

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 329 of 2014

Gaurango Pradhan, Son of Satya Kunwar Pradhan, Resident
of Bamangutu, P.O.- Bamangutu, P.S. Chakradharpur,
District-West Singhbhum. **Petitioner**

Versus

The State of Jharkhand **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

For the Petitioner : Ms. Shilpi John, Amicus Curiae
: Mr. Shivam Sahay, Amicus Curiae
For the Opp. Party : Mr. Gauri S. Prasad, Advocate

16/08.07.2020

1. Heard the learned counsel for the parties.
2. This criminal revision application has been filed for setting aside the judgment dated 20.12.2013 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in Criminal Appeal No. 52 of 2012, whereby the learned lower appellate court has been pleased to dismiss the appeal and uphold the judgment of conviction and order of sentence dated 29.06.2012 passed by the learned Sub-Divisional Judicial Magistrate, Porahat at Chaibasa in G.R. Case No. 114/2011. The learned trial court had convicted the petitioner for offence punishable under Sections 25(1-B)a/35 and under Section 26(i)/35 of the Arms Act and under Section 414 of Indian Penal Code and the petitioner was directed to undergo rigorous imprisonment for two years six months for offence under Section 25(1-B)a/35 of Arms Act and fine of Rs. 1000/- and further undergo rigorous imprisonment for one year for conviction under Section 26(i)/35 Arms Act and further undergo rigorous imprisonment for one year for conviction under Section 414 of Indian Penal Code. The sentences have been directed to run concurrently.

Arguments of the petitioner

3. The learned counsel for the petitioner submits that in the present case, the petitioner has been convicted only on the ground of confessional statement of the co-accused and there is no material whatsoever against the petitioner apart from such statement. He has also submitted that in absence of any further evidence against the petitioner, the petitioner could not have been convicted in the present case. The learned counsel has also submitted that there has been no seizure or recovery from the possession of the present petitioner. He has relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2018) 18 SCC 654 (Suresh vs. State of Haryana)** and has referred to Para-50 in support of the aforesaid submission. The Hon'ble Supreme Court in para-50 of the aforesaid judgment has held as follows: -

"50. Now we need to concentrate on the relevance of the alleged confessions of the co-accused made before Zile Singh (PW 16). In Periaswami Moopan, In re, Reilly, J. observed: (SCC OnLine Mad)

"... where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence."

(emphasis supplied)

Therefore, the aforesaid extra-judicial confession against the co-accused needs to be taken into consideration if at all it is one, only if other independent evidence on record have established the basic premise of the prosecution. The confession of the co-accused cannot be solely utilised to convict a person, when the surrounding circumstances are improbable and create suspicion (refer to Haricharan Kurmi v. State of Bihar). As the confession of a co-accused is weak piece of evidence, we need to consider whether other circumstances prove the prosecution case."

Arguments of the opposite party-State

4. The learned counsel appearing on behalf of the opposite party-State opposes the prayer and submits that there is no scope for re-appreciation of evidence at the revisional stage and there is no perversity or illegality in the impugned judgments

which have been passed by the learned courts below. However, he has not disputed the aforesaid submission of the learned counsel for the petitioner upon going through the impugned judgments that the conviction of the petitioner is based on the confessional statement of the co-accused only.

Findings of this Court

5. After hearing the learned counsel for the parties, this Court finds that the prosecution was instituted on the self-statement of Sub-Inspector of Police on 29.04.2011 stating that one Vijay Kumar Bhattar on the said date had reported to him that under the letter pad of People Liberation Front of India, a levy amount of Rs. 1,50,000/- has been demanded from him and that the miscreants may come to him for taking the amount of levy. Upon receiving the information, he constituted a raiding party and went to the brick kiln of the aforesaid Vijay Kumar Bhattar and created an ambush and started waiting for the arrival of the miscreants. It is alleged that at about 21:15 hours, two persons came on motorcycle and one of them remained near the motorcycle and the other went to the hut situated in the brick kiln and demanded levy from said Vijay Kumar Bhattar. The informant believed that the person who was went to Vijay Kumar Bhattar is the miscreant, he ordered the other police officials to nab him and in the meantime, seeing the police party both started fleeing away, but one miscreant, who was standing nearby the motorcycle fled away and other who had gone to Vijay Kumar Bhattar for demand of levy of money, was apprehended. Upon interrogation, he disclosed his name as Samir Gagrai and also disclosed the name of other, who fled away from the spot, as Gaurango Pradhan (Petitioner). It is also alleged that upon search, a single barrel pistol (katta) was recovered from Samir Gagrai and on opening the pistol, one .303 live cartridge was also found loaded in that

pistol, one mobile and the motorcycle was also seized by the police and accordingly, the seizure list was prepared and thereafter the informant recorded his self statement and the case was registered. The charges were framed under Sections 25(1-B)a/26/35 of the Arms Act and under Section 414 of Indian Penal Code and upon conclusion of trial, the present petitioner and the co-accused were found guilty and accordingly convicted.

