

Bhima Sahu Vs. Dukhei Sahu

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Court : Orissa

Decided On : Aug-20-1958

Reported in : AIR1959Ori57; 24(1958)CLT464; 1959CriLJ500

Judge : P.V.B. Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 258

Appeal No. : Criminal Appeal No. 108 of 1957

Appellant : Bhima Sahu

Respondent : Dukhei Sahu

Advocate for Def. : S. Misra and ;D. Singh, Adv.

Advocate for Pet/Ap. : Nabakumar Das, Adv. for ;G. Rath, Adv.

Disposition : Appeal dismissed

Judgement :

P.V.B. Rao, J.

1. This appeal is filed by leave of the Court against the acquittal of the respondent of the charge under Section 406, I. P. C.

2. The complainant-appellant stated that he pledged a gold necklace weighing 3 tolas consisting of 8 Tabis and one Padaka with the accused-respondent and received Rs. 100/-. The interest was fixed at 2 pice per rupee per month. He alleged that he repaid the entire amount, namely Rs. 140-10-0 to the accused in presence of one Suresh Chandra Mohanty.

That being a Thursday, it appears that the respondent refused to return the necklace and asked the appellant to come on the next day for getting the same back. He approached the respondent the next day but the latter denied any knowledge of the necklace and abused him. He reported the matter to the Village Panchayat, but to no effect.

3. The accused-respondent denied the pledge as well as the payment of money. The appellant examined six witnesses. The Magistrate to whom the case was transferred did not accept the evidence on account of certain inconsistencies in the statements of the witnesses and of the appellant.

The respondent examined one witness who spoke to the poverty of the appellant and also stated that the Jubakadal of the village demanded Rs. 50/- from the respondent, but the latter expressed his inability to pay the same which was alleged by the respondent to be the cause of this complaint.

There is nothing in the case which would compel the setting aside of acquittal. The case rested upon the oral evidence in proof of the appellant's payment of the amount borrowed and the non-return of the pledged ornaments. The Magistrate who examined the witnesses did not accept their evidence. The appeal is misconceived and is dismissed.

4. Before closing the judgment, I must note that there is a serious mistake committed in the office. At the time when this appeal came up for admission, my Lord the Chief Justice on 19-7-57 ordered,

'Leave granted. While calling for the record the Magistrate may be asked to explain whether arguments were heard. If so, on what date.'

Accordingly a letter appears to have been sent to the Court of the Magistrate which tried this case along with the notice of appeal and the Magistrate, who was in charge of the Court, by his letter dated 28-9-57 replied that the original record in the case disposed of by Shri S.C. Mohapatra, Magistrate 1st Class was sent along with that letter and that notices had been issued to both the parties intimating the date of hearing.

He also informed the Deputy Registrar that there was no mention in the order-sheet on what date the arguments were heard and he definitely stated that the trying Magistrate had since been transferred and it could not be said whether the arguments were heard at all. Neither the Magistrate who wrote this letter nor the office, of this Court seems to have understood the import of the order of my Lord the Chief Justice.

The learned Chief Justice wanted to know from the Magistrate who disposed of the case whether arguments were heard in the case. It was incumbent on the office to have addressed a letter with regard to that query to the Magistrate who heard the case and not along with the appeal notice asked the Magistrate's Court to inform whether arguments were heard.

The Magistrate who was in charge of the Court at the time when appeal notice was issued to him ought to have seen that it was necessary to enquire from the Magistrate who heard the case whether arguments were heard as there was no such mention in the order-sheet.

The Magistrate without any further enquiry from the Magistrate concerned simply intimated to this Court that the trying Magistrate was transferred and the office after receiving that letter was satisfied with the answer without realising that the query by my Lord the Chief Justice was not answered and instead of writing a letter to the trying Magistrate whose name is in the judgment against which the appeal is filed and whose present official address could have been gathered kept quiet and listed the appeal for hearing.

This is the way in which even judicial matters are dealt with by the office and the subordinate magistracy. I thought it to be my duty to note this and have done so

accordingly. I disposed of the appeal-without again calling for the report of the trying Magistrate, because in my view I do not think the judgment is vitiated because the Magistrate did not hear the arguments after the close of the evidence as the facts in the case are simple and not complicated.

After the close of the evidence, the Magistrate is competent to dispose of the case without hearing argument. There is no provision in the Criminal Procedure Code that arguments should be heard after the close of the evidence in a warrant case.

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