

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 338 of 2011

Thanwar Yadav

Applicant

Versus

State of Chhatisgarh

Respondent

Post for pronouncement of the order on 04.12.2019

Sd/-

JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 04.09.2019****Order Delivered on : 04/12/2019****CRR No. 338 of 2011**

- Thanwar Yadav, Aged 50 years, S/o. Shri Sonchand Yadav, R/o. Village Tumgaon, PS Tumgaon, Tahsil and District Mahasamund (CG)

---- Applicant**Versus**

- State Of Chhattisgarh, through Police Chowki Patewa, PS Tumgaon, District Mahasamund (CG)

---- Respondent

For Applicant	: Shri J.A.Lohani, Advocate
For Respondent/State	: Smt. Reena Singh, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****04/12/2019**

Present revision arises out of the impugned order and judgment dated 09.05.2011 passed by the Second Additional Sessions Judge, Mahasamund in Cr. A. No. 16/2011 whereby the learned Appellate court has modified the conviction and sentence of the accused/applicant under Sections 186, 341 and 353 IPC, affirming the sentence under the aforementioned Sections, altered the conviction of the applicant under Section 353 IPC and sentenced him for fine of Rs.2000/- and the custodial period of 6 days, however, sentence awarded under Sections 186 and 341 were upheld.

2. Brief facts of the case are that on 10.11.07, complainant Mangal Singh Head Constable has lodged a report at Police Chowki Sirpur alleging that on that day in the morning, when he along with the police party were going towards village Marod Paasid, they caught Amarsingh, Chhotu and Salik Ram who were gambling and seized cash of Rs. 460/- and 52 cards from them. It is further alleged that while returning, on the way, present applicant Thanwar Yadav, along with Narayan Sahu and others stopped them, assaulted and took away the amount and cards, torn off the documents and put them in a furnace and thus, have obstructed the public servant from doing his duties. After completion of investigation, charge sheet was filed and accordingly charges were framed.

3. In order to prove the guilt of accused, prosecution has examined 16 witnesses. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charged levelled against him and pleaded his innocence and false implication in the case. This apart, two defence witnesses have also been examined by the applicant.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 22.12.2010, the Judicial Magistrate First Class, Mahasamund has acquitted the accused of the offence under Section 392 IPC. However, he has been convicted under Sections 186, 353 and 341 IPC and sentenced with fine of Rs. 500/- u/s. 186; RI for 4 months u/s. 353 and fine of Rs. 500/- u/s. 341 plus default stipulations.

5. This order was appealed by the applicant and in the appeal,

appellate court has confirmed the conviction but has altered the sentence under Section 353 IPC, to pay fine of Rs. 2,000/- plus custodial period of 6 days instead of RI for 4 months. However, the remaining part of conviction remain as it is. Hence, the present revision.

6. Counsel for the applicant submits that the applicant being innocent villager, is a political leader (*Kisan Neta*), aged about 50 years, has been falsely implicated by the police party. He submits that it is an afterthought story that too, without any material evidence and witnesses, therefore the impugned judgment of conviction is illegal, arbitrary and perverse under the eye of law. It is submitted that the complainant party are the interested party to the prosecution themselves but the independent witnesses have not supported the prosecution case. The true story behind the case is that the police party visited the village in drunken condition, illegally demanded money from the villagers and when they tried to obstruct them from doing so, the police party got annoyed and registered a false case against the applicant. In the *rojnamcha sanha* date of incident is shown to be 10.11.07, whereas the applicant was arrested on 13.06.09 i.e, after a lapse of nineteen months. The reasons mentioned are that the applicant was absconding whereas Ganesh Ram Sahu (PW-7) and Chandrashekhar Dhruv (PW-16) has admitted that applicant is involved in politics and is known as *Kisan Neta* in the village. He has stated that the police had made him witness in Crime No. 297/08 (motor accident case) in the year 2008 and statement was also recorded under Section 161 Cr.P.C. and this fact has been admitted by SL Navratan therefore, prima facie it is admitted fact that the applicant

was never absconding which creates doubt over the prosecution story and inquest. He submits that the prosecution had mentioned the date of incident as 10.11.2007 whereas in the *rojnamcha sanha* (No. 237 & 238), the date is mentioned as 10.10.2007. Further, in the FIR Column NO. 3(c) the police had mentioned *rojnamcha sanha* number as 338 which creates doubt in the prosecution case. Counsel for the applicant has contended that the applicant has not at all committed such offence and he has been falsely implicated in the case. In the present case, all the proceedings, inquest, investigation, *rojnamcha sanha* and FIR have been recorded by one police Officer Chandrashekhar Dhruv and thus, there is lot of discrepancy in respect of the spot map. The police had prepared a false case making allegation against the applicant and other persons therefore, the impugned order is liable to be set aside.

7. On the other hand, counsel for the State supported the order impugned.

8. Heard counsel for the parties and perused the material available on record.

9. In the present case, K.R.Minj (PW-1), Ganesh Ram Sahu (PW-7), Naresh Yadav (PW-7) and Bhupat Ojha (PW-11) who were the police personnels, said to have visited the village. The witnesses PW-1 and 2, however, have not supported the prosecution case and instead, have stated that the applicant has not done anything and also not aware of the incident. This apart, the independent witnesses Amaru Ram (PW-3), Shatrughan (PW-4), Hiran Das (PW-5) and Amar Singh (PW-10) have not supported the prosecution case. Complainant Ganesh Ram Sahu (PW-7), Naresh Yadav (PW-8) and Bhupat Ojha

(PW-11) have supported the case of prosecution.

Applicant has also examined two defence witnesses Tilak Ram Patel (DW-1) and S.L.Navratan (DW-2) ASI. Prosecution has examined Bharti Markam (PW-14) in this regard who has stated that she prepared *Farari panchanama* and prepared Ex.PC-1 and C-2. S.L.Navratan (DW-2) has stated that in the year 2008, when the vehicle-metador of the applicant met with accident, at that time he has done the investigation and prepared *naksha panchnama*.

10. Close scrutiny of the evidence makes it clear that in the instant case, the evidence brought on record do not conclusively and consistently bring home the guilt of the applicant beyond all reasonable doubt. Recently in the judgment of the Hon'ble Supreme Court in the case of Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan reported in (2013) 5 SCC 722, the Hon'ble Apex Court while discussing earlier judgments rendered by Apex Court, held as follows:

"21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The (5 of

7) [CRLA-1138/2015] Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

11. By perusing the material available on record, it appears that no force was used by the applicant to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the complainant/police party or obstructed them from discharging their official duty. Taking the uncontroversial allegations, I am of the view that the prosecution failed to prove the case against the appellant beyond reasonable doubt and thus, the applicant becomes entitled for benefit of doubt. Accordingly, the revision filed by the applicant is allowed and the judgment impugned convicting and sentencing the applicant as mentioned above is set aside. He is acquitted of the charges levelled against him. Fine amount deposited by him shall be refunded.

Sd/-

(Rajani Dubey)
Judge