O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2015

(*MAY*)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY
MONTHLY REVIEW OF CASES ON CIVIL, CRIMINAL & OTHER LAWS, 2015 (MAY)

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2. Section 120-B read with Section 302
Indra Dalal Vs. State of Haryana
A.K. Sikri & Uday Umesh Lalit, JJ.
In the Supreme Court of India
Date of Judgement-29-05- 2015
Issue

Charge under Section 120-B and punishment Under Section 302.

The deceased Nand Karan, a retired Master, and his wife Suraj Kaur, were residing in the house known as 'Lal Kothi' situated on the Loharu Road, Dadri. On May 24, 2001, at about 8.00 p.m., the deceased, his wife and his brother Harish Chander Godara were present in the house. While the deceased's wife was watering the plants in the lawn, the deceased inside the room and his brother on the roof, one young boy aged about 22-25 years, came on a scooter. He told Suraj Kaur that he had come from Rohtak and wanted to meet Master Nand Karan. When she was talking with that boy, the deceased came out of the house to the gate. Suraj Kaur told the deceased that a boy had come to meet him. Soon thereafter, the boy took out a pistol from his pant's pocket and fired at the deceased on his chest. Another shot was fired at the head of the deceased.

The deceased fell down crying. After hearing the sound of shots fired, Harish Chander Godara, brother of the deceased, immediately came down to the spot. After throwing the pistol at the spot, the boy ran away on the scooter on which he came. After the occurrence, many persons, including Suresh Kumar, s/o.

Hoshiar Singh, and Jaipal, s/o. Kamal Singh, reached the spot. After arranging vehicle, they took the deceased to the hospital, where he was declared dead. Dr. H.L. Beniwal (PW-3), who attended the deceased at the hospital, declared him dead and sent a ruqqa (Exhibit PE) to the Station House Officer, Dadri Police Station at 9.10 p.m., regarding the dead body being brought by Suresh Kumar and Jaipal. In the hospital, statement of Suraj Kaur (Exhibit PA) was recorded by Sub- Inspector Ram Chander (PW-17) on May 24, 2001 at 11.00 p.m.

Thus, the central issue in these appeals, qua these appellants, is as to whether the prosecution has been able to prove the involvement of the appellants with the aid of Section 120-B of the IPC. As mentioned above, the prosecution had produced one witness, Pradeep Kumar (PW-7), who was allegedly the witness of conspiracy. However, during trial, he did not support the prosecution version and was declared hostile. Therefore, there is no witness to this conspiracy. No doubt, such conspiracies are normally hatched in dark and clandestinely and there may not be any eye witnesses. We have to see from the circumstantial evidence or other evidence produced as to whether such a charge is established or not. In the present case, the conviction is recorded by the trial court and upheld by the High Court against these appellants primarily on the basis of their confessional statements and recovery of the scooter from the house of Indra Dalal.

Therefore, it is to be examined as to whether conviction could be sustained on the basis of such statements. Mr. Sushil Kumar, learned senior counsel appearing for the appellants Indra Dalal and Bijender, argued that these confessional statements were admittedly recorded after the arrest of these accused and when these accused were in police custody. Therefore, such statements were inadmissible having regard to the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872. Section 25 of the Evidence Act mandates so, in certain and unequivocal terms, as is clear from the language thereof.

In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under Section 164 of the Code has to be given credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for the accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against other conspirator restricts it to the statements made during the period when the agency subsisted.

Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably

foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission.

The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. 26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions.

Explaining this rule, Judge Hand said: "Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States, 13 F 2d 961, 967 (2d Cir 1926))."

Thus conspirators are liable on an agency theory for statements of co- conspirators, just as they are for the overt acts and crimes committed by their confreres.

Thus, the alleged disclosure/confessional statement (Mark A) made by Jaibir in another case would be of no consequence. With this, we now discuss the evidentiary value of the recovery of scooter. Sub-Inspector Ram Chander, who was the Investigating Officer and who appeared as PW-17, deposed in his statement that on July 13, 2001, the scooter in question, which was allegedly used in the offence, was recovered from the house of Indra Dalal. It was parked in verandah and the same was taken into possession vide recovery memo Exhibit PD. It is important to note that on July 13, 2001, appellant Indra Dalal was in jail, as she was arrested on June 02, 2001, when the so-called recovery was made. Recovery was, thus, made in her absence.

Harish Chander Godara, brother of the deceased, appeared as PW-2. According to him, he was at the roof of the house at the time when a boy came and shot at his brother. He rushed from upstairs to the ground floor and saw the boy leaving on scooter towards the town. He noted down the number of the scooter which was HR 20G 1102 and was of cream colour. He further stated that on July 13, 2001, on seeing the police vehicle near bus stand, he went to the Police to enquire about the case. During that time, one informant informed the police that one scooter bearing No. HR 20G 1102 was standing in the store of the old house of Indra Dalal.

It would be of interest to point out that the Investigating Officer (PW-17) had earlier gone to the house of Indra Dalal immediately after the incident, but did not find any scooter. If the registration number of the scooter was given by PW-2 during investigation and the Investigating Officer had visited the house of Indra Dalal, how he could not find the scooter parked there with the same number on that date. All these facts cast a shadow of doubt on the alleged recovery of scooter from the house of appellant Indra Dalal. Appellant Jaibir has denied that the scooter in question belonged to him. In order to prove his ownership, the prosecution had produced Gulab Singh (PW-18), Registration Clerk with Regional Transport Office. He produced on record application (Exhibit PZ) moved by the police officer and report (Exhibit PZ/1) made by Pavan Kumar, Clerk working in the Regional Transport Office. No documents have been produced to show the ownership of Jaibir.

Only the report prepared by Pavan Kumar, Clerk, allegedly on the basis of the record, is produced. That cannot partake the character of primary evidence. Moreover, in the cross-examination of PW-18, he has accepted that there is cutting in the relevant entry of ownership. He also admitted that he had not brought the forms/applications for change of ownership of the scooter in question. He further mentioned that as per the record, the original registration of the scooter was in the name of one Vipul Kaushal, s/o. Prithi Singh, resident of Hisar. In such a circumstance, necessary evidence was required to prove how the

ownership changed hands and came to be recorded in the name of Jaibir.

No such evidence has been produced. We are, therefore, of the opinion that there is no sufficient evidence to prove the ownership of the scooter in the name of Jaibir. Aforesaid discussion leads us to conclude that the entire bucket of evidence is either inadmissible putting the roadblock creating by the Evidence Act or unbelievable/untrustworthy. For all the aforesaid reasons, we are of the view that the prosecution has miserably failed to prove, beyond reasonable doubt, the charge of conspiracy against these appellants with the aid of Section 120-B of IPC.

As a result, the appeals are allowed and the impugned judgment and sentence are, accordingly, set aside. During the pendency of these appeals, sentence of the appellant Indra Dalal had been suspended. Her bail bonds shall, accordingly, stand discharged. The other two appellants, namely, Bijender @ Vijay and Jaibir, shall be released from jail forthwith, unless they are required in any other case.

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3. Sections 302/201/34
Ranjeet Kumar Ram @ Ranjeet Kumar Das Vs. State of Bihar.
T.S. Thakur & R. Banumathi, JJ.
In the Supreme Court of India.
Date of Judgement-15.05.2015
Issue

Causing disappearance evidence of the Offence - Punishment for murder.

On 27.02.2006, Sunil Kumar Singh-PW8, a vegetable vendor in Paswan Chowk, lodged a complaint stating that his son Vicky aged five years was playing near PW8's vegetable shop and Rubi Kumari aged seven years sister of the victim boy Vicky was also playing with him. At that time two unknown persons [later identified as Chintoo Singh (A-5) and Birendra Bhagat (A-3)] offered chocolates to Vicky and other children and took away Vicky saying that they would come back and drop the boy; but the boy Vicky did not come back.

On the above complaint on 28.02.2006, a case was registered as P.S. Case No.105/2006 at Hazipur Town (Industrial Area), Police Station, Vaishali. Inspite of search, the missing boy could not be traced. After 5-6 days passed, Ranjeet Kumar Ram (A-1) and Sanjay (A-4), who were also vegetable vendors in the same market i.e. at Paswan Chowk, told PW8 that his son would come back if he would pay money. Nearly after three months of the incident, on 23.06.2006, PW8 received a phone call and the kidnappers demanded a ransom of four lakh rupees for return of his son; but PW8 expressed his helplessness to meet the demand, and the demand was reduced to two lakh rupees.

Another telephone call was received by PW8 on 1.07.2006 and the final amount of ransom was fixed for Rs.1,05,000/-. On 3.07.2006, PW8 received another call from the kidnappers and PW8 informed them that he has arranged the ransom money and PW8 was asked to bring the money at New Gandak Bridge ahead of Line hotel of Bachcha Babu at Sonepur. When PW8 expressed fear in coming alone with money, he was instructed by the

kidnappers to come with his neighbours Ranjeet Kumar Ram (A-1) and Sanjay (A-4).

In order to pay the ransom money, PW8 had withdrawn Rs.80,000/- from his Savings Bank account with Bank of India at Rajendra Chowk, Hazipur and PW-8 arranged balance money from his own savings and borrowings from his father-in-law. On 4.07.2006, PW8 wrapped the ransom amount in a plastic bag and kept it in a gunny bag under the carrier of his cycle and PW8 accompanied by Ranjeet Kumar Ram (A-1) and Sanjay (A-4) and Sanjeet (A-2) proceeded to the place as instructed by the kidnappers.

When they reached the New Gandak Bridge, Sanjeet (A-2) got down from PW8's cycle and went inside a hut on the left side of the road and PW8 followed him. At that time two persons came out and pulled away the money from the carrier of PW8's cycle. Sanjeet (A-2) informed PW8 that his brother-in-law-Birendra Bhagat (A-3) lives in that hut and PW8 was informed that his son would be returned by evening. Even after payment of the money, the boy was not returned.

To inquire about the boy, PW8 went to the hut and learnt from the local people that Birendra Bhagat (A-3) is a criminal and the other person was identified as Chintoo Singh (A-5). On 16.08.2006, PW8 informed the investigating officer-Reeta Kumari (PW12), the names of the accused persons and also about the demand and payment of money to the kidnappers.

To bring home the guilt of the accused, prosecution has examined fourteen witnesses and exhibited documents and material objects. When questioned under Section 313 Cr.P.C., the accused denied incriminating evidence and circumstances put against them. Defence has examined seven defence witnesses.

Evidence of Rubi Kumari (PW2) coupled with the evidence of Sunil Kumar Singh (PW8) clearly establishes that the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) kidnapped PW8's son Vicky and PW8 informant paid Rs.1.05,000/- to them as ransom amount. On the evidence of PW2, courts below rightly recorded concurrent findings that the prosecution has established that deceased boy Vicky was last seen alive in the company of accused Chintoo Singh (A-5) and Birendra Bhagat (A-3). It is for the accused to explain how and when they parted company of the deceased child Vicky. Absolutely, there is no explanation forthcoming from the accused which is a strong militating circumstance against the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) which indicates that they are responsible for the crime. This is further fortified by the evidence of PW8 who stated that the accused Nos.3 and 5 had snatched the money kept in the carrier of his cycle, when he was near the hut of Birendra Bhagat (A-3).

Based on the statement of Chintoo Singh (A-5) and Birendra Bhagat (A-3), investigating officer- Reeta Kumari (PW12) went to Fakuli O.P. and learnt that the body of a deceased boy was recovered on 22.4.2006 beneath the pulia in between Bhagwanpur-Bahadurpur road for which F.I.R. in (Fakuli OP) P.S. Case No.128/2006 dated 22.4.2006 under Sections 302, 201 IPC read with Section 34 IPC was registered. PW12 received the clothes (material Ext.11), photographs of the deceased boy and PW8 has identified the said clothes (material Ext.11) as that of his son and also photographs (Ext.3 & 3/1) as of deceased boy Vicky. Identification of clothes recovered from the body of deceased boy beneath the pulia and identification of the photographs and knowledge of accused No.3 and as to the place of dead body is a strong militating circumstance against the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3).

It is well settled that in criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation otherwise the criminal trial will plummet to the level of the investigation. Criminal trials should not be made casualties for any lapses committed by the investigating officer. In State of M. P. vs. Mansingh & Ors., (2003) 10 SCC 414, it was held that even if there was deficiencies in the investigation that cannot be a ground for discrediting the prosecution version. The same view was reiterated in Sheo Shankar Singh vs. State of Jharkhand And Anr., (2011) 3 SCC 654 and C. Muniappan & Ors. vs. State of Tamil Nadu, (2010) 9 SCC 567.

We are not impressed with the arguments advanced on behalf of the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) that there is nothing to connect the accused with the body found under the bridge. Corpus delecti in some cases may not be possible to be traced or recovered. If the recovery of a dead body is an absolute necessity to convict an accused, in many cases the culprits would go unpunished as the accused would manage to see that the dead body is destroyed or not recovered. Any lapse in recovery of the dead body or missing link qua the dead body will not enure to the benefit of the accused.

Upon appreciation of evidence of PW2 and PW8, the courts below recorded cogent and concurrent reasonings that Chintoo Singh (A-5) and Birendra Bhagat (A-3), for kidnapping the boy Vicky for ransom and committed murder and the conviction of Chintoo Singh (A-5) and Birendra Bhagat (A-3) under Sections 364A, 302 and 201 IPC and the sentence of imprisonment imposed on them cannot be interfered with.

Direct evidence of common intention is seldom available. Such common intention of the accused can only be inferred from the evidence and circumstances appearing from proved facts of case. In furtherance of common intention, Ranjeet Kumar Ram (A-

1) had been persuading PW8 to pay the ransom amount even before there was no such demand from the kidnappers viz., Chintoo Singh (A-5), Birendra Bhagat (A-3). Considering the act of Ranjeet Kumar Ram and the proved circumstances, courts below rightly held that Ranjeet Kumar Ram had the common intention of kidnapping and committing murder of the boy Vicky and the courts below rightly convicted Ranjeet Kumar Ram (A-1) under Section 364A IPC and Sections 302/34 IPC.

As far as Sanjay Mahto (A4) is concerned, he is also a vegetable vendor in Paswan Chowk Market. Though the circumstances that he has also persuaded PW8 to pay the ransom amount to kidnappers and also accompanied PW8 to Sonepur to pay the ransom amount to the kidnappers, Sanjay might have accompanied PW8 as a bonafide helper. Neither any recovery was made from Sanjay nor any incriminating evidence is available against him. So far as Sanjay Mahto (A-4) is concerned, though there may be strong suspicion about his involvement in the commission of the offence, suspicion however strong it may be, cannot take the place of proof. The case against Sanjay (A-4) is not proved beyond reasonable doubt and his conviction is liable to be set aside.

Criminal Appeals No.1831/2011, 1817/2013 and 1821/2013: These appeals filed by Ranjeet Kumar Ram (A-1), Chintoo Singh (A-5) and Birendra Bhagat (A-3) are dismissed.

Criminal Appeal No.1820/2013: Conviction of Sanjay (A-4) is set aside and this appeal is allowed. He is acquitted of the charges and he is ordered to be set at liberty forthwith if not required in any case.

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4. Section 302
Rohita Amanta Vs. State of Orissa.
Vinod Prasad & S. K. Sahoo, JJ.
In the High Court of Orissa, Cuttack
Date of Judgement-12.05.2015
Issue

Question of applicability of Sec.300 exception 4 and sec.304 -part-I. - Punishment for murder.

Thus after carefully scanning the evidence of these two eye witnesses P.W.1 and P.W.2, we are of the view that the prosecution has proved that when the appellant took away the pumpkin raised by the deceased, there was quarrel between them and during course of such quarrel, the appellant shot an arrow at the deceased which hit on his left side chest and the deceased pulled that arrow from his chest and while trying to run away from the spot, he fell down on the ground where after the appellant dealt repeated Tangia blows on the neck of the deceased resulting severe bleeding injuries and thereafter the appellant fled away from the spot with his Tangia. The evidence of these two eye witnesses P.W.1 and P.W.2 appears to be not only truthful and reliable but also the same is corroborated by the medical evidence. The autopsy doctor has categorically stated that injury no.4 might have been caused by arrow (iron portion) M.O.III and injuries nos.1, 2 and 3 can be caused by Tangia M.O.I. When the occurrence is spoken to by eye-witnesses and the same is supported by Medical Report, it is not necessary to investigate the motive behind such commission of offence. In other words, where a murderous assault has been established by clear ocular evidence, motive pales into insignificance. Accordingly, we have no hesitation to rely upon the testimonies of these two eye witnesses.

Coming to the contentions of the learned counsel for the appellant that the case would fall within the ambit of section 304 Part-I IPC, we find that the evidence on record indicates that there was quarrel between the appellant and the deceased on the issue of pumpkin as the appellant had taken away the

pumpkin raised by the deceased. The evidence on record clearly indicates that the deceased was unarmed at that point of time and the appellant not only first shot an arrow which pierced the chest of the deceased but after he pulled out that arrow from the chest and tried to escape from the spot to save his life, the appellant chased him with the Tangia and dealt blows after blows on the neck even after the deceased had fallen down on the ground. The type of injuries caused on the neck as per the post-mortem report are very serious in nature and apart from the chest wound which was caused on account of arrow shot, there are three chopped wounds on the neck and all the structures of neck like skin, muscles, larynx, trachea, oesophagus, great vessels of neck, vertebrae, spinal cord were cut except a tag of skin of 2" width on the right side of neck. The injuries around the neck were fatal and sufficient in ordinary course of nature to cause death.

Exception 4 to section 300 IPC reads as under: "Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault."

In case of Surinder Kumar –vrs.- Union Territory, Chandigarh reported in AIR 1989 Supreme Court 1094, it is held as follows:-

"To invoke this exception, four requirements must be satisfied, namely,

(i) it was a sudden fight;

(ii) there was no premeditation;

(iii) the act was done in a heat of passion; and

(iv) the assailant had not taken any undue advantage or acted in a cruel manner.

The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden

and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly".

Exception 4 to section 300 IPC would indicate that it is only an unpremeditated assault committed in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner which would come within the purview of such Exception and it is necessary that all the ingredients must be found. In other words, even if it is proved to be an unpremeditated assault committed in a sudden fight in the heat of passion upon a sudden quarrel but it appears from the materials available on record that the offender had taken undue advantage or had acted in a cruel or unusual manner, then no benefit under Exception 4 can be granted to the accused.

The expression "undue advantage" as used in the provision means "unfair advantage". If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken.

From the evidence on record, it is established that the appellant had not only taken undue advantage of shooting the arrow on the chest of the deceased who was unarmed at the time of occurrence but had also acted in a cruel manner in chasing the deceased and dealing repeated blows with Tangia causing three chopped wounds on the vital part of the body like neck even after the deceased had fallen down on the ground

which were sufficient in ordinary course of nature to cause death. The impact of the assault, the depth of the injuries clearly reveals the force with which the assault was made. Therefore we are of the view that Exception 4 to section 300 IPC is not applicable in this case and the contentions of the learned counsel for the appellant that the case comes within the purview of 304 Part-I IPC is liable to be rejected. The contentions of the learned counsel for the State that the appellant had taken undue advantage and acted in a cruel manner in chasing the deceased and repeatedly dealt Tangia blows on the neck of the deceased and therefore the case would fall within the mischief of section 302 of IPC is quite acceptable. In view of our analysis, we are of the view that the learned trial Court is quite justified in convicting the appellant under section 302 IPC and sentencing him to undergo imprisonment for life. In the result, the impugned judgment and order of conviction and sentence passed by the learned trial Judge is hereby confirmed and the appeal stands dismissed. As it appears, the appellant is in jail custody. He shall remain in jail to serve out the sentence imposed against him. Lower Court Records with a copy of this judgment be sent down to the learned trial Court forthwith for information and necessary action.

Before parting we would quote, "Family quarrels are bitter things. They don't go according to any rules. They're not like aches or wounds; they're more like splits in the skin that won't heal because there's not enough material." -F. Scott Fitzgerald.

Accordingly the Jail criminal appeal is dismissed.

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5. 304 Part II read with Section 34 IPC
Abdul Razak & Ors. Vs. State of Karnataka represented by SHO, Hutti PS.
T. S. THAKUR, J., R.K. Agrawal & A. K. Goel ,JJ
In The Supreme Court of India
Date of Judgement-15.05.2015
Issue

Jurisdiction of conviction U/S - 304 part- II read with Section 34

The prosecution case in brief is that three years before the date of incident CW-11 Md. Shafi sold two acres of land to CW-2 Lingappa. The accused-appellants herein were upset by the said sale transaction and are alleged to be picking up quarrels with CW-2 besides causing obstruction in the free flow of water to the fields owned by the complainant from a distributory at Narayanapur.

The appellants are alleged to be insisting that they will let water for irrigation flow only if the land purchased by the complainant was transferred in their favour. Lingappa was on that count coerced to sell the said two acres of land purchased from Mohd. Sahfi to accused- Abdul Razak. Despite this, however, the obstruction in the flow of water continued as the appellants started demanding money for letting the water flow.

It was in the above background that on 19th September, 2006 at about 7.30 p.m. the appellants are alleged to have caught hold of Lingappa's son Basavaraj-deceased while he was returning home, tied his hands behind his back splashed chilly powder on his face and assaulted him with a club of stones causing injuries on his head and other parts of body leading to his death. The incident is alleged to have been witnessed by Hanumantha (PW-1), brother of the deceased, and Mannamma (PW-4), mother of the deceased. In connection with the incident Crime No.168 of 2006 was registered at Hutti Police Station for an

offence punishable under Section 302 read with Section 34 IPC against the appellants herein.

A charge-sheet, after completion of investigation, was filed against the appellants before the jurisdictional Court for their committal. The appellants pleaded not guilty before the Additional Sessions Judge, Fast Track Court-II, Raichur, to whom the case was made over for trial. At the trial the prosecution examined as many as 22 witnesses besides placing reliance upon several documents produced on its behalf.

In their statements under Section 313 Cr.P.C., the appellants denied the incriminating circumstances appearing against them, but led no evidence in their defence. The Trial Court on an appraisal of the prosecution evidence came to the conclusion that the prosecution had failed to bring home the guilt of the accused for the offences allegedly committed by them. Aggrieved by the order of acquittal the State preferred an appeal before the High Court of Karnataka which was heard and allowed by a Division Bench of that Court holding the appellants guilty of the offence punishable under Section 304 Part II read with Section 34 of the IPC and sentencing them to undergo imprisonment for a period of seven years with fine and default sentence mentioned above. The present appeal assails the correctness of the said order.

In his deposition before the Trial Court PW-1 refers to the purchase of land and resultant enmity between the appellants and the complainant party. He also refers to the dispute regarding the irrigation channel and the civil litigation between the two sides before the Sindhanaur Court. According to the witness, on the fateful day the deceased-Basavaraj had gone to a restaurant (dhaba) owned by PW-6 Basappa.

At about 6.00 p.m. he heard Basavaraj shouting for help whereupon he and his mother PW-4 rushed towards the land of

one Swami from where they saw Pathe Sab (A-3) throwing chilly powder towards Basavaraj whose hands had been tied behind his back. He also saw A-3 assaulting deceased-Basavaraj on the head and A-2 and A-4 also doing so with a stick and stone. When he stepped forward to rescue Basavaraj, his mother-PW4 dissuaded him from doing so.

The accused persons then left the spot whereafter the witness and his mother went near the injured but returned home. Sometime later they again went to the field with PW3-Lingappa who too saw his son Basvaraj in an injured condition. PW-3 is then said to have gone to Gurgunta police post to inform the police about the incident and returned at about 6.00 p.m. It was only at about 10.00 p.m. that a Sub Inspector from Hutti police station came to the spot in a Jeep. PW-1 Hanumantha presented to him a written complaint about the incident.

He also narrated the incident to the police Sub Inspector which was reduced to writing by him and treated as the first information report marked as Ex.P-1 at the trial. The witness further states that it was the ASI of police who directed him to untie the ropes from the hands of deceased-Basavaraj which he accordingly did. Deceased-Basavaraj was then shifted in an injured condition to Government Hospital at Lingasugur. PWs. 1 and 3 also accompanied the injured, but the injured Basavaraj breathed his last on the way. The deposition of PW-4 mother of the deceased- Basavaraj is also on the same lines.

The Trial Court appraised the version given by the two witnesses but came to the conclusion that the same was unreliable. The Trial Court gave more than one reason for its view. In the first place, the Trial Court found the conduct of PWs 1 and 4 who are closely related to the deceased unnatural. The Trial Court held that if their version that they were witnesses to the occurrence was correct, there was no reason why they would not

intervene to rescue the deceased from the clutches of the assailants.

More importantly, the Trial Court held that PW1, brother and PW4, mother of the deceased, instead of untying the deceased who was in a seriously injured condition, returned home even after the assailants had fled away from the spot. What is worse is that even after returning home PWs. 1 and 4 accompanied by PW-3 who is none other than the father of the deceased had gone back to the place of occurrence where they found the deceased in an injured condition with his hands tied behind his back, his leg broken/fractured and eyes burning with chilly powder, but made no effort to untie his hands or rush him to the hospital for treatment.

Instead PW-3 father of the deceased went to lodge a report with the police leaving the injured in a hapless condition on the spot where he was lying only to wait till 10.00 p.m. at night for the police to arrive. If the prosecution version is correct, it is only after instructions were given by the Sub- Inspector to PW-1 to untie the hands of Basavaraj that he does so. The injured Basavaraj was then put in the police Jeep for being taken to the hospital where he reached only after he had died.

The Trial Court found the story, the sequence of events and the conduct of the prosecution witnesses who claim to be eye witnesses to the incident to be wholly unnatural and unreliable. The Trial Court was, in our opinion perfectly justified in taking that view. The conduct of the prosecution witnesses does not inspire confidence not only because they did not intervene when Basavaraj was being assaulted but also because post the event, the witnesses did practically nothing to help the unfortunate soul, who was left to die with his hands tied for over 4 hours without any succor coming from any quarter. The High Court has made light of these aspects and thereby fallen in an error.

Although the accused have alleged that Hanumantha PW-1 who had a dispute over money and land with the deceased was actually responsible for causing the injuries sustained by him, yet even assuming that there was no such bad blood between the two brothers, both PW-1 and his mother PW-4 would have in the ordinary course rushed to intervene to save the deceased from being belaboured.

No such attempt was made by any one of them nor even by PW-5 who happens to be chance witness. So much so, they do not make any attempt to help the injured after the alleged assailants had fled from the spot. It is most unnatural for PW-4 mother and PW-1 brother of the deceased to return home leaving the injured in a hapless condition with his hands tied behind his back. Equally unnatural is the conduct of the father of the deceased who along with PW-1 and PW-4 came to the spot where the deceased was lying injured but did nothing to help him. Instead, PW-4 the father of the deceased leaves the deceased in a critical condition to report the matter to the police. What makes the entire story unacceptable is that the mother PW-4 and the son PW-1 wait till 10.00 p.m. when the police arrive to untie the hands of the deceased. That is not all.

After the police arrived, PW-1 presents a written complaint about the incident. His statement (fardbeyan) is recorded by the Sub-Inspector in which Basavaraj is said to have died, meaning thereby that Basavaraj was not alive when the police reached the spot. What is amazing is the admission made by PW-19 that the report received by him about the incident was destroyed by him after the fardbeyan of PW-1 was recorded on the spot. This implies that the first version regarding the incident was totally obliterated by the Investigating Officer and Exb. P-1 recorded in its place. It is difficult to appreciate how PW-19 could have destroyed the original complaint given to him by Hanumantha PW-1.

This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely demolishing the prosecution case and rendering its version wholly unacceptable. The only inference which can, in the circumstances, be drawn is that Basavaraj was done to death and his dead body left at the spot from where it was picked-up by the police after they arrived around 10.00 p.m. The complaint presented to Sub-Inspector perhaps did not say what the police intended to present as its case. The same was, therefore, destroyed and a new version brought in, according to which Basavaraj was shown to be alive when the police reached the spot.

The fact of the matter, however, appears to be that Basavaraj was dead when his brother, mother and father discovered the body, for otherwise there was no question of the parents of the deceased and his brother leaving him alone in the condition, which they are alleged to have done. The conclusion drawn by the Trial Court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was, in our opinion, correct, no matter the judgment and order is not as happily worded as it ought to be, especially coming from a senior judicial officer of the level of Additional Sessions Judge.

Inasmuch as the High Court has overlooked all these aspects, we are constrained to set aside the order passed by it and acquit the appellants of the charges framed against them. We, accordingly, allow this appeal, set aside the judgment and order passed by the High Court and acquit the appellants of the charges framed against them. The appellants shall be released from custody forthwith if not required in connection with any other case.

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6. Section 354, 302, 404

Prem Singh Vs. State of Haryana

A.K. Sikri & Uday Umesh Lalit, JJ.

In the Supreme of India

Date of Judgement - 29-05- 2015.

Issue

Assault or criminal force to woman with intent to outrage her modesty - Dishonest misappropriation of property possessed by deceased person at the time of his death -Punishment for murder.

Unfolding the prosecution case, we find that Jaibir (PW-12), complainant, who is the father of deceased Sunita, had made a complaint at PS Sadar, Hansi stating that he was an agriculturist and had two sons and one daughter (Sunita).

He had married his daughter, who was aged 24-25 years, to one Rajesh, s/o Chhanna, at Village Dhantan, Hisar. She had come to the parental house about 8-9 days prior to the incident and was staying with the complainant. On 03.03.1999 at about 9/10 a.m., she went to the field to bring Barseem (green fodder) but did not return till 3/4 p.m. on that day. Then, complainant's daughter-in-law Murti (PW-8) went to the field to look for Sunita. When she reached there, she found Sunita lying dead in the field of Barseem. There was a cut mark on the left side of the neck of deceased. Murti returned home and informed the complainant about the same. After hearing the news of the death of Sunita, the complainant and his brother Mahavir and one Chhajju, s/o Buta, went to the field and they found dead body of Sunita lying there with cut mark on her neck.

The blood had oozed out and there was one teeth bite mark on her right cheek, which was an indication that some unknown person had tried to molest her. Complainant then lodged the complaint. FIR was registered on the basis of the said complaint and police started investigation. The blood stained earth and a pair of chappels were taken into possession from the spot. Rough site plan regarding the place of occurrence Ex. PO and inquest

report were prepared. Thereafter, the statement of certain witnesses in the case were recorded wherein name of the appellant surfaced as a suspect.

The post mortem on the dead body of Sunita was conducted in the General Hospital, Hansi. The clothes of the deceased and other parcels were handed over by the doctor after conducting post mortem report. The appellant, Prem Singh, was arrested on 07.03.1999 who made a disclosure statement Ex.PJ on 08.03.1999.

After the disclosure statement, a pair of earrings and one dhol (jewellery article of gold which is worn around the neck of the women) and sickle was recovered at the instance of the appellant. Site plan Ex.PR was prepared regarding place of recovery. On the same day, one Balraj was also arrested. With this exercise undertaken by the police, the investigation was completed. A challan under Section 173 Cr.P.C. was filed before the concerned Area Magistrate. The Area Magistrate sent the challan after observing the formalities and produced before the trial court. The charges under Sections 302, 404 and 354 of IPC were framed against the accused Prem Singh.

Charges were also framed against accused Balraj under Section 109 read with Section 302 of IPC. The trial court examined PW-1 Jagdish Chander Assistant Sub Inspector, PW-2 Ramji Das Patwari, PW-3 Dr. O.P. Charaya, PW-4 Head Constable Subhash, PW-5 Kharati Lal Sub Inspector, PW-6 Krishan Kumar Assistant Sub Inspector, PW-7 Ramesh Kumar Constable, PW- 8 Murti Devi, wife of Sushil Kumar, PW-9 Sushil Kumar son of Jaibir, PW-10 Subhash son of Balbir Singh, PW-11 Shamsher Singh Constable, PW-12 Jaibir Singh son of Chandgi Ram, PW-13 Mahabir son of Chandgi Ram, PW-14 Shivdan Singh Inspector. After completion of the evidence of the prosecution witnesses, the statement of the appellant/accused was recorded under Section 313 Cr.P.C.,

wherein the appellant pleaded that he was innocent and falsely framed in the case.

The learned Additional Sessions Judge, after hearing the arguments of both the counsel and going through the record of the case, delivered his judgment dated 11.09.2001, finding the appellant guilty of offences under Section 302, 404 and 354 of IPC and sentenced him on 13.09.2001.

Even if there are some contradictions, those are of minor nature and it would be foolhardy to discard the version of these witnesses on miniscule variations which have no bearing at all. Having regard to the above, we are of the considered view that there is clinching evidence against the appellant and he is rightly convicted under Sections 354, 404 as well as 302 IPC. The High Court has summed up the analysis of the evidence in the following words with which we are entirely agree : "Thus, from the aforementioned discussion, it is clear that accused Prem Singh had cast an evil eye upon deceased Sunita.

He had teased her, a day prior to the occurrence and had also winked at her on previous occasions. The report of post mortem as well as the Forensic Science Laboratory (Ex.PD/1) shows that there was a teeth bite mark on the right cheek of the deceased and also human semen was detected on the salwar of the deceased. When the attempt to commit rape upon the deceased failed, the accused committed the murder of Sunita with the sickle which she was having for cutting fodder (Barseem). As per the FSL Report, human blood was detected on the sickle. As per the statement of PW-9 Sushil Kumar, he had seen accused Prem Singh operating the tubewell of Hoshiar Singh which was near his fields. The deceased had gone to the fields of Hoshiar Singh to cut fodder. This witness had last seen the accused on the date of occurrence in the same fields where Sunita had gone for cutting fodder. Thus, the prosecution has been able to prove last seen evidence.

Apart from the above, the recoveries of sickle and gold earrings which the deceased was wearing were effected upon a disclosure statement made by the accused. It was accused Prem Singh, who got recovered the earrings and dhol of gold by digging the earth from the field of Hoshiar Singh Master. Thus, the prosecution has been able to establish that the recoveries were effected at the instance of accused Prem Singh, as per his disclosure statement and the same belonged to the deceased. The recoveries were effected in the presence on PW-10 Subhash and Mahavir PW- 13. The post mortem report also corroborates the case of prosecution as according to Dr. O.P. Charaya (PW-3), injury No.1 was sufficient to cause death in the ordinary course of nature. The Doctor had also noticed a bite mark on the cheek of the deceased.

All the aforementioned circumstances clearly and unequivocally point towards the fact that it was Prem Singh who had firstly intended to outrage the modesty of Sunita and thereafter had committed her murder. The evidence of the prosecution witnesses is trustworthy and reliable and furthermore, all the links in the chain are complete which point to the guilt of the accused."

Learned counsel for the appellant had cited certain judgments in support of his submission that 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 something that 'will be proved'. However, in the present case, as we found that the guilt of the appellant is conclusively established with the credible material, those judgments have no application. We find the appeal bereft of any merits which is accordingly dismissed.

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7. Article. 226
Bilaspur Raipur Kshetriya Gramin Bank and another Vs. Madanlal Tandon
M.Y. Eqbal & S.A. Bobde , JJ.
In the Supreme court of India
Date of Judgement - 15-05- 2015
Issue

Payment of respondent's claim of salary with consequential benefits.

The factual matrix of the case is that the respondent was working as a Field Supervisor in the appellant Bank since 1981. In February, 1984, a charge-sheet was issued to him for having committed misconduct and after a departmental inquiry, an order dated 5.7.1984 was passed by the Disciplinary Authority imposing punishment of stoppage of his two annual increments.

Thereafter a second charge-sheet was issued to the respondent in November, 1987 alleging that the respondent had committed several financial irregularities in various loan cases. An inquiry was conducted, wherein fourteen charges were found proved against the respondent and three charges were not found proved. Consequently, the punishment of removal from service was inflicted against the respondent on 1.10.1991. Respondent preferred an appeal before the Board of Directors of the appellant Bank, but the same was dismissed.

The respondent, therefore, moved the High Court by way of writ petition, inter alia contending that both the charge-sheets being identical, the second inquiry was not competent. It was also contended that along with the second charge-sheet, neither the list of documents nor the documents sought to be relied upon were supplied. It was also contended by the respondent-writ petitioner that appropriate opportunity was not afforded to him to

have inspection of the relevant documents and as such the respondent was not in a position to reply the said show cause notice effectively and to defend him in the inquiry.

Learned Single Judge of the High Court rejected his first contention and held that the charges were not identical and, therefore, the second inquiry was competent. However, it was held that along with the charge-sheet and imputation of charges, there was no list of documents and list of witnesses were also not supplied as such the respondent was not afforded an opportunity to put forward his case in response to show cause notice along with the charge- sheet.

Observing that the object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service, learned Single Judge of the High Court quashed the orders of removal passed by the appellant and allowed the writ petition of the respondent with all consequential benefits.

Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause.

The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies of the documents are not supplied to the concerned employee, it would be difficult for him to prepare his defence and to cross-examine

the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless.

The Division Bench of the High Court further observed that in the instant case neither the list of witnesses nor the list of documents was supplied to the respondent along with the charge-sheet. Though during the course of inquiry some documents were supplied to him but those documents, on which the reliance was placed by the Inquiry Officer for holding various charges proved, were not supplied to the respondent.

Hence, the present appeal by special leave by the appellant Bank and its Board of Directors. It is worth to mention here that the respondent has not come to this Court against the impugned judgment passed by the High Court.

We have heard Mr. Akshat Shrivastava, learned counsel for the appellants and Mr. T.V.S. Raghavendra Sreyas, learned counsel for the respondent. We have also perused the impugned order passed by the Division Bench of the High Court. The only controversy that falls for our consideration is as to whether the documents, which were the basis of the charges leveled against the respondent, were supplied to the respondent or not?

Indisputably, no documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and

witnesses were also not supplied and some of the documents were produced during the course of inquiry.

Admittedly, show cause notice was served along with 17 charges, but all the documents were not supplied to the respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the learned counsel appearing for the appellants whether documents viz. P-21, P-25, P-23, P-19, P-30, P-31 & P-32 were supplied to the respondent, on the basis of which various charges have been held to be proved, learned counsel was not able to demonstrate that the above documents were supplied to the respondent even during the course of inquiry.

The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment cannot be sustained in law. However, taking into consideration the fact that the respondent was out of employment since 1991, a lump sum payment of Rs.5,00,000/- towards the salary would meet the ends of justice.

After giving our anxious consideration, we do not find any reason to differ with the finding recorded by the learned Single Judge and also the Division Bench of the High Court in writ appeal. Therefore, this civil appeal is dismissed.

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8. Section 7 and Section 13(2) read with Section 13(1) (d)

K.L. Bakolia Vs. State through Director, Central Bureau of Investigation.

T.S. Thakur & R. Banumathi, JJ.

In the Supreme Court of India

Date of Judgement - 15- 05- 2015

Issue

Conviction and sentence under section 7 and Section 13(2) read with Section 13(1)(d) of the Act.

Shamsher Singh-complainant (PW4) is the sole proprietor of M/s. Colonel's Security Services working on contract for providing security staff to Indian Agricultural Research Institute (IARI), Pusa, New Delhi on annual basis from 1.03.1993 which was subsequently renewed from year to year basis upto 31.03.1996 and the contract was due for renewal on 1.04.1996.

Complainant stated that on 2.04.1996 when he contacted the appellant for renewal of his contract and payment of his outstanding dues, the appellant demanded Rs.50,000/- as a bribe for renewal of contract and when complainant stated that he was not in a position to pay Rs.50,000/-, the bribe amount was reduced to Rs.20,000/- and the complainant was asked to meet the appellant on 3.04.1996 and pay the bribe amount.

Complainant was not interested in paying the bribe and on the same day he went to CBI office and narrated the facts. The complainant was asked to come on the next day with Rs.20, 000/- by CBI officer. In the evening of 3.04.1996, the appellant rang up the complainant and inquired him as to why he did not contact him on the said date, for which, the complainant replied that he would come to the residence of the appellant on the next day between 1.00 to 2.00 p.m.

On 4.4.1996, the complainant visited CBI office and he was asked to submit his complaint in writing. Based on the complaint, FIR was registered in RC No. 24(A)/96-CBI/ACB/N. Delhi under Section 7 of the Prevention of Corruption Act, 1988. Raiding party was constituted and pre- trap proceedings were conducted and Rs.20,000/- consisting of forty currency notes of rupees five hundred denomination each treated with phenolphthalein powder were given to complainant. As the complainant alone was supposed to go and contact the appellant, a two piece recorder consisting of recorder and mic-cum-transmitter along with audio cassette was put in the pocket of the complainant. A further direction was given to the complainant to give signal to the trap party by saying 'Gin Leejiye'.

The complainant and the trap party went to Pusa Complex at about 1.45 p.m. The complainant after switching on the mic-cum-transmitter went inside the house of the appellant who welcomed him. The appellant inquired from the complainant 'Laye Ho' and the complainant replied in the affirmative. When complainant gave the bribe amount of Rs.20,000/- to the appellant, he raised the cushion of the sofa and asked the complainant to keep the money under the cushion of the sofa.

As the complainant insisted that the money should be handed over in the hand, the complainant took the tainted money in his right hand and kept it under the cushion of his sofa. The complainant gave the signal 'Gin Leejiye' where after the CBI officials rushed into the drawing room of the appellant and questioned him about the bribe money and the appellant was perplexed and kept mum. On instructions from the officer, PW6 lifted the cushion of the sofa and the trap money was recovered.

Wash of both the hands of the appellant in the sodium carbonate solution turned pink. Trap laying officer prepared the seizure memo and completed other formalities of trap proceedings. After completion of investigation, chargesheet was

filed against the appellant under Section 7 and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short 'the Act').

To bring home the guilt of the accused, the prosecution has examined ten witnesses. Upon consideration of the evidence, learned Special Judge convicted the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act and sentenced the appellant to undergo rigorous imprisonment for a period of four years on each count with a fine of Rs.500/- each with default clause. Aggrieved by the conviction, the appellant filed appeal before the High Court of Delhi and vide impugned judgment, the High Court confirmed the conviction of the appellant and also the sentence and the fine imposed on him. This appeal assails the correctness of the same.

We have heard Ms. Vibha Dutta Makhija, learned Senior Counsel for the appellant, who submitted that the initial demand was not proved by the prosecution which is evident from the self-contradictory version of the complainant and in the light of contradictory statement of witnesses, recovery has become highly doubtful and the courts below erred in convicting the appellant for the alleged receipt of illegal gratification. The learned counsel inter-alia submitted that the occurrence was in the year 1996 and the appellant is now aged seventy four years and prayed for leniency.

Per contra, learned counsel for the respondent contended that the prosecution has proved the demand and acceptance of the illegal gratification by the appellant and upon appreciation of evidence, courts below rightly convicted the appellant and the concurrent findings warrant no interference.

For coming to the finding of guilt for the offence under Section 13(1)(d) of the Act, firstly, there must be a demand and secondly, there must be acceptance in the sense that the

accused received illegal gratification. Courts below recorded concurrent findings that there was evidence on record to substantiate the fact that there was a demand and the complainant paid the bribe amount to the appellant who has accepted the same. Courts below also recorded concurrent findings that there is no reason to discredit the testimony of the complainant (PW4) and Inspector of Police-A.K. Kapoor (PW7). Defence plea of the accused that the currency notes were put under the sofa without his knowledge was rightly rejected by the courts below. Conviction of the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act is unassailable.

In this appeal, notice was issued only limited to the question of sentence. The appellant was sentenced to undergo rigorous imprisonment for four years on each count of conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act and the sentence imposed was ordered to run concurrently.

The incident had taken place in the year 1996 about nineteen years ago and for all these years the appellant has undergone the agony of criminal proceedings. Keeping in view the passage of time and that the appellant is now aged seventy four years, in our view, while upholding the conviction of the appellant, interest of justice would be met by reducing the sentence of rigorous imprisonment of four years to one year rigorous imprisonment.

Application for exemption from surrendering was allowed by the Chamber Judge on 20.09.2013, which was subsequently continued until further orders by this Court's order dated 25.11.2013. Necessary steps be taken forthwith to take the appellant into custody to serve out the remaining part of the modified sentence. Judgment of the High Court is accordingly modified and this appeal is allowed in part.

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9. Section 11

Bansidhar Bhoi Vs. State of Odisha & another.

Sanju Panda & K.R. Mohapatra, JJ.

In the High Court of Orissa.

Date of Order – 11.05.2015

Issue

Enquiry and award by Collector.

The petitioner is a land-loser of an area measuring Ac.2.70 decimals of land acquired for the purpose of construction of Chahaka Minor Irrigation Project in the district of Kalahandi. An award was passed under Section 11 of the Land Acquisition Act, 1894 (for short 'the Act') by the Land Acquisition Officer, Kalahandi-opposite party no. 2 under Annexure-1. In the said award, a meager amount of Rs.65,541/- was paid to the petitioner which he accepted on protest and he filed an application under Section 18 of the Act for enhancement of compensation in respect of the present market value of land acquired.

"It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of S. 23 but the remaining sub-sections thereof as well. It is thus clear from S. 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S. 23, including all the sub-sections thereof."

Mr. Mishra, learned Additional Government Advocate, per contra, supporting the sanction order as at Annexure-3 so far as it

relates to the petitioner contended that the same is in accordance with the guidelines issued by the Government and is being uniformly applied to all the claimants. Therefore, no fault can be found with such guidelines.

After forgoing discussion, more particularly when the guidelines issued by the Government have already been quashed by this Court and taking into consideration the unambiguous statutory provisions of the Act as well as the ratio decided in the case of Sunder –v- Union of India, AIR 2001 SC 3516 the impugned letter under Annexure-3 is quashed. The opposite parties are directed to pay interest on the re-determined market value as provided under Sections 23 (1-A), 23(2) and 28 of the Act strictly in accordance with the rates mentioned therein to the petitioner within a period of four weeks from the date of receipt of a certified copy of this order. This writ petition is accordingly allowed, but in the circumstances, no order as to cost.

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