

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 90 of 2007

1. Keshar Husain, son of Shri Taubbar Husain, aged about 25 years, resident of Village Manpur, P.S. Surajpur, District Surguja (C.G.)
2. Shri Ashok Kumar Sahu S/o Shri Rambharos Sahu, aged about 25 years, R/o Purana Bazar, Surajpur, P.S. Surajpur, District Surguja (Chhattisgarh)

---- Applicants

Versus

- State of Chhattisgarh, Through The Station House Officer, P.S. Surajpur, District Surguja (C.G.)

---- Respondent

For Applicants : Ms. Sharmila Singhai, Advocate
For Respondent/State : Shri Vijay Bahadur, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

(07/11/2016)

1. This revision has been brought against the judgment dated 21/02/2007 in Criminal Appeal No. 114/04 passed by the III Additional Sessions Judge, Surajpur, District Surguja (C.G.) in which the judgment of conviction and sentence passed by the trial Court was confirmed.
2. The case against the applicant is that that one FIR (Ex.P/1) was lodged by Krishna Kumar Agrawal (PW-1) that on the intervening night of 4th – 5th July 2001 the battery of a roller which

was in his possession, in village Manpur was stolen. On collecting information Krishna Kumar Agrawal (PW-1) came to know that some Bangali Muslim was involved in this theft. A case under Section 379 of IPC was registered for investigation. Documents of ownership were seized vide (Ex.P/3), regarding battery. At the instance of applicant Keshar Hussain vide (Ex.P/3) and applicant Ashok Kumar Sahu vide (Ex.P/5) a battery of 24 V. made by Exide Company valued at Rs.4500/- was seized vide (Ex.P/4) from the possession of applicant Ashok Kumar Sahu. Further on completion of investigation, charge-sheet was filed before the trial court. Applicant Keshar Hussain was charged under Section 379 of IPC and another applicant Ashok Kumar Sahu was charged under Section 411 of IPC. On their denial the trial was conducted. Applicant Keshar Hussain held guilty under Section 379 of IPC and sentenced to undergo simple imprisonment of one year along with fine of Rs. 500/-, another applicant Ashok Kumar Sahu was held guilty under Section 411 of IPC and sentenced to undergo simple imprisonment of one year along with fine of Rs.500/-. This judgment was appealed and heard before the III Additional District Judge (FTC) Surajpur, which was decided and maintained as per the details given in aforesaid paragraph.

3. The grounds in this revision petition are these that applicants have been convicted on the basis of evidence which is not legally admissible. Trial court and the lower appellate Court have ignored the contradictions and omissions in the statement of

the witnesses. FIR was unnamed. The seized battery has not been identified as the article of theft. Independent witness of seizure has been hostile, hence the applicants are entitled for benefit of doubt and prayed that the revision be admitted and allowed and the applicants be acquitted for the charges against them.

4. At the stage of argument learned counsel for the applicants submits that the article of theft battery was valued at Rs. 4500/- only. The applicants have faced trial thereafter have prosecuted the appeal and later on have come before this Court in which almost 16 years have been passed. Looking to the value of the property involved, it is prayed that the substantive sentence of imprisonment may be condoned and fine amount may be increased with this submission the counsel for applicants does not wish to press on the grounds for acquittal as raised in this revision petition.

5. Counsel on behalf of the State has opposed the arguments of the applicants side and submitted that prosecution has proved its case beyond reasonable doubt, hence there is finding of two Courts below regarding conviction of the applicants, which suffers from no infirmity and should not be inferred with.

6. Considering the arguments submitted on both sides the submission of counsel for the applicants is allowed by which the grounds for acquittal in this revision petition are not pressed, hence on the basis of this submission the finding of conviction

recorded by trial Court and the lower appellate Court is confirmed.

7. Section 401 of Cr.P.C. empowers the High Court to exercise the powers of appeal court as provided under Section 386, 389, 390 and 391 of the Code. Under Section 386 of Cr.P.C. a Court of appeal has power to alter the sentence without altering the finding of conviction, this power can be invoked to consider for the prayer of the applicants.

8. Looking to the fact that a long time of almost 16 years have been elapsed, article of theft was valued at just Rs.4500/-, looking to the hardship suffered by the applicants during this period and that the applicants do not have any criminal background, it is found proper that the sentence against the applicants should be modified. Hence this revision is allowed in part. The jail sentence against the applicants is set-aside . The fine amount awarded by the trial Court is enhanced and now each of the applicant is ordered to pay a fine of Rs.3000/-, on condition of non-payment of fine they shall be required to undergo simple imprisonment of three months.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE