
(2011) 05 JH CK 0069
In the Jharkhand High Court
Case No : Criminal Rev. No. 364 of 2008

BalramTudu and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 34, 429

Citation : (2011) CriLJ 4560

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This criminal revision is directed against the judgment dated 30.11.2007, passed by the learned Additional Sessions Judge, East Singhbhum, Ghatshila in Criminal Appeal No. 63 of 2005, by which the appeal preferred by the Petitioners against their conviction by the learned SDJM, Ghatshila in C/1 Case No. 93 of 2000, corresponding to T.R. No. 921 of 2005, by which they were held guilty, was affirmed and the appeal was dismissed. The learned SDJM, Ghatshila held the Petitioners (1) Balram Tudu (2) Laso Tudu @ Laxmi Tudu (3) Sunaram Tudu and (4) Krishna Sardar guilty for the offence u/s 143 of the Indian Penal Code and each of them was sentenced to undergo simple imprisonment for a period of four months. They Were further held guilty for the offence under Sections 429/34 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for two years. Petitioner No. 5 Chandrai Tudu was also held guilty but no substantive sentence was awarded to him except that he was directed to be released on execution of the probation bond of Rs. 5000/- with two sureties for a period of one year for maintaining peace and be of good behaviour. Sentences awarded to the other four Petitioners were directed to run concurrently. Their conviction and sentence awarded by the trial court was affirmed in appeal as already mentioned.

2. Prosecution story as narrated by the complainant-informant Hopna Tudu was

that in the night of 11.4.1996 at about 7:00 p.m. one Gopal Kalindi had visited towards the government pond to answer the call of nature where he spotted the Petitioner Balram Tudu returning from the pond side briskly with a bottle in his hand followed by other Petitioners Laso Tudu @ Laxmi Tudu, Sunaram Tudu, - Krishna Sardar, Chandrai Tudu and one Motilal Sardar (not the Petitioner herein) in the light of torch he was carrying. The witnesses came near the pond on alarm along with the informant-complainant and found the fishes of the pond jumping and some of the fishes floating presumed to be died. A written report was presented by Hopna Tudu at the Ghatshila police station, to which Ghatshila P.S. Case No. 44/96 was instituted on 14.4.1996 for the alleged offence under Sections 429/34 of the Indian Penal Code, however, after investigation, the Investigating Officer submitted final form exonerating the criminal liability of the accused as the allegation was not found to be true. A notice was issued to the informant whereupon the informant appeared and filed a protest petition which was registered as complaint case. During course of inquiry, one of the accused Motilal Sardar died. A prima facie case under Sections 429/34 of the Indian Penal Code was found against all the five accused, who are the Petitioners herein and ultimately, charge was framed against them under Sections 147/429/34 of the Indian Penal Code.

3. Learned senior counsel Mr. M.K. Dey submitted that there is error of record in the judgment of the learned Additional Sessions Judge, East Singhbhum, Ghatshila in Criminal Appeal No. 63 of 2005 wherein he observed,

Therefore, in my opinion, the learned court below has rightly found the Appellants guilty for the offence under Sections 147 and 429 read with Section 34 of the Indian Penal Code and the judgment of conviction and order of sentence passed by the S.D.J.M., Ghatshila is justified as the same is in accordance with law and it does not require any interference.

4. According to the learned senior counsel Mr. Dey, the learned Additional Sessions Judge perhaps had no basic knowledge of the principle of law that conviction of the accused cannot be sustained u/s 147 of the Indian Penal Code with the aid of Section 34 of the Indian Penal Code. Similarly, it was not the allegation that an unlawful assembly was formed by the accused persons with the intention to use force or violence for commission of rioting and therefore, the learned appellate court misconceived the entire facts and law and confirmed the conviction of the Appellants-Petitioners without appreciating the facts and application of law.

