CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY ----- For the Petitioners : Mr. Vijay Gopal, Advocate For the State : Mr. Manoj Kr. No. 2, A.P.P. ----- C.A.V. on 25/04/2017 Pronounced on 10/07/2017 Heard Mr. Vijay Gopal, learned counsel for the petitioners and Mr. Manoj Kr. No. 2, learned A.P.P. for the State. This revision application is directed against the judgment dated 06.01.2003 passed by the learned 6 th Additional Sessions Judge, Hazaribagh in Cr. Appeal no. 128 of 1991 whereby and whereunder the judgment and order of conviction and sentence dated 07.06.1991 passed by the learned Judicial Magistrate, 1 st Class, Hazaribagh in G.R. Case No. 553 of 1987 convicting the petitioners for the offences punishable u/s 377/34 of the Indian Penal Code and sentencing them to undergo R.I. for one year has been affirmed.

The First Information Report was instituted by the informant Jitendra Singh in which it was alleged that on 26.12.1986 when he was going to the house of one S.P. Roy to watch Television, the petitioners and one boy namely Mehraj Mian had caught hold and brought him near a standing truck. It is alleged that three accused persons had stepped out from the truck and brought the informant in a bush where after he was sodomized. It is alleged that during the course of the unnatural act committed upon the informant the petitioners were exhorting the main accused Mehraj Mian. It is further alleged that subsequently the informant came to his house and narrated about the occurrence to his family members and -2- thereafter a case was instituted at Giddi A Police Station which was registered as G.R. No. 553 of 1987. After investigation culminated in submission of charge sheet cognizance was taken for the offences punishable u/s 377/34 of the Indian Penal Code and after charge was framed trial proceeded against the accused persons. Since the prosecution had been able to establish its case beyond all reasonable doubt the petitioners were convicted for the offences punishable u/s 377/34 of the Indian Penal Code and were sentenced to undergo R.I. for one year each. The petitioners preferred an appeal being Cr. Appeal No. 128 of 1991 which however was also dismissed by the learned 6th Additional Sessions Judge, Hazaribagh on 06.01.2003. It has been submitted by the learned counsel for the petitioners that no specific allegation has been levelled against the petitioners and infact it is Mehraj Mian who is said to have sodomized the informant. It has been submitted that even the medical report does not suggest an offence of sodomy against the informant and in such circumstances therefore the petitioners deserves acquittal from the criminal case. Learned A.P.P. for the State has opposed the prayer made by the petitioners. In course of trial five witnesses were examined on behalf of the prosecution. P.W.1 is Prem Singh who happens to be the father of the informant. This witness has stated that he was in his house when the informant had come and on being questioned he disclosed about the entire occurrence of sodomy committed upon him by the accused persons. P.W.2 Hardip Singh is the elder brother of the victim who has also stated that the informant had disclosed about the occurrence and the part played by the petitioners in helping Mehraj Mian to commit the offence of sodomy. P.W.3 Jasvir Singh is a seizure list witness who had stated that a trouser was seized by the Police and he had put his signature in

the seizure list which was marked by Exhibit-1/1. P.W.4 U.C. Jha, is the Medical Officer who had examined the victim boy on 27.12.1986 and he had found certain injuries on the person of the victim. P.W.5 Jitendra Singh is the informant himself who has specifically taken the -3- name of these petitioners along with Mehraj Mian and the act of forcibly subjecting him to an unnatural offence has been disclosed by him in course of his evidence. The star witness in the trial was P.W.5 the victim boy who had clearly stated that it was Mehraj Mian who had committed an unnatural act upon him and he was helped in his cause by the petitioners, since it was the petitioners along with Mehraj Mian who had forcibly caught the informant which led to the subsequent act of Mehraj Mian committing an unnatural act upon him. The evidence of P.W.5 has been supported by the medical evidence as the opinion of the Doctor after examining the victim suggests that there was penetration in the anus of the victim boy and tenderness was also found. The evidence of P.W.4 Dr. U.C. Jha has thus also categorically revealed that the victim boy was subjected to an unnatural offence. Although there is a direct allegation against Mehraj Mian but the petitioner cannot be absolved from their criminal act in view of the fact that they had also participated although indirectly and in a concerted move had forcibly taken the victim boy pursuant to which Mehraj Mian had committed the act of sodomy. Such circumstances have been considered by the learned trial court while convicting the petitioners for the offences punishable u/s 377/34 of the Indian Penal Code and sentencing them accordingly. The learned appellate court has also based on the materials available on record dismissed the appeal preferred by the petitioners. In such view of the matter therefore I am not inclined to interfere in the judgment of conviction passed against the petitioners. However, with respect to the sentence which has been awarded to the petitioners it seems that the petitioners are facing the rigors of the prosecution case since the year 1987 and the petitioners have also for sometime remained in custody. The petitioners are not attributed with directly committing an act of sodomy upon the victim and at best it can be said to be common intention on the part of the petitioners in helping Mehraj Mian to commit such act. -4- The circumstances enumerated above therefore leads this Court to a conclusion that the petitioners have been sufficiently punished on account of the long pendency of the prosecution case and the fact that they have remained in custody for some

time out of a maximum sentence of one year R.I. The sentence imposed upon the petitioners therefore is modified to the period already undergone. This application stands dismissed with the aforesaid modification in sentence. (R. Mukhopadhyay, J.) Alok/-

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