

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28.01.2020

Delivered on 05.3.2020

Criminal Appeal No.175 of 2009

Smt. Gayatri Sharma, Wife of Shri Dinesh Kumar Sharma, aged 33 years, Occupation Service (Assistant Sub Inspector) presently residing at Rakshit Kendra, Rajnandgaon, Distt. Rajnandgaon (CG)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Shivrinarayan, Distt. Janjgir-Champa (CG)

---Respondent

AND**Criminal Appeal No.194 of 2009**

Onkar Prasad Dubey, S/o. Late Shri Raghunandan Prasad Dubey, aged about 55 years, Occupation Service (Head Constable), R/o. At Present Police Line, Janjgir, Distt. Janjgir Champa (CG)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Shivrinarayan, Distt. Janjgir-Champa (CG)

---Respondent

AND**Criminal Revision No.217 of 2009**

Smt. Krishna Yadav, Widow of Late Kranti Yadav, aged about 53 years, R/o. Village Kharaud, Police Station Sheorinarayan, District Janjgir-Champa (CG)

---- Appellant

Versus

1. State of Chhattisgarh, through Officer-in-charge, Police Station Shivrinarayan, Distt. Janjgir-Champa (CG)

2. Smt. Gayatri Sharma, W/o. Dinesh Kumar Sharma, aged about 33 years, Assistant Sub Inspector, Presently residing at Rakshit Kendra, Rajnandgaon, Distt. Rajnandgaon (CG)
3. Onkar Prasad Dubey, S/o. Raghunandan Prasad Dubey, aged about 55 years, Head Constable, Presently posted at Rakshit Kendra, Janjgir-Champa, District Janjgir-Champa (CG)

---Respondents

For appellants in CrA No.175/09 & 194/09 : Ku. Preeti Jha,
Advocate as Amicus Curiae.

For applicant in CRR No.217/2009 : Shri Manoj Kumar Mishra,
Advocate

For the State : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. Shri VC Ottalwar and Shri Shailendra Dubey, Advocates have been engaged for arguing the above mentioned appeals on behalf of the appellants. Despite repeated calls, they have not appeared when the case is called for final hearing, therefore, Ku. Preeti Jha, Advocate who is present in the court, has been appointed as *Amicus Curiae* to argue the case on behalf of the appellants.

2. Both criminal appeals and criminal revision, as mentioned above, are arising out of judgment dated 24.02.2009 passed by Second Additional Sessions Judge (FTC), Janjgir (Chhattisgarh) in Session Trial No. 157/2007 wherein the said Court acquitted both the appellants (in CrA No.175/2009 & 194/2009) for offence

under Section 306/34 of the Indian Penal Code, but convicted for commission of offence under Section 342/34 of the IPC and sentenced them to undergo rigorous imprisonment for three months and to pay fine of Rs.500/- with default stipulation.

3. As per the version of the prosecution, both the appellants were posted at Police Station Shivrinarayan in the capacity of Station House Officer and Head Constable respectively on 30.6.2006. On the said date, deceased namely Kanti Kumar Yadav was called for interrogation in the said Police Station as he was suspected in Crime No.169/2006 registered for offence under Section 379 IPC regarding theft of cattle. Superintendent of Police, Janjgir directed said police officers to interrogate said Kanti Kumar. Appellant Omprakash Dubey asked said Kanti Kumar to sit in the lockup and as per the version of the prosecution, he was harassed by the police officers that is why he committed suicide by consuming poisonous substance. The matter was reported and investigated and both appellants were charge sheeted and after the trial, they were convicted for offence under Section 342 of IPC and acquitted for offence under Section 306 IPC.

4. Learned counsel for the appellants submits as under:

(i) Deceased Kanti Kumar was called in Police Station for interrogation in connection with crime of theft, therefore, his appearance in the said police station is not illegal.

(ii) The police authorities have acted as per the provisions of criminal procedure code and they did not violate any provisions of said code, therefore, charge under Section 342 of IPC is not made out.

(iii) Offence under Section 379 IPC is a cognizable offence and the appellants who were the Sub Inspector and Head Constable of the Police have authority to interrogate the said person, therefore, finding of the trial Court is not sustainable.

(iv) There is no evidence for any kind of torture and harassment done by the police to the deceased, therefore, finding of the trial Court is not sustainable.

(v) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the judgment impugned and the record.

