

State Vs. Prahallad Rath and ors.

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Court : Orissa

Decided On : Nov-03-2006

Reported in : 2007CriLJ1189

Judge : L. Mohapatra, J.

Appellant : State

Respondent : Prahallad Rath and ors.

Disposition : Appeal dismissed

Judgement :

L. Mohapatra, J.

1. This Government appeal is directed against an order of acquittal recorded by the learned Judicial Magistrate, First Class, Khurda in Case No. 2(c) C. C. 54/85 (T.R. Case No. 163 of 1988) acquitting the respondents from charge under Section 3(a) of the Railway Property (Unlawful Possession) Act.

2. The case of the prosecution is that on 12-6-1985, P.Ws. 1 and 4 were escorting 215 of Up Bhubaneswar-Palasa passenger train from Khurda Road to Palasa. On their way, they received information that the staff on duty of generator coach in the said train were preparing to sell high speed diesel oil from the generator coach at Nirakarpur Station. The further case of the prosecution is that when the train

arrived at Nirakarpur Railway Station, an outsider entered into the generator coach from the off side of the train and got down with a heavy bag on his shoulder. On suspicion, both the R. P. F. staff chased the outsider and caught him red handed. On interrogation, the said person disclosed his name to be Dhaneswar Behera, one of the accused and also confessed that he got the high speed diesel oil from the generator coach of the said train with the help of the other two accused persons on payment of Rs. 80/- as bribe. On verification, it was found that the gunny bag contained 35 ltrs. of high speed diesel oil in a black plastic jar. When the train started moving towards Nirakarpur Station, P.W. 1 left the accused Dhaneswar along with P.W. 4 at Nirakarpur Railway Station and proceeded in the train to ascertain the address of the other two accused persons, who were in the generator coach. After ascertaining the names and addresses of the two accused persons, he got down at Balugaon and on the next date gave a report in the police station. On the basis of the report, investigation was started and the high-speed diesel was seized. The accused Dhaneswar was examined and his confessional statement was recorded and on completion of investigation, he submitted the prosecution report against the accused person for commission of offence as stated above. The defence plea is one of the complete denial of the occurrence. The prosecution examined seven witnesses in order to bring home the charge and defence examined one witness. The trial Court on consideration of the evidence available on record, held that non-recording of confessional statement by the Investigating Officer shows that the said accused persons had never confessed. The Court also held that even accepting the case of the prosecution that one of the accused confessed, his confessional statement cannot be used against the other two co-accused persons. On analysis of the evidence, the learned Magistrate also found that there was no evidence of physical possession of the high speed diesel oil by the accused persons and the bag containing the said seized high speed diesel oil was not sealed. Apart from above, the trial Court also found that independent witnesses, though available were not examined in the case. On the above findings, the learned Magistrate passed an order of acquittal.

3. The learned Standing Counsel challenging the impugned judgment submitted that ordinarily in such type of cases, independent witnesses are not available and, therefore, the Court can rely on evidence of official witnesses. The learned

Counsel for the State further submitted that the high speed diesel oil was seized from the accused Dhaneswar when he was carrying the same and he confessed to have got it from two co-accused persons on payment of Rs. 80/- as bribe. On the face of such evidence available on record, according to the learned Counsel for the State, an order of acquittal is not called for. It was also submitted that the officer of Railway Protection Force not being a Police Officer, the confession made before the R P. F. Officer is required to be taken into consideration as a piece of evidence. The learned Counsel appearing for the accused-respondents, on the other hand, submitted that though it is alleged that the accused Dhaneswar confessed before P.Ws. 1 and 4 to have purchased the high speed diesel oil from two co-accused persons, such confessional statement was never recorded. In view of the above, merely on the statement of the witnesses, the trial Court was justified in holding that in absence of recorded confessional statement, it is difficult to arrive at a conclusion as to whether there is any confession at all or not. Apart from above, the learned Counsel appearing for the respondents also submitted that the alleged bag containing high speed diesel oil was not sealed and the sample alleged to have been collected from the said bag for the purpose of examination is doubtful. The learned Counsel also submitted that though independent witnesses were available, none was examined in course of trial and it is unsafe to convict an accused on the basis of evidence of official witnesses only.

4. P.Ws. 1 and 4 are the officers of the Railway Protection Force, who got information and caught hold of the accused Dhaneswar at Nirakarpur Railway Station while carrying 35 ltrs. of high speed diesel oil in a plastic jar kept in a gunny bag. P.W. 1 in his evidence has stated that after they got information about the said transaction, in order to detect, they kept themselves concealed on the off side of the generator coach and noticed that accused Raguriath Samantray and Prahallad Rath gave indication to Dhaneswar to come to the generator coach and when the accused-Dhaneswar went to the generator coach, the two accused person gave him one gunny bag, which was being carried by Dhaneswar on his shoulder. At that point of time, he and P.W. 4 apprehended the accused-Dhaneswar and found that 35 ltrs. of high speed diesel oil had been kept in a plastic jar inside the gunny bag. The witness further stated that on interrogation, the accused Dhaneswar confessed before them that he had obtained the high

