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Gopal Behera Vs. State of Orissa

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Court : Orissa

Decided On : Apr-01-1995

Reported in : 1995CriLJ3962

Judge : P.C. Naik, J.

Acts : Railway Property (Unlawful Possession) Act, 1966 - Sections 3; Code of Criminal Procedure (CrPC) - Sections 240

Appeal No. : Criminal Revn. No. 158 of 1994

Appellant : Gopal Behera

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S.K. Nayak and ;K.B. Kar, Advs.

Disposition : Revision allowed

Judgement :
ORDER

P.C. Naik, J.

1. This revision is directed against the judgment dated 3-12-1993 passed by the Second Additional Sessions Judge, Puri in Criminal Appeal No. 81/25 of 1990

confirming the order of conviction and sentence passed on 20-1-1990 by the Additional Chief Judicial Magistrate, Puri in 2(c) C. C. Case No. 61 of 1980 wherein the petitioner having been found guilty of an offence under Section 3(a) of the Railway Property (Unlawful Possession) Act was convicted and sentenced to suffer R. I. for one year and to pay a fine of Rs. 1000/-.

2. The case of the prosecution is that on 6-3-1980 at about 10.00 a.m. while the complainant (P.W. 1) was on duty along with P.W. 2, they saw the accused carrying a bundle inside the Railway-yard of Puri Railway Station. The accused was stopped and the bundle was searched. In the bundle they found a dynamo belt measuring 12' 4'. The dynamo belt and the napkin in which it was wrapped was seized vide seizure list Ext, 2. P.W. 2 is a seizure witnessee.

3. On 19-3-1980 a belt was sent to P.W. 3 who on examining it opined it to be railway property and which, was not available in the open market. During the course of investigation, some witnesses were examined and it is alleged that a confessional statement was also made by the accused which was reduced in writing 'by P.W. 5. A carbon copy of the alleged confession has been exhibited as Ext. 6.

4. After investigation, a charge-sheet was filed against the petitioner Under Section 3(a) of the Act. During trial 5 witnesses were examined on behalf of the prosecution. No defence evidence was led. The case of the appellant/accused is one of complete denial.

On a consideration of the material on record, the learned trial Magistrate came to the conclusion that an offence under Section 3(a) of the Act has been made out against the accused and he was accordingly convicted and sentenced. It may be mentioned that while considering the case against the accused, the learned Trial Magistrate has taken into consideration the confessional statement which is Ext. 6. The learned Trial Magistrate heard the appellant on the question of sentence and found that it was not a fit case to extend the benefit of Section 240 of the Code of Criminal Procedure to him.

5. In appeal, his conviction and sentence having been upheld, the petitioner has invoked the revisional jurisdiction of the Court.

6. Learned counsel for the petitioner challenges the conviction and sentence on the ground that the appreciation of evidence by the Courts below is not proper and that material omissions in the statement of prosecution witnesses have not been taken into consideration. During the course of arguments, he has taken me through the evidence of the prosecution witnesses. On going through the evidence, I am satisfied that a belt was in fact seized on 6-3-1980 and that P.W. 3 had given an opinion that the belt which was sent to him was the property of the railways and was of a type that was not available in the open market. I am also satisfied that the belt which was sent to P.W. 3 contains an endorsement that it is the property of the Indian Railways. The learned Counsel also pointed out that the confessional statement marked Ext. 6 is not the original but a carbon copy, which fact is admitted by P.W. 5. He has also drawn my attention to the statement of P.W. 5 wherein he admits that the statement of witnesses recorded during investigation are not available in the case records. Even the requisition for examining the dynamo belt is admittedly not in the case record. P.W. 3 who examined 'a' belt admits that he did not receive any requisition for examining it and for giving his opinion. The further contention of the learned counsel for the petitioner is that a belt was seized on 6-3-1980 and a belt was sent to P.W. 3 on 19-3-1980 but there is no evidence on record to show the safe custody of the belt which was seized during the intervening period nor is there any evidence to show that the belt which was seized was properly sealed and kept in safe custody. On these facts, he contends that the prosecution case ought to have been thrown out by the Courts below.

7. The learned counsel appearing for the State, on the other hand, contends that the arguments advanced should not be entertained in view of the fact that this revision is directed against the concurrent findings recorded by the Courts below. It is contended that in exercise of the revisional jurisdiction, this Court would not reappreciate or reconsider the evidence afresh. The learned counsel also draws my attention to the statement of P.W. 5 who has stated that he had got the seized belt examined by a technical person. In reply, learned counsel for the petitioner

pointed out that the article was not seized in presence of P.W. 5. but was in fact seized by P.W. 1 and was produced before P.W. 5 at the time of recording of the F.I.R. He also drew my attention to the fact that only the signature of P.W. 3 who admittedly affixed his signature on 19-3-1989 was proved. There is no proof that the other persons alleged to have signed, in fact, actually signed on M.O.I.

8. On a consideration of the rival contentions advanced by the learned counsels appearing for the parties, I am of the opinion that this is a fit case in which the petitioner needs to be given the benefit of doubt. P.W. 4 who is the only independent witness does not support the prosecution case. There is no material on record to prove that after seizure, the article (i.e. the belt) was kept in safe custody. P.W. 3 who examined the belt and opined it to be railway property admits in cross-examination that he did not receive any requisition personally for examining the article though P.W. 5, the [. 0. states that requisition was sent but it was not available in the record. Though the I.O. stated that he had recorded the confessional statement of the accused, he is unable to explain why the carbon copy and not the original was filed. He also admits in cross-examination that the copies of statements recorded by him are not available on record. He also admits that the requisition sent for examining the article is also not on record. Ext. P/6, a carbon copy of the statement recorded is not in the mother tongue of the accused but is in English. P.W. 1, S.I., R.P.F. who lodged the F.I.R. admits in cross-examination that though he signed on the Article M.O.I., there is no specific identification mark on it. He states that at the time of seizure he bad called one Chakradhar Jena, who happened to be near the spot. The said Chakradhar Jena was examined as P.W. 4 and stated in Court that he did not know anything about the case. He was not declared hostile and confronted with the case diary statement. P.W. 1 admits that he and the seizure witnesses had signed M.O.I. The witness (P.W.4) has denied any knowledge about the incident.

9. It is no doubt true that the Courts below on a consideration of the evidence and material on record have come to a certain finding. The fact that a belt was seized cannot be disputed but it also cannot be disputed that a belt which was seized bore the signatures of P.W. 1 and P.W.2. The independent witness neither supports the seizure nor the prosecution case. It also cannot be disputed that a

belt was sent to P.W. 3 who opined it to be the railway property but there is no cogent and reliable material on record to establish that 'the belt' seized was in fact kept in safe custody and that it was that particular belt which was sent for the opinion of P.W.3. Neither the original, confessional statement of the petitioner whether admissible or not recorded by P.W. 5 nor the statements of other witnesses recorded during investigation are on record. This raises a suspicion and makes the prosecution case suspect. For this reason the petitioner is entitled to the benefit of doubt. Suspicion, however, strong cannot be taken as the basis for conviction in a criminal proceeding. The case is required to be proved beyond all reasonable doubt which burden the prosecution, in this case, has failed to discharge.

10, For the reasons aforesaid, the revision is allowed. The conviction and sentence imposed on the petitioner are set aside. He is given the benefit of doubt and stands acquitted of the offence charged. The bail-bond be cancelled.

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