Krushna Chandra Pail Vs. State

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Court : Orissa

Decided On : Apr-15-1968

Reported in : AIR1968Ori172; 34(1968)CLT585

Judge : S.K. Ray, J.

Acts : Evidence Act, 1872 - Sections 3; Code of Criminal Procedure (CrPC) , 1898 - Sections 145 and 162

Appeal No. : Criminal Revision No. 310 of 1966

Appellant : Krushna Chandra Pail

Respondent : State

Advocate for Def. : R.K. Mohapatra, Adv. for ;S.C.

Advocate for Pet/Ap. : C.V. Murty and ;S.C. Misra, Advs.

Disposition : Revision dismissed

Judgement :

Ray, J.

1. The petitioner was prosecuted under Section 436, Indian Penal Code, in Sessions Trial No. 2/4C of 1965, in the court of the Assistant Sessions Judge. Cuttack and was convicted thereunder and sentenced toundergo Rule I, for four

years. This conviction and sentence were upheld by the Additional Sessions Judge, Cuttack, in Cr. Appeal No. 133-C of 1965. This petition is directed against the above order of conviction and sentence passed on appeal by the Additional Sessions Judge, Cuttack.

2. The charge against the petitioner was that he at about 2 A.M. in the night of 20th April 1964, at Jaipur set fire to the Gundi factory house of Jagabandhu Raul which was used as a place for custody of property, with the intention to cause destruction of the house and thereby caused a loss of about Rs. 20,000.

3. The defence of the petitioner was a complete denial of his complicity in the offence. In his statement under Section 342, he stated that he did not stir out of his house that night as there was heavy rainfall. He further averred that this false case has been foisted on him due to his enmity with the prosecution witnesses, viz., P.Ws. 2, 3, 4, 6 and 7.

4. It is admitted that the Gundi factory was in fact burnt down on the data and at the time of the alleged occurrence. The accused however, asserts that it was the act of the owner Jagabandhu Raul who got it gutted in order to avoid payment of income tax and sales tax dues.

5. A station diary entry was made on the afternoon of 21-4-64 on the report of P.W. 1, to the effect that the factory had been set on fire by some unknown person. During investigation of a theft case in tha village, first information regarding this occurrence was lodged with the I. O. on 29-4-64. The name of the petitioner finds place in this F.I.R After some investigation on the basis of this F.I.R. received in the village, the police submitted a final report on 25-5-64 which was accepted by the Court on 8-6-64. By this report the petitioner was cleared of all the allegations against him and a finding was recorded that the owner himself had ignited his own factory-house to avoid income-tax. Being dissatisfied with the final report, the complainant filed a protest petition on 6-6-64 and during its pendency also filed an independent complaint on 28-8-64. Upon receipt of this complaint cognizance of the offence was taken and the petitioner was, in due course, committed to the court of session for trial.

6. The prosecution examined 7 witnesses of whom one was the informant, five were witnesses of the conduct of the accused, both prior to the occurrence and immediately following it and one was the sole eyewitness to the occurrence.

7. The defence examined three witnesses of whom D.W 2 is the I. O., who submitted the final report and D W 1 is the Inspector of Police who supervised the investigation conducted by D. W. 2.

8. It is admitted by the prosecution as also established in evidence that there isenmity between the petitioner and P.Ws. 2, 3 and 7, but while enmity with P.Ws. 2 and 3 was oustanding on the date of occurrence that with P W. 7 was a subsequent development The alleged enmity against P.W. 7 has been sought to be established by proof of one circumstance only, that is the filing of a criminal case of theft against P.W. 7, P.W. 1 and his father. This criminal case was filed by the accused shortly after the occurrence, but unaccountably it was dropped some time thereafter. From this, it is argued by the prosecution, and in my opinion rightly, that this criminal case was started only with the object of creating some evidence of enmity against P. W. 7, the only eye-witness in the case so that his disinterested character may be tarnished. There is no basis for any other inference to be derived from the inexplicable loss of zeal on prosecuting P.W 1 no sooner than it had hardly started.

9. One 6f the general arguments advanced by the defence counsel is that the prosecution evidence as led must be discarded as falsely manufactured since the police after thorough investigation had found the case to be false. But it having transpired from the evidence of D.W. 1, the Inspector of Police that the investigation conducted by D.W. 2 was perfunctory and the courts below having come to the definite conclusion that the police investigation and its findings are unreliable by reason of its unsatisfactory and perfunctory nature, the weight of prosecution evidence cannot be displaced by such comparison. Similar attack is also levelled against the veracity of the prosecution witnesses on account of the discrepancies occurring between their deposition in Court and their statements before the police, as recorded in case diary. For self-same reason, as aforesaid, faithful recording of the statements of witnesses by the police becomes suspicious

and the courts below have rightly rejected these contentions as not substantially weighty.

10. It is next urged that the courts be low have misappreciated the evidence of P. Ws 2 3 and 4 by ignoring the following circumstance? while assessing their testimony. These circum stances are:

(i) Inaction on the part of P.W 1 even though he was informed by P W. 7 about the accused having set fire to the Gundi factory house and naming P W 7 for the first time as eve-witness in the F.I.R lodged much later (ii) Non-disclosure by PWs. 2 and 3, at the time of their examination by the police that they saw the accused at the place of occurrence at or about that time; and (iii) that P.W 7 was neither examined by the police, nor did he say anything before them as to the commission of the offence by the petitioner

11. The first two circumstances have been noticed by the lower appellate court and have been sufficiently explained away and they cannot have my adverse effect onthe assessment and appreciation of the evidence of P.Ws. 2, 3 and 4. He has found on the basis of evidence on record that P.W. 1 and his father were both away from the village at Jajpur and on receiving information of the burning of the factory-house, P. W 1 reported the matter at the police station upon which a station diary entry was made. Obviously, the information received by him being sketchy and being silent as to the name of persons involved in the crime, the names of the author of, and of the eye-witness to the crime could not find place in the station diary entry. After P.W. 1 returned to the village, he gave a written report to the I.O. who was then camping in the village investigating another theft case and that report was treated as the F.I.R in the case. This F.I.R. naturally contains fuller information including the name of the accused.