speed diesel oil from other two co-accused persons on payment of Rs. 80/- as bribe. This witness has further stated that though the occurrence took place on 12-6-1985, he came back to Nirakarpur Railway Station on 13-6-1985, went to R.P.F. Post, Khurda Road along with the accused-Dhaneswar, lodged written report in the police station and seized the oil. P.W. 2 is the S.I. of Police in whose presence seizure of diesel oil was made. P.W. 3 is also S.I. of Railway Protection Force who took sample of half-liter diesel from the jar for expert's opinion. P.W. 4 is the witness, who accompanied P.W. 1 to Nirakarpur Railway Station and caught hold of the accused-Dhaneswar while carrying the high speed diesel oil. This witness in his evidence has supported the stand taken by P.W. 1. P.W. 5 was working as T.L.M. at Khurda Road. In his evidence, he has stated that on 14-6-1985, the sample was collected from the jar for the purpose of examination. P.W. 6 is the Superintendent of Laboratory, Railways, Visakhapatnam, who has stated in his evidence that the sample sent for examination was a high speed diesel oil. P.W. 7 is the A.S.I. R.P.F. Post, Khurda who has stated in his evidence that the accused-Dhaneswar confessed before him that he had purchased the high speed diesel oil from the staff on duty in the generator coach. On analysis of the evidence of the prosecution witnesses, it appears that on 12-6-1985, the accused-Dhaneswar was caught by P.Ws. 1 and 4 while carrying the high speed diesel oil in a black plastic jar kept in a gunny bag. Though it was possible on the part of the office of P.Ws. 1 and 4 to lodge an F.I.R. on the very same day, the written report was submitted on the next date on 13-6-1985. It is, therefore, clear that the accused-Dhaneswar was kept in Nirakarpur Railway Station from 12th till the next date and was taken to Khurda R.P.F. post for the purpose of submission of a written report. Though P.W. 3 stated that he had taken half liters of high speed diesel oil as sample out of the said jar for the purpose of examination on 13-6-1985, P.W. 5 in his evidence stated that the sample has taken on 14th June, 1985 and there is a clear discrepancy in evidence of P.Ws. 3 and 5 with regard to the date of taking sample for the purpose of examination. There being no dispute that seizure took place in Khurda Railway Station, it cannot be said that independent witnesses were not available to be examined. No witnesses on behalf of the prosecution has stated that independent witnesses were not available to be made part of the investigation. This has not been done since the F.I.R. was never lodged on the

date when the accused-Dhaneswar was found with high speed diesel oil. Admittedly, on 12th June, 1985 the accused-Dhaneswar was found with the high speed diesel oil and F.I.R. was lodged on the next date and only after lodging the F.I.R. the seizure of the diesel oil was made. It was open for the P.Ws. 1 and 4 to take the help of one or two persons available in the Railway Station as independent witnesses but the same was not done. Now, only evidence available before this Court is the fact of seizure of high speed diesel oil from accused-Dhaneswar and his confessional statement before the three prosecution witnesses. In absence of independent witnesses, the Court can always rely upon the evidence of official witnesses, provided they are reliable and trustworthy. In this case, though accused-Dhaneswar was caught by P.Ws. 1 and 4 carrying the high speed diesel oil on 12th of June, 1985, no F.I.R. was lodged on the same day, no independent witness was examined on the same day and no seizure was also made on the same day. Only on the next date, an F.I.R. was lodged and seizure was made. Admittedly, the seizure was made in the Khurda Railway Station and independent witnesses could have been examined to support the seizure. That was also not done. As stated earlier, there is variation between the evidence of P.Ws. 3 and 5 with regard to the date of collection of sample for the purpose of examination. In view of such evidence, it will be unsafe to convict an accused persons only on evidence of such official witnesses. Apart from the above, admittedly the accused-Dhaneswar was taken from Nirakarpur to Khurda Road and his confessional statement was recorded in Khurda R.P.F. Post. In this connection, a decision of this Court reported in 1983 Cri LJ NOC 188 is relevant. In the said decision, the accused was taken to the R.P.F. Post where his confession was recorded. The said confession was denied by the accused at a later stage. Under the circumstances, the Court held that Railway Protection Force Officer-in-Charge of Post inquiring into an alleged offence by an accused under Section 3(a) of the Act is not a Police Officer and confession alleged to have been made by the accused before him is admissible in evidence under Section 25 of the Evidence Act, yet where the evidence showed that an accused was forcibly taken to R.P.F. Post where he was alleged to have made the confession and the accused later denied such confession, no reliance can be placed on such confession for the purpose of conviction. While deciding the case in the above

manner, this Court also relied on a decision of the Apex Court, reported in 1980 Cri LJ 1424 (SC).

5. So far as other two co-accused persons are concerned, the only evidence against them is the confession of Dhaneswar. Since I have found that no reliance can be placed on the confession of Dhaneswar because of the circumstances under which it was recorded, there is no other evidence against the other two accused persons and accordingly they cannot be convicted of the charge.

In view of the discussions made above, I do not find any merit in the appeal and is accordingly dismissed.

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