

Hoshiarey Vs. State of ors.

Hoshiarey Vs. State of ors.

SooperKanoon Citation : sooperkanoon.com/467085

Court : Allahabad

Decided On : Jan-06-1966

Reported in : 1966CriLJ1230

Judge : H.C.P. Tripathi, J.

Appellant : Hoshiarey

Respondent : State of ors.

Judgement :

ORDER

H.C.P. Tripathi, J.

1. This revision is directed against an order of acquittal recorded by the temporary Civil and Sessions Judge of Meerut on an appeal in a case under Section 326, I.P.C.

2. According to the prosecution on 14th of September, 1961, at about 10 or 11 a.m. the opposite parties beat Hoshiarey (P.W. 1) and after forcibly dragging him to their gher one of them namely Bedu chopped off his nose. The incident was witnessed by Munsni and Narain (P.Ws. 4 and 5) but they were not allowed to remove the injured person from the gher. When some more villagers arrived on the scene they rescued Hoshiarey who then went to the police station and lodged a report there at 6 p.m. On the basis of his report a case was registered and

investigation followed. It was alleged that this crime was committed by the opposite parties on account of enmity with Hoshiarey (P.W. 1) on whose application to the S.D.O. the police had removed the water logging from the village in spite of the resistance from the side of the opposite parties.

3. The opposite parties had pleaded not guilty before the trial court. According to them they had no enmity with Hoshiarey and that Hoshiarey had committed rape on Mst. Kripali daughter of one Gudar and it was Gudar who had chopped off his nose but they had been falsely implicated in the case on account of their relationship with Gudar and also because they had witnessed the commission of rape by Hoshiarey. They examined Gudar and his daughter in their defence.

4. The case of the prosecution was supported by Hoshiarey (P.W. 1) Munshi (P.W. 4) and Narain (P.W. 5) all of whom furnished an eye-witness account of the occurrence.

5. The Assistant Sessions Judge who tried the case found the various charges established against the accused persons and convicted and sentenced them to three years rigorous imprisonment under Section 326, I.P.C. He also found Bedu and Hoshiarey guilty under Section 148, I.P.C. and sentenced them each to one year's rigorous imprisonment and other opposite parties under Section 147, I.P.C. and sentenced them to six months' rigorous imprisonment. Their sentences, however, under various counts were directed to run concurrently.

6. On appeal, the learned Civil and Sessions Judge, on an assessment of evidence, held that the prosecution had failed to bring the charges home to the opposite parties and that in all probability the defence story was correct. Accordingly he allowed the appeal and set aside their conviction and sentences.

7. I have heard the learned Counsel for the parties at some length.

8. The learned Sessions Judge after referring to the evidence on the record reached a conclusion that there was no motive for the opposite parties to have belaboured Hoshiarey (P.W. 1), that Hoshiarey was an interested person and as such his evidence was not reliable, that Munshi (P.W. 4) one of the eyewitnesses

was a partisan of Hoshiarey and had some enmity with one of the opposite parties, that the presence of Narain (P.W. 5) at the scene of occurrence was doubtful, and that Mir Bux another witness of occurrence was not mentioned in the F.I.R. and his testimony did not inspire reliance, He, therefore, held that the prosecution has failed to establish the case.

9. It is thus obvious that the learned Sessions Judge has considered the evidence on the record and has arrived at his findings on the basis of that evidence. Whether the reasonings given by him for rejecting the evidence are sound and justifiable or not is not a question which can be considered by this Court while sitting in revision against an order of acquittal. It is not a case where the appellate court has wrongly held the evidence accepted by the trial Court to be inadmissible or has overlooked to take into account some material evidence on the record or has committed any illegality in appreciating the evidence.

10. In *D. Stephens v. Nosibolla* : 1951 CriLJ510 , it was observed:

The revisional jurisdiction conferred on the High Court under Section 439 is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only if justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or mis-appreciated the evidence on record. An order in revision directing the retrial of a man for a third time for offences which could not be said to have been made out even prima facie, cannot be upheld.

The same principle was affirmed in the cases of *Chinnaswamy Beddy* and *Fakir Chand* respectively : [1963]3SCR412 and 1964 (2) Cri LJ 74 (S C).

11. This revision has no force and is accordingly dismissed.