

Brajamohan Pradhan Vs. State

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Court : Orissa

Decided On : Jan-15-1985

Reported in : 1985(I)OLR175

Judge : B.K. Behera, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 378

Appeal No. : Criminal Revision No. 86 of 1983

Appellant : Brajamohan Pradhan

Respondent : State

Advocate for Def. : M.R. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : B. Panda, B.B. Ratho, J.R. Dash and Saura Chandra Mohapatra

Disposition : Revision allowed

Judgement :

B.K. Behera, J.

1. While functioning as a Police Constable, who was supposed to maintain law and order and to guard against the commission of theft, the petitioner stood

charged under Section 379 and in the alternative, under Section 411 of the Indian Penal Code (for short, 'the Code') with having committed theft of a brass piece belonging to the Rourkela Steel Plant on the New Year's day of 1982 which was detected by three employees (P. Ws. 1 to 3) serving in the Central Industrial Security Force attached to the Plant while the petitioner was coming on a bicycle from the plant sits and was at the Hirakud Gate. P. W. 1 lodged the first information report (Ext. 1), investigation followed and on its completion a charge-sheet was placed and the petitioner was prosecuted. The petitioner had denied to have committed theft and according to him, he had been involved falsely by P. Ws. 1 to 3 owing to a quarrel which had occurred between him and P.Ws. 1 to 3. The prosecution had examined four witnesses three of whom had figured as witnesses to the occurrence and P. W. 4 was the Investigating Officer. In support of his defence the petitioner had examined one witness.

2. Mr. H.B. Das, the learned Subdivisional Judicial Magistrate, held that the charge of theft had been brought home to the petitioner. No specific finding was recorded in respect of the charge under Section 411 of the code. It would follow that in view of the order of conviction in respect of the charge of theft, the petitioner was not convicted for the other offence. For his conviction under Section 379 of the Code, the petitioner was sentenced to pay a fine of Rs. 500/- and in default of payment thereof, to undergo rigorous imprisonment for a period of six months.

3. The petitioner unsuccessfully moved the Court of Session. Mr.R.N. Chatterjee, the learned Additional, Sessions Judge, Rourkela, agreed with the finding recorded by the trial Court and dismissed the appeal.

4. Mr.Saura Chandra Mohapatra, appearing on behalf of the petitioner, has contended that although concurrent findings have been recorded by the trial and appellate Courts, the findings are vitiated owing to complete absence of evidence bringing home the charge and therefore, it is a fit case for interference by this Court in its revisional jurisdiction. Mr.M.R. Mohanty, the learned. Additional Standing Counsel, has supported the order of conviction.

5. In spite of the wide language of Section 401 of the Code of Criminal Procedure, the High Court is not expected to act while hearing a revision as if it is hearing an appeal. Normally the jurisdiction of the High Court in revision is to be exercised in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in flagrant miscarriage of justice. But in a case in which the findings recorded by the trial and appellate Courts are found to be unreasonable and unfounded, to allow the conviction to stand would mean travesty of justice. Findings recorded by the trial and appellate Courts do not become infallible because they are concurrent. In order to be sustained, such findings must be reasonable and well-founded on the evidence on record.

6. The specific charge under Section 379 of the Code against the petitioner was that he had committed theft of a piece of brass weighing about 17 Kgs. by taking it out of the possession of the Rourkela Steel Plant without consent. In order to constitute an offence of the theft, the person must have removed movable property out of the possession of another dishonestly and without that person's consent. There was complete absence of evidence to show that the brass piece which was said to be with the petitioner was in possession of the 'Rourkela Steel Plant'. Even as the evidence of P. Ws. 1 to 3 would show, there was no mark of identification and there was nothing to show that it did belong to the Rourkela Steel Plant. It is important to keep in mind that even the Investigating Officer (P. W.4) had not properly directed his investigation in this regard. He had stated in his cross-examination that there was no identification mark on the seized brass piece and he could not say wherefrom that brass piece had been stolen. He had not sent it for examination by any expert of the Rourkela Steel Plant. Even assuming that the entire evidence of P. Ws. 1 to 3 was true and as alleged, the petitioner was in possession of the brass piece, no case had been made out as there was absence of evidence that the brass piece did belong to or was in possession of the Rourkeia Steel Plant.

7. As one of the ingredients to constitute an offence of theft had not been established and the case against the petitioner must fail, I do not feel myself called upon to go into the other factual questions raised before me with regard to the recovery of the brass piece from the possession of the petitioner. However, I

would like to keep on record that the brass piece alleged to have been recovered from the possession of the petitioner had not even been produced in the Court for the purpose of identification by P. Ws. 1 to 3 in support of their evidence and this is a highly unsatisfactory feature which would affect the veracity of the evidence of P. Ws. 1 to 3.

8. It is not necessary to examine the plea of the defence and find out, in the circumstances of the case, as to how and why a case had been foisted against the petitioner or as to why P. Ws. 1 to 3 had involved him for commission of theft. Mysterious is the working of human minds and an accused person may not be in a position to say as to why he has been involved falsely or as to why some persons have come forward as witnesses to implicate him. The prosecution is to establish its case by clear, cogent and clinching evidence and in the absence of such evidence, no order of conviction can be based on the falsity of or weakness in the defence.

9. For the foregoing reasons, I find that the charge of theft had not been brought home to the petitioner and he was entitled to an acquittal. The findings recorded by the trial and appellate Courts are grossly unreasonable and utterly unfounded and a reading of the judgments would show complete non-application of minds. The order of conviction cannot be founded on facts and sustained in law.

10. I would allow the revision and set aside the order of conviction and sentence passed against the petitioner. As it had not been established that the brass piece belonged to the Rourkela Steel Plant and the petitioner had denied its recovery from his possession and had not claimed it to be his, I direct that the seized brass piece be confiscated to the State.