

Basudeo Sahu. Vs. the State of Bihar.

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Court : Jharkhand Ranchi

Decided On : Apr-07-2011

Judge : Bhagwati Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 364, 323, 365, 342, 352; Code of Criminal Procedure (CrPC) - Section 164, 313

Appeal No. : Cr. Rev. No. 160 of 2000; Cr. Appeal No. 2 of 2000.

Appellant : Basudeo Sahu.

Respondent : The State of Bihar.

Advocate for Def. : Mr. Shekhar Sinha, Adv.

Advocate for Pet/Ap. : M/s. Dilip Kumar Prasad; Jai Prakash Agarwal, Adv.

Judgement :

1. By Court The present revision application stands preferred by the petitioner for setting aside the judgment passed in Cr. Appeal No. 02 of 2000, passed by Sri Ravindra Nath Verma, 2nd Additional Judicial Commissioner, at Khunti confirming the sentence passed by Asstt. Sessions Judge, Khunti, in S.T. No. 304 of 1991.

2. The prosecution story, in short, is to the effect that on 24.04.1990 at about 8:00 a.m., a quarrel took place in between two girls. A minor boy Ranjit Sahu (P.W. 5) pacified the girls. However, one Sabita Kumari fell down, and on her complaint the father i.e. petitioner Basudeo Sahu, came to school and forcibly took Ranjit Sahu,

assaulted and confined into a room of his house. Thereafter, informant Nand Lal Sahu, on next date i.e. 25.04.1990 lodged F.I.R. alleging murder of his son.

3. The F.I.R. was registered under section 364/323 of I.P.C. on 25.04.1990 being Sonahatu P.S. Case No. 17 of 1990.

4. It further reveals from the record that said Ranjit Sahu was recovered from Ranchi and his statement was recorded on 18.06.1990 under section 164 of Cr.P.C. wherein he alleged that Basudeo Sahu took him to his house, assaulted him and in the night hours Basudeo Sahu, with one unknown person, was talking to kill him, but said Ranjit Sahu, on the pretext of natural call, escaped away and came to Ranchi and started working in a Hotel. One villager Moti Sahu, having seen him, brought him to his father and father took him to police station.

5. It further transpires that the said statement under section 164 of Cr.P.C. was not exhibited during trial as well I.O. was not examined.

6. The charge was framed on 03.09.1997 for the alleged offence under section 364 of I.P.C.

7. The prosecution in support of the case examined 8 witnesses out of which P.W. 6 was declared hostile, P.W. 7 was tendered and P.W. 8 formally proved F.I.R., marked as Exhibit-2.

8. On the other hand defence also examined 2 D.Ws' and got exhibited 2 affidavits as Exts.-A and 13 and report of Mukhia which was marked X for identification.

9. P.W. 1 namely Surju Prasad stated before court that he had seen [2] accused Basudeo Sahu assaulting and taking victim from school to his house and confining him in a room. His evidence has been believed by the learned court as well appellate court.

10. P.W. 2 Dinesh Prasad has stated before the court that his father Nand Lal Sahu was informant but he died. He has deposed that some one told him about the beating and confinement and accordingly after visiting the house, he prayed for release of his brother but Basudeo Sahu displayed bamboo stick. He further

deposed that Ranjit Sahu returned back after 1 and 1/2 months with one Moti Sahu.

11. P.W. 3 Khedu Devi mother of Ranjit Sahu, deposed that she had not seen the occurrence herself but she had gone to the house of accused Basudeo Sahu, who had kept her son for 2 days in his house in side cow shed.

12. P.W. 4 Devi Bala (Bhabhi) of Ranjit Sahu has deposed that she had equally not seen the occurrence of quarrel or assault or forcible dragging but she has deposed that she had seen Ranjit Sahu confined in cow-shed of Basudeo Sahu.

13. P.W. 5 Ranjit Prasad Sahu, victim of the present case, deposed that on 24.09.1990 a quarrel took place between Sabita and Tijan Kumari and he intervened to pacify them but Sabita Kumari fell down and on her complaint, Basudeo Sahu (Father), came to the school, assaulted him, dragged him and confined him in a cow- shed. He further deposed that Basudeo Sahu and one unknown person took him inside forest to kill him. Thereafter, he raised alarm, as a result whereof both fled away. He has further deposed that he came to Ranchi on a Truck and worked in a Hotel. One day Moti Sahu who happens to be (Nephew-Bhatija) of Basudeo Sahu brought him to his father's house. He got his statement recorded under Section 164 of Cr.P.C. before Magistrate.

14. Thus, on perusal of evidence on record learned trial court though acquitted the accused for the alleged offence under Section 364 I.P.C., yet convicted under Section 365 I.P.C. and sentenced to 3 years R.I. and imposed fine of Rs. 5,000/-.

15. The learned appellate court affirmed the findings of learned trial court and dismissed the appeal.

16. The learned counsel for the petitioner submitted that the conviction under Section 365 I.P.C. is bad in the eye of law as the case comes within the purview of section 342 I.P.C. The evidence of P.Ws. 1 to 5 shows that there was use of criminal force and assault which falls within the purview of section 352 I.P.C. but in no case, conviction can be sustained for the alleged offence under section 364 I.P.C. as well as he has not been convicted under section 323 I.P.C.

17. It has been further submitted that the necessary ingredient of section 365 depicts; kidnapping or abducting with intent to secretly and wrong fully confine a person; but in the instant case no such secret intent has been brought on record, as [3]

P.Ws. 1 to 5 have seen the accused carrying the victim as well as confining in (Gohal) Cow-shed.

18. The learned counsel for the petitioner has further submitted that serious prejudice has been caused due to non examination of I.O. and independent witnesses.

19. It has been further submitted that two views are possible taking into account the evidence of P.W. 3 who has seen the P.W. 5 in the house of accused for 2 days whereas P.W. 5 has said that on the same day i.e. on 24.04.90 he escaped from the custody of accused person from Jungle in the night hours which suggests that the whole prosecution story is a myth.

20. It has been further submitted that conviction of petitioner is equally bad in view of the fact that no such question was put to accused under Section 313 Cr.P.C. that he committed offence under section 365 I.P.C and thus the defence has been seriously prejudiced. He has relied upon the Judgment reported in (2008) 16 SCC 328.

21. The learned A.P.P has vehemently opposed the contention of the petitioner and submitted that there is no illegality, impropriety or incorrectness in the judgment under revision and hence same should be dismissed.

22. The learned defence counsel lastly submitted that the case relates back to 1990 for a petty offence and now petitioner has become 72 years old person. No useful purpose will be served if a person is sent behind bar after a lapse of 21 years. The case of prosecution will not be prejudiced if petitioner is directed to pay more fine in lieu of sentence.

23. Heard, the rival contentions of the parties, perused the record. I find and hold that the judgement under revision requires no interference by this Court under

limited jurisdiction of revision court. Yet I am satisfied that no useful purpose will be served if an old man is sent behind bar after a long lapse of time. The end of justice will be served if his sentence is altered in directing payment of only fine to the tune of Rs.10,000/-. The learned counsel, on instruction, submits that his client is ready to pay the enhanced fine in lieu of sentence.

24. Accordingly, this revision application is dismissed with modification in the order of sentence, as indicated above.

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