7. Now the question for consideration of this Court is whether any act of the appellants falls within the purview of Section 342 of the IPC. To substantiate the charge, prosecution has examined as many as 22 witnesses. From the evidence of Constable Vidya Sagar Dubey (PW-2), Kotwar Sadva Ram (PW-3), Sanjay Kumar (PW-5), Ku. Mamta Yadav (PW-6), Sukh Sagar (PW-7), Amit Kumar Sahu (PW-8), Hari Prasad Patel (PW-9), GR Suryavanshi (PW-16) and Sonaram (PW-17), it is established that deceased Kanti Kumar was brought to Police Station for interrogation and in the lock-up of the police station his health deteriorated and he died there. Dr. Anwita Dhruv (PW-14), who conducted autopsy of the deceased, recorded finding that cause of death is suspected poisoning. This witness has not recorded a firm opinion regarding cause of death of the deceased. This witness deposed before the trial Court that no external injury was found on the body of the deceased. From the evidence of the medical expert, it is clear that it is not a case of physical violence against said person.

8. Now the point is whether calling a suspect for interrogation and keeping him in custody in the police station amounts to wrongful confinement. As per Section 41A of the Code of Criminal Procedure, 1973 (for short 'the Code'), the police officer

shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice and where such notice is issued to any person it shall be the duty of that person to comply with the terms of the notice.

9. As per provision of Section 156 of the Code, any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case and no proceedings of the police officer in any such case shall be questioned on the ground that the case was one which such officer was not empowered under this Section to investigate. In the present case, both the appellants in the above mentioned Criminal appeals were police officers empowered to investigate the cognizable case because they were incharge of the said police station or working in the capacity of Sub-Inspector and Head Constable, therefore, calling said Kanti Kumar for appearance for the purpose of investigation cannot be termed as wrongful confinement. Contrary, it shall be the duty of the person called by the police officers to comply with the notice. Again said Kanti Kumar was suspected for

commission of offence of theft. Both the appellants were well within their jurisdiction, therefore, it is not a case of wrongful confinement. Argument advanced on behalf of the respondent in both these appeals is not sustainable.

10. Accordingly, appeals filed on behalf of appellants are allowed. Conviction and sentence imposed by the trial Court is hereby set aside. Both the appellants are acquitted of the charges under Section 342 of IPC framed against them. They are reported to be on bail. Their bail bonds shall continue for further period of six months from today in view of Section 437-A of Cr.P.C.

Criminal Revision No.217 of 2009

1. This revision has been preferred by wife of deceased Kanti Kumar Yadav who died in the Police Station.

2. As per the version of the revisioner, said Kanti Kumar was called at Police station where no offence was registered against him. The deceased had gone to the police station on 30.6.2006 at 8.00 am and was found dead at about 12.20 pm in the said police station. As per the revisioner, it is a case of hiding injury on the body of the deceased, though both the appellants as mentioned above were charge sheeted for offence under Sections 306 and 342 IPC, but they were acquitted by the trial Court against factual matrix and legal aspects of the matter and the trial Court overlooked the provisions of section 114 B of the Indian Evidence

Act, 1872. Though the investigating agency did not produce all the relevant material evidence, the appellants/accused ought not have been acquitted for technical fault by the prosecution. Magisterial enquiry report was not produced before the trial Court , therefore, the case requires re-hearing by the trial Court and order pertaining to re-trial or re-hearing may be passed to meet the ends of justice.

3. After going through the record, this Court is of the opinion that it is not a case where re-hearing can be ordered. The trial was conducted before the trial Court for long and 22 witnesses were examined and the revisioner had all the rights to intervene during trial and to assist the prosecution. After evaluating the entire evidence, the trial Court recorded finding that instigation or conspiracy or intentionally aiding which are the basic ingredients of abetment are missing in the present case, therefore, conviction under Section 306 IPC cannot be recorded. The view taken by the trial Court is one of the plausible view and as per Section 401(3) of the Code, nothing in this Section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. It is not a case where finding is recorded on the basis of evidence which are inadmissible. Again finding is not based on any extraneous substance. The finding is based on relevant evidence which is admissible and the same cannot be termed as

perverse. The order can be reversed only when it is perverse or contrary to the legal aspects of the matter, but that is not the case here. Therefore, it is not a case where interference of this Court is required invoking the jurisdiction of the revision embodied under Section 401 of the Code.

4. Accordingly, the revision is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE