

Harinarayan Singh vs The State Of West Bengal on 16 January, 2020

Bench: N.V. Ramana, Sanjiv Khanna, Krishna Murari

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 240 OF 2010

HARINARAYAN SINGH

... APPELLANT

VERSUS

THE STATE OF WEST BENGAL

... RESPONDENT

ORDER

1. This appeal by the appellant¹accused is directed against the judgment dated 18.05.2009, passed by the High Court of Calcutta in Criminal Appeal No. 246 of 2000, whereby the High Court dismissed the appeal filed by the appellant herein and upheld the conviction of the appellant under Section 302 of the Indian Penal Code (hereinafter referred to as “the IPC”) and sentence of imprisonment for life imposed upon him by the Trial Court. Aggrieved by the dismissal of his appeal by the High Court, the appellant has preferred the appeal by way of Special Leave Petition.

2. The brief facts, as per prosecution, giving rise to the present appeal are that on 02.11.1993 at around 5/5.30 p.m., the deceased along with his son, PW², was waiting at Tildanga Railway Station to board a train. They were carrying with them a gunny bag containing 15 kg. of wheat seeds. The appellant, a constable with the Railway Protection Force, posted at the said Railway Station on the day of occurrence, went to the deceased and allegedly demanded bribe for allowing the gunny bag of wheat seeds on the train. When the deceased refused to pay the bribe, an altercation ensued between the deceased and the appellant. The appellant, as per the prosecution, abused the deceased by using filthy language and then out of anger fired twice at the deceased due to which the deceased sustained injuries and succumbed to the injuries on the spot.

3. At the first instance, FIR was lodged by the complainant, PW³ with the Officers of Azimganj, G.R.P.S. but no action was virtually taken by them. Thereafter, a complaint was lodged by the complainant in the Court of Sub⁴Divisional Magistrate, Jangipore praying inter alia to take appropriate action against the appellant⁵accused. The Magistrate, 1st Court, Jangipur, examined the complainant and witnesses and recorded their statements under Section 200 Cr.P.C. The Magistrate after having found prima facie case against the appellant⁶accused committed it to the Sessions Court for trial. The appellant⁷accused was charged for commission of the offence punishable under Section 302 of the IPC and ultimately convicted and sentenced by the trial court as mentioned hereinabove. The High Court dismissed the appeal filed by the appellant⁸accused.

4. We have heard learned counsel for the appellant¹accused and the respondent²State of West Bengal and have carefully perused the material placed on record.

5. A preliminary objection has been raised by the appellant¹accused that prior permission as mandated under Section 197 of the Cr.P.C. was not obtained and the appellant¹accused cannot be prosecuted for the acts done by him in discharge of his official duties.

6. In our considered opinion, both the Courts below have rightly appreciated the settled position of law that the prior sanction under sub³Section (2) of Section 197 of the Cr.P.C. is not mandatory to be obtained when the offence complained of has nothing to do with the discharge of public duty. On this aspect, the trial court has observed that from the consistent statement of the ocular witnesses and the complainant, it is crystal clear that the appellant¹accused was demanding bribe for taking a small quantity of wheat seeds by the train. Such conduct of the appellant¹accused does not fall within the course of official duty and the appellant¹accused cannot be said to have done the act of firing under the colour of his official duty. The High Court has also confirmed the findings of the trial court on this aspect. The appellant¹accused has miserably failed to produce any document or witness testimony to substantiate his plea of mandatory prior sanction under Section 197 of the Cr.P.C., except the statement of DW⁴ which, in our opinion, does not come to the rescue of the appellant¹accused.

7. The prosecution has examined as many as 10 witnesses to prove its case. The statement of the complainant, PW⁵, who happened to be the son of the deceased and an eyewitness to the occurrence, has been duly corroborated by other eye⁶witnesses. Medical evidence of PW⁶, who had conducted the postmortem examination of the deceased, lends support to the prosecution case that the cause of the death of the deceased was the gunshot injuries and that the injuries were ante⁷ mortem and homicidal in nature.

8. In view of the above, we see no reason to interfere with the concurrent findings recorded by the courts below. The High Court has appreciated the evidence in detail and relying on the testimony of the complainant, PW⁵, corroborated by the testimony of eye⁶witnesses as well as independent witnesses, has rightly come to the conclusion that the death took place by the bullet fired by the appellant¹accused and confirmed the order of conviction under Section 302 of the IPC and sentence for life imprisonment, passed by the trial court.

9. Accordingly, the criminal appeal stands dismissed.

10. Needless to state, the interim order dated 10.9.2012 passed by this Court enlarging the appellant on bail stands vacated and he is directed to surrender before the appropriate Court within a period of two weeks from today for serving the remaining period of sentence, failing which the concerned Police authorities shall take him into custody for the said purpose.

.....J. (N.V. RAMANA)J. (SANJIV KHANNA)
.....J. (KRISHNA MURARI) NEW DELHI;

16TH JANUARY, 2020

ITEM NO.101

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

HARINARAYAN SINGH

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL

Respondent(s)

Date : 16~~01~~122020 This appeal was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE KRISHNA MURARI For Appellant(s) Mr. Navdeep Jain,
Adv.

Mr. Akash Chaudhary, Adv.

Mr. Nikilesh Ramachandran, AOR For Respondent(s) Mr. Suhaan Mukerji, Adv.

Mr. Vishal Prasad, Adv.

Mr. Amit Verma, Adv.

Ms. Kajal Dalal, Adv.

For M/s. PLR Chambers and Co., AOR UPON hearing the counsel the Court made
the following O R D E R The Criminal Appeal stands dismissed in terms of the signed
order.

Needless to state, the interim order dated 10~~09~~122012 passed by this Court enlarging
the appellant on bail stands vacated and he is directed to surrender before the
appropriate Court within a period of two weeks from today for serving the remaining
period of sentence, failing which the concerned Police Authorities shall take him into
custody for the said purpose.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)