6. This Court finds that altogether 13 witnesses were examined before the learned trial court. P.W.-4 is the person who informed the police and is the owner of the brick kiln. He has clearly stated during his evidence that the date of occurrence is on 29.04.2011, but prior to that date on 22.04.2011, he received a call on his mobile number and money was demanded amounting to Rs. 1,50,000/-. This witness ignored the phone call and thereafter on 23.04.2011, when he reached the brick kiln, his staff Kapildev Ram, Fireman handed over an envelope and told him that on 22.04.2011 at about 07:00 O'Clock in the evening two persons had come and had asked him to handed over the envelope to this witness. When this witness open the envelope, he found that in the letter pad of People Liberation Front of India a demand of Rs. 1,50,000/- was made by way of extortion from him and the said amount was to be paid within one week. This witness has stated that on 29.04.2011, he gave the information to the officer-in-charge of Seraikella Police Station. After receiving this information, the in-charge came to the brick kiln and thereafter two persons came on a motorcycle and one of them approached him to demand and take the money, but the police personnel caught hold of him and this witness disclosed his name as Samir Gagrai. Upon being searched, a loaded pistol with mobile was recovered from his possession and he disclosed the name of the

present petitioner as the person who ran away from the spot. This witness has also stated that seizure list was prepared which was duly signed by his staff and he had also signed it and has exhibited the seizure list as Ext. 1/1. This witness has claimed to have identified both the accused persons in the court during his evidence. The evidence of P.W.-4 has been recorded in Para-11 of the trial court's judgment, no material inconsistency has been recorded in his evidence on this point.

7. In view of the aforesaid facts and circumstances, the arguments of the learned counsel for the petitioner that apart from the confessional statement of the co-accused, there is no evidence against the petitioner to connect him with the offence is hereby rejected as the P.W.-4 who is the person giving information to the police and who received the call and was certainly present at the place of occurrence identified both the accused persons and no argument has been advanced by the learned counsel for the petitioner on this aspect of the matter.

8. This Court finds that the learned trial court convicted the petitioner as well as the co-accused after considering the materials available on record by a well-reasoned order and the learned trial court upheld the conviction and sentence after considering the materials on record.

9. This Court finds that the learned lower appellate court considered the argument of the petitioner that the present petitioner has been convicted only on the confessional statement of the co-accused and that the same is not admissible in evidence and rejected the said contention and held that though the investigation was conducted on the basis of the statement of the co-accused and ultimately the present petitioner was also arrested and the entire truth came before the court after adducing evidence against the petitioner.

10. This Court is of the considered view that though the name of the petitioner had initially come in the case on the basis of the confessional statement of the co-accused, but in view of the aforesaid facts and circumstances, it cannot be said that there was no other evidence against this petitioner.

11. This Court finds that the judgment passed by the Hon'ble Supreme Court reported in *(2018) 18 SCC 654 (Suresh vs. State of Haryana)* does not help the petitioner in any manner, in as much as, it has been held in Para-50 of the said judgment that the confession of a co-accused is a weak piece of evidence and there is a need to consider whether other circumstances proved the prosecution case and the confession of the co-accused cannot be solely utilize to convict a person when the surrounding circumstances are improbable and create suspicion.

In the present case, the conviction of the petitioner is not solely based on confession of the co-accused, but other circumstances including his identification by P.W.-4 and thus the evidences on record were sufficient to convict the petitioner. It has also come in evidence that there were no documents whatsoever produced by the accused persons in connection with the motorcycle nor the motorcycle was released in their favour and accordingly, the petitioners were also convicted under Section 414 of Indian Penal Code.

12. Considering the aforesaid facts and circumstances of this case and the nature of offence, this Court is of the considered view that the petitioner does not deserve any sympathetic view on the point of sentence. The age of the petitioner on the date of conviction on 29.06.2012 was 30 years and accordingly, he is less than 40 years of age as of now.

13. This Court does not find any illegality or perversity in the impugned judgments passed by the learned courts below. Accordingly, the present petition is hereby dismissed.

14. Interim order, if any, stands vacated.

15. Bail bond furnished by the petitioner is hereby cancelled.

16. Pending interlocutory applications, if any, are also dismissed as not pressed.

17. Let the lower court records be immediately sent back to the learned court below.

18. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Mukul