

(2020) 08 JH CK 0107
In the Jharkhand High Court
Case No : Criminal Revision No.674 Of 2014

Imtiyaz Ansari @ Imtiyaz Alam

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 379, 411
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 08 JH CK 0107

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Ashmita Shrivastava, Md. Hatim

Final Decision : Disposed Of

Judgement

1. Heard Ms. Ashmita Shrivastava, learned Amicus appearing on behalf of the petitioner.

2. Heard Md. Hatim, learned counsel appearing on behalf of the State.

3. This revision application has been filed against the order dated 21.06.2014 passed by the learned Additional Sessions Judge-I, Bermo at Tenughat in

Criminal Appeal No.109 of 2007 whereby the learned appellate court has upheld the judgment dated 05.10.2007 passed by the Learned Judicial

Magistrate, Ist Class, Bermo at Tenughat in Gomia P.S Case No.94 of 2005 corresponding to G.R No.839 of 2005 (T.R No.685 of 2007) whereby the

petitioner was convicted under section 379 of Indian Penal Code and was sentenced to undergo rigorous imprisonment for 3 years and a fine of

Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for one month only.

Arguments for the petitioner

4. Learned Amicus on behalf of the petitioner submitted that the impugned judgments passed by the learned courts below are against the weight of evidence and the learned courts below have not appreciated the evidence led by the prosecution in correct perspective. She submitted that there are contradictions in the evidence of the prosecution witnesses which has not been taken care of by the learned courts below. She submitted that altogether three witnesses were examined by the prosecution and P.W.-1 and P.W.-3 are own brothers while P.W.-2 is not an eye witness to the incident and there is no independent witness in the case. She also submitted that the Investigating Officer of the case has not been examined and in such circumstances, the impugned judgments of conviction are fit to be set aside. Learned Amicus also submitted that on similar allegations and on the basis of same set of evidence, other co-accused have been acquitted and so, the petitioner is fit to be also acquitted.

5. Without prejudice to the aforesaid submissions, the learned Amicus further submitted that the facts and circumstances of this case call for modification of the sentence, in as much as, the case relates to stealing of an ox and when the petitioner was seen, he was caught while fleeing away leaving the ox. She submitted that the petitioner has remained in custody for the period from 13.10.2005 to 25.11.2005 and thereafter for the period from 05.07.2014 to 13.08.2014. She also submitted that on the date of conviction i.e., 5th October, 2007, the petitioner was 22 years of age and accordingly, the present age of the petitioner is about 35 years and almost about 15 years have elapsed from the date of occurrence. Arguments of the Opposite Party-State

6. Learned counsel for the State opposed the revision application and submitted that there are concurrent findings of facts recorded by both the learned courts below and there being no perversity in the matter of appreciation of evidence, the present revision is devoid of any merit and is fit to be dismissed. He also submitted that although the Investigating Officer of the case has not been examined, but non-examination of Investigating Officer by itself is not fatal to the prosecution case inasmuch as the witnesses examined by the learned trial court were sufficient to prove the prosecution case beyond all reasonable doubt. He also submitted that the learned courts below have carefully scrutinized the evidence of all the 3 prosecution

witnesses and have considered all the aspects of the matter and convicted the petitioner.

7. He further submitted that the case against the petitioner is on different footing than the case of the co-accused, inasmuch as, it was the petitioner,

who was caught red handed by the villagers and the prosecution witnesses have clearly identified him and the case of the prosecution against other

accused persons was based on the confessional statement of the petitioner and therefore, the learned trial court while convicting the petitioner found

that the prosecution case regarding theft remained doubtful against other accused persons and acquitted the other accused persons.

8. Learned counsel has also submitted that so far as the sentence of the petitioner is concerned, the learned trial court though recorded the submission

that the present offence is the first offence, but refused to give benefit of the Probation of Offenders Act to the petitioner considering the manner in

which the offence was committed. Learned counsel submitted that the petitioner was caught red handed while taking away ox from the campus of the

informant in the night. However, he submitted that in case, this court considers it proper to modify the sentence of the petitioner, then the fine amount

may be enhanced which may not be less than Rs.10,000/-. Findings of this court

9. After hearing the learned Amicus and the learned A.P.P, this Court finds that as per the prosecution case, P.W.-3 had filed a written report before

the concerned police station on 12.10.2005 that when he reached his house, he saw that one person was pulling his ox after untying its rope in order to

take it away. When the informant raised alarm, the person left the ox and started running away. It was the specific case of the prosecution that 3

others were hidden near the house of the informant and they also started running away and when the informant raised alarm, villagers gathered and

chased the persons running and only one person i.e. the petitioner was caught who disclosed his name and also disclosed the names of the other 3

persons. Upon investigation, charge sheet was submitted under section 379/411 of Indian Penal Code and ultimately, charge was framed under the

said sections. The accused persons denied the charges and claimed to be tried.

10. To prove the charges, prosecution examined altogether 3 witnesses including the Informant. The Investigating Officer of the case was not

examined. This Court finds that in the order dated 22.05.2007, it has been

recorded that the Investigating Officer of the case had expired and consequently, prosecution evidence was closed and the Investigating Officer could not be examined.

11. This Court finds that the learned trial court has considered the evidence of P.W.-1 who is the brother of the informant (P.W.-3), who has fully supported the prosecution case. He had seen that out of 4 persons, 3 ran away and the petitioner was caught, but this witness has not identified the petitioner in the court. So far as P.W.-2 is concerned, he has stated that upon hearing the alarm, he reached at the spot and saw that 4 thieves were running and one was caught by the villagers who was the petitioner. This witness P.W.-2 identified the petitioner in the court and he did not identify the other accused persons. P.W.-3 is the informant of the case, who also has fully supported the prosecution case and narrated the entire incident that when he entered into the house, he had seen one person taking away his ox and when he raised alarm, the person left the ox and started running and the villagers chased and caught him and he was the petitioner. He had also seen 3 persons standing outside and the petitioner disclosed the name of 3 persons. This witness has identified the petitioner in the court, but could not identify the other accused persons. This Court finds that the witnesses were thoroughly cross-examined. The statement of the petitioner was also recorded under Section 313 of Cr.P.C and the petitioner remained in the state of total denial and did not furnish any explanation from his side and also did not lead any defence evidence.

12. After considering the entire evidence, the learned trial court recorded a finding that the petitioner was caught red handed by the villagers and the prosecution witnesses have clearly identified him and the case of the prosecution against other accused persons was based only on the alleged confessional statement of the petitioner. Since the prosecution case regarding theft remained doubtful against other accused persons, they were acquitted of the charge under section 379/411 of the Indian Penal Code and the petitioner was held guilty under section 379 of Indian Penal Code.

13. The learned trial court while considering the sentence of the petitioner refused to give the benefit of Probation of Offenders Act and sentenced the petitioner for 3 years R.I. and a fine of Rs.1,000/- (one thousand).

14. The learned appellate court also scrutinized the evidence of the prosecution

witnesses and was of the considered view that the prosecution has been able to prove its case against the petitioner beyond all reasonable doubts. The learned appellate court was of the considered view that the learned trial court passed its judgment on sound principle and the evidence of prosecution witnesses are corroborative in nature and accordingly, dismissed the appeal.

15. This Court finds that there is consistent finding of facts recorded by both the learned courts below and the learned courts below have convicted the petitioner under Section 379 of Indian Penal Code by well-reasoned judgments and upon considering all the materials on record. So far as non-examination of I.O. is concerned, the same was on account of his death as recorded in the order sheet of the learned trial court. Moreover, non-examination of the investigating officer has not caused any prejudice to the petitioner as the petitioner was caught on the spot while fleeing away. The evidence of P.Ws.-1, 2 and 3 are consistent and corroborative and the petitioner was given full opportunity to defend himself during trial.

16. There is no scope for re-appreciation of evidence under revisional jurisdiction and to come to a different finding. This Court finds that there is no perversity or illegality in the order of conviction of the petitioner under Section 379 of Indian Penal Code by the trial court and its confirmation by the learned appellate court.

17. So far as the sentence of the petitioner is concerned, this Court finds that the petitioner has remained in custody for more than two months and as per the records available in the present case, the petitioner did not have any previous conviction and further the petitioner has suffered the rigors of the criminal case right from 12.10.2005 and about 15 years have elapsed from the date of occurrence. This Court is of the considered view that ends of justice would be served if the sentence of the petitioner is modified and the sentence is reduced to a period of one and half years R.I. and fine amount is increased to some extent. Accordingly, the sentence of the petitioner is modified and reduced to a period of 1 and half years R.I. and a fine of Rs.2,000/- (two thousand) and in default of payment of fine, the petitioner will have to undergo simple imprisonment for one month only.

18. This revision petition is disposed of with the aforesaid modification of the sentence of the petitioner.

19. Bail bonds furnished by the petitioner is hereby cancelled.
20. Pending interlocutory applications, if any, are dismissed as not pressed.
21. Office is directed to send back the lower court records to the court concerned.
22. Let this order be communicated to the learned court below through FAX/E-mail.