The third circumstance is based upon the statements alleged to have been made by P.Ws. 2 3 and 7 before the I. O. and recorded in the case diary maintained by the police In course of investigation of this case, the entire case-diary has been exhibited (Ext. 4). Omission to state, some facts deposed to in Court, earlier before the police has been made the pivot of criticism against the truth of their evidence

12. The answer to this is two-fold. The first is that the investigation itself having been found to be perfunctory as admitted by the Inspector of Police (D. W. 1). no sanctity can be attached to the statements recorded by the police: and the second is that such statements are inadmissible. Section 162 of the Code of Cr. Procedure and Section 145 of the Evidence Act, are the two provisions of law which have a crucial bearing on this aspect of the question, viz., the admissibility of the statements made by the prosecution witnesses before the police as recorded in the case-diary Having regard to these provisions of law, the procedure prescribed for contradicting witnesses by their previous statements made during investigation, has been indicated by the Supreme Court in a decision reported in Tahasildar Singh v. State of Utter Pradesh, AIR 1959 SC 1012 where their Lordships said :

'The Section (Section 162 CR P C) was conceived in an attempt to find a happy via media namely while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever it enables the accused to rely upon it for 4 limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to Parts of the statement intended for contradiction It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor car it be used for contradicting a defence or a Court witness Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar.'

Their Lordships further said in another part of the judgment:

'The procedure prescribed for contradicting a witness by his previous statement made during investigation is that if it is intended to contiadict him by the writting, his attention must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examination of a witness within the meaning of

the first part of Section 145 of the Evidence Act. The argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act, without putting relevant questions under the first part thereof, cannot be accepted. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness-box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary: if he does not admit, the practice generally followed is to admit it subiect to proof by the police officer ..... This procedure, therefore contravenes the express provision of Section 162 of the Code. The second fallacy is that there is no self-contradiction of the primary statement made in the witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the Section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. '

The proper method of contradicting witnesses with their statements under Section 162 has been elaborately set out in a decision reported in Ramlal Singh v State. AIR 1958 Madh Pra 380

13. Having regard to these principles laid down in the aforesaid two decisions, viz., statements not reduced to writing by the police officer cannot be used for contradiction, not can omissions unless by necessary implication be deemed to be part of the statements recorded by the police and be used to contradict the statements made in the witness-box. Thus, where a witness deposes as to certain fact in Court and such, assertion is not found in the statement of this witness recorded by the police officer in the case-diary, this would be a case of omission. There is nothing in Section 162, Cr. P. C. read with Section 145 of the Evidence Act, which would make it permissible in law to bring on record the fact that a statement made by the witness in Court had not been made before the police

officer. Therefore any statement elicited from a prosecution witness that he did not state before the police that he deposed in court when such discrepancy does not amount to contradiction, must be ruled out of consideration. Consequently the attack of misappreciation of the evidence of the prosecution witnesses by the courts below must fail.

14. It clearly appears from the evidence of P Ws. 1 and 4 and from the cross-examination of D. W. 1 that the witnesses were brow-beaten by the police and the investigation was highly perfunctory, and there was thus sufficient justification for the courts-of-fact to arrive at the conclusion that the police record was tainted. Even though the omissions as implied statements before the police, could be confronted to the witnesses and proved as contradictions, such contradictions can have no evidentiary value at all. The policy in enacting Section 162, Cr. P C. to debar statements of witnesses made before the police during investigation from being proved at the trial, is on the assumption that such statements are not made under circumstance inspiring confidence This legislative assumption coupled with positive evidence of perfunctory character of police investigation which clearly includes recording of statements in most unsatisfactory and highly haphazard manner would discredit any such statement recorded by the police. So, the contradiction, if any, brought out by proof of omissions, would rather discredit the statements recorded by the police in the instant case than cast any reflection on the probity of witnesses.

15. It has been brought out in the evidence that 15 days prior to the occurrence a civil suit between the complainant and the accused had been decided in which the complainant had succeeded This is admitted by the accused in his statement under Section 342 and also by P. W. 1 P. W. 4 has deposed that about eight days before the occurrence, he had heard the accused threatening to take revenge on P W. 1 for his defeat in the civil suit. Thus the prosecution has been able to prove the powerful motive for the petitioner to set fire to the factory house of P. W. 1's father.

16. Thus, none of the points urged onbehalf of the petitioner has any substance,and I am satisfied that the findings of factarrived at by the courts below,

have beenreached after a careful consideration of theentire evidence on record and are accordingly correct.

17. A number of decisions were cited by both sides to indicate the ambit and scope of the revisional power of this Court in interfering with the convictions in revision. I do not feel that this is a suitable case where the interests of justice require an interference with the conviction of the petitioner. The findings are neither perverse, nor are they manifestly erroneous or is there any miscarriage of justice which requires interference.

The petitioner has been rightly convicted and the sentence, in my opinion, is not excessive.

In the result, therefore, there is nomerit in this revision application which isaccordingly dismissed.