5. Advancing his argument, Mr. Dey further submitted that written report, which was presented by the informant before the police station, was investigated and the police when found the allegations false against the Petitioners, submitted final report exonerating the criminal liability of the Petitioners for the reasons, of course, that the informant could not file any chit of paper that he was in any manner associated with the government pond in the backdrop of the allegation that he was subjected to wrongful loss to the extent of Rs. 20,000-25,000/-. It

was not the case that the government pond was settled in Ms favour and in support thereof, he had produced any paper related to settlement on lease or otherwise for the relevant period. The second point the senior counsel raised that perhaps the police considered that there was no evidence of mixing poison in the pond, which resulted into death of fishes. Even there was no post mortem report of any fish so as to substantiate the allegation that the cause of death of fishes was due to poisoning. As regards complicity of the Petitioners was concerned, there was an instance and old enmity that on the instance of the Petitioner Balram Tudu, as many as fourteen accused persons including the complainant and his witnesses were convicted by the court of law and soon after their conviction in G.R. No. 638 of 1991, wherein each of them was sentenced to undergo rigorous imprisonment for one year, a written report was presented by Hopna Tudu before Ghatshila police. This corroborative evidence was overlooked by the trial court as well as by the appellate court while considering the veracity of case which was instituted maliciously. All the witnesses were interested having enmity with the Petitioners and having vital contradictions in the statement of the informant-complainant with that of the other witnesses.

6. Mr. Dev, the learned senior counsel, further submitted that the complainant-informant was not the eye-witness of the occurrence rather he had derived information from C.W.-1 Gopal Kalindi, who had stated that he had seen that Petitioner Balram Tudu was returning from the pond carrying a bottle in his hand followed by other Petitioners, but the complainant and other witnesses have substantially developed the case, who claimed having seen some of the Petitioners mixing poison in the pond and thereafter fishes of the pond were found dead. With reference to the statement of P.W.-3 Hopna Mandi, as contained in para-12 under cross-examination, the witness admitted that the pond in question was in possession of the Petitioner Balram Tudu for the last seven years, hence the question has arisen that when the Petitioner Balram Tudu was the owner of the pond then why he would mix poison in the pond and therefore, the entire allegation was cooked up with the intention to implicate the Petitioners falsely and maliciously and the police at the very beginning of the case exonerated their criminal liability by submitting the final report in their favour.

7. Heard Mr. S.K. Srivastava, the learned A.P.P. on behalf of the State, who opposed the contention raised on behalf of the Petitioners and submitted that the witnesses produced on behalf of the complainant were consistent about the complicity of the Petitioners, who committed mischief by mixing poison in the pond causing loss to the extent of Rs. 20,000-25,000/- and therefore, Petitioners were rightly convicted under Sections 429/34 of the Indian Penal Code by the learned SDJM, Ghatshila, which was affirmed by the learned Additional Sessions Judge in Criminal Appeal No. 63 of 2005.

8. Having regard to the facts and circumstances of the case, I find substance in the argument advanced on behalf of the Petitioners that conviction cannot be sustained on the ground that the complainant failed to show that he was in any

manner associated with the government pond and wrongful loss to the tune of Rs. 20,000-25,000/- was caused to him for the mischief alleged to have been committed by the Petitioners. It was the specific case of the complainant that the Petitioner No. 1 had mixed poison in the pond as a result of which fishes died but neither the report of the chemical analyst nor any post mortem report of the fishes procured from the said pond was brought on the record so as to substantiate the allegation of committing mischief by poisoning and therefore, I subscribe the view of the learned senior counsel for the Petitioners that the offence u/s 429 of the Indian Penal Code, in the facts and circumstances, could not be established against the Petitioners. Similarly, prosecution further failed to prove that the Petitioners had formed an unlawful assembly for doing certain criminal act as the offence alleged u/s 429 of the Indian Penal Code was not established and therefore, the Petitioners cannot be held guilty for the offence u/s 143 of the Indian Penal Code as the complainant failed to prove by adducing evidence that the Petitioners had framed unlawful assembly for committing offence. I finally observe that the learned Additional Sessions Judge, who affirmed the conviction of the Petitioners, without application of his judicial mind affirmed the conviction under Sections 147 and 429 of the Indian Penal Code read with Section 34 of the Indian Penal Code, which cannot be sustained under law and such finding is deprecated.

9. For the reasons stated above, judgments recorded by the learned SDJM, Ghatshila in C/1 Case No. 93 of 2000 and affirmed by the Additional Sessions Judge, East Singhbhum, Ghatshila in Criminal Appeal No. 63 of 2005, both are set aside and the Petitioners (1) Balram Tudu (2) Laso Tudu @ Laxmi Tudu (3) Sunaram Tudu (4) Krishna Sardar and (5) Chandrai Tudu are acquitted.

10. Accordingly, this criminal revision is allowed.