

Rabindra Kumar Swaln Vs. State of Orissa

Rabindra Kumar Swaln Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/536440

Court : Orissa

Decided On : Jul-25-1991

Reported in : 1992CriLJ1868

Judge : A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 354 and 387

Appeal No. : Criminal Revn. No. 34 of 1988

Appellant : Rabindra Kumar Swain

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S. Misra (1), ;S.N. Misra and ;S.K. Nayak, (2), Advs.

Judgement :
ORDER

A. Pasayat, J.

1. The petitioner assails the judgments of conviction and sentence as passed by the learned Chief Judicial Magistrate, Jeypore and affirmed in appeal by the lea~rned Sessions Judge, Koraput, Jeypore.

2. The petitioner stood charged for having dishonestly misappropriated primary gold, gold and silver ornaments, cash and other valuable properties worth around Rs. 1,50,000/- while he was in charge of Malkhana of Judicial Courts at Jeypore and acted as a Malkhana Clerk.

As many as 46 witnesses were examined to further the prosecution case and voluminous documents were pressed into service by the prosecution. The primary stand of the petitioner was that there was no entrustment of the articles in question and therefore, the question of his having misappropriated them did not arise. The learned trial Magistrate found the petitioner guilty, convicted him under Section 409 of the Indian Penal Code, 1860 (in short 'IPC') and sentenced him to five years' rigorous imprisonment and also imposed a fine of Rs. 5,000/- with a default sentence of one year's rigorous imprisonment. In appeal the conviction and sentence were maintained.

3. Main plank of the argument advanced by Mr. S. Misra (1), learned Counsel for the petitioner is that while hearing an appeal against conviction and sentence under Section 409, IPC, a detailed analysis of the evidence was imperative. Unfortunately, the learned Sessions Judge has disposed of the appeal in a cursory manner without dealing with various contentions raised by the accused and without even referring to various material aspects which were highlighted before him to show about improbability of the prosecution case. The learned Counsel for the State, however, supports the order passed by the learned Sessions Judge.

4. On perusal of the order of learned Sessions Judge, I find that the force of the contention of learned Counsel for the petitioner cannot be gainsaid. A reference to Section 387 of the Code of Criminal Procedure, 1973 (in short 'the Code') is desirable in this context. The provision enunciates that the general rule that the provisions in Chapter XXVII of the Code relating to judgments shall apply to appellate judgments 'so far as may be practicable'. It must state points for determination, the decision on each of them, with reasons; as required in case of judgments of original Courts in terms of Section 354 of the Code. The judgment must show that the appellate Court has applied its mind to all facts and circumstances from all aspects. It is not enough to set aside mechanically

arguments advanced by both sides without setting out the reasons why any of them is accepted or rejected. It must contain a critical appraisal of the whole evidence and give clear reason for conclusions arrived at. (See (1969) 2 SCWR 12 : (AIR 1969 NSC 123), K.C. Aggarwal v. Delhi Administration). Where the appellate Court agrees with the judgment of the original Court and dismisses the appeal, a lengthy or elaborate judgment, may not be passed; nevertheless, it must be independent and self-contained.

5. It appears from the records that appellant-petitioner had elaborately referred to the inconsistencies before the learned Sessions Judge, but the appeal was disposed of by general observations, without critical analysis and consideration of facts at issue. Without, therefore, going into merits of the conviction and sentence question in the revision, I feel that interest of justice would be best served if the learned Sessions Judge hears the appeal afresh and disposes of the same in accordance with law. The matter is pending for the last about eight years and therefore, the learned Sessions Judge would do well to hear the appeal afresh and dispose of the same by the end of 1991.

The lower Court records be sent back to the learned Sessions Judge. Since fate of the case would depend on acceptability of the documents, he would ensure their proper custody.

The criminal revision is accordingly disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com