

Bata Behera Vs. Devendranath Bhol

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Court : Orissa

Decided On : Nov-30-1959

Reported in : AIR1960Ori178; 26(1960)CLT25; 1960CriLJ1353

Judge : R.L. Narasimham, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 204(1A)

Appeal No. : Criminal Revn. No. 7 of 1959

Appellant : Bata Behera

Respondent : Devendranath Bhol

Advocate for Def. : H. Kanungo, Adv.

Advocate for Pet/Ap. : M. Mohanty and ;P.K. Mohanty, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a petition, in revision, against the appellate judgment of the Sessions Judge of Cuttack maintaining the conviction of the petitioner under Section 504 I. P. C. and Section 352 I. P. C. and the sentence of fine of Rs. 25/- passed on him

by a Second Class Magistrate of Cuttack.

2. The facts as found by the two lower Courts are that on 23-9-56 at about 9 a.m. when the complainant was passing along the road near Jholasahi Girls' School in Cuttack town he had an altercation with the petitioner regarding the settlement of accounts in respect of some financial transactions between the two. It was alleged that during that altercation the petitioner got enraged and pulled away the wearing apparel of the complainant, tearing a major portion of it, thereby making him half naked and also picked up two brickbats with a view to throw them at the complainant and further abused him in filthy language. Nothing untoward however happened as several persons prevented further quarrel. The complainant immediately went to Laibagh Police Station and lodged a station diary entry and subsequently filed a petition of complaint before the Sub-divisional Magistrate on 25-9-1956 on the basis of which a case was started against the petitioner.

3. The complainant is the Headclerk in the Certificate Department of Cuttack Collectorate. The petitioner is said to be a rich and influential man of Cuttack Town. There was some argument in the lower Court as to whether in view of the status of the parties mere abuse would suffice to attract the provisions of Section 504 I. P. C. The lower appellate court rightly observed that this question is somewhat academic because even if the charge under Section 352 I. P. C. succeeds a sentence of fine of Rs. 25/- would be quite adequate for that offence, I am inclined to agree with the learned lower court. The question as to whether mere abuse on the public road would amount to an offence under Section 504 I. P. C. would depend on several circumstances such as the respective status of the parties, the nature of the abuse and other factors. For the purpose of this case it is unnecessary to enter into elaborate discussion of this question and to examine the correctness of some decisions referred to by Mr. Mohanty.

4. The main question is whether the charge under Section 352 I. P. C. was made out. The evidence of the complainant, if believed, is sufficient to establish that charge. Criminal force was used on the complainant, his dhoti was torn, and the petitioner aimed two brick-bats at him. Mr. Mohanty urged that the complainant's story should not be believed mainly because there was a delay of one day in filing

the petition of complaint before the Magistrate. This delay has been rightly ignored by the lower courts because the station diary entry (Ex. 2) was lodged by the complainant on the very day of occurrence at Laibagh Police Station and here is no material difference between the story as put forward in the station diary entry and the case as put forward in Court.

The complainant's version is corroborated by three witnesses namely Kailash Chandra Behera (P. W. 2) Bhaskar Mohapatra (P. W. 3) and Krishna Chandra Behera (P. W. 6). The two courts in fact have believed them and I see absolutely no reason to take contrary view. The names of Kailash Chandra Behera and Krishna Chandra Behera were mentioned in the petition of complaint. It is true that the name of Bhaskar Mohapatra (P. W. 3) was not mentioned in the petition of complaint, as a witness, and some of the witnesses mentioned in that petition were not examined by the complainant. But he has given some explanation during his cross-examination and the two courts of fact have taken that explanation also into consideration and held that the evidence of P. Ws. 2, 3 and 6 was sufficient to corroborate the complainant's story. As a court of revision I am not prepared to interfere with this finding.

5. The main question of law urged by Mr. Mohanty is regarding non-compliance with the mandatory provisions of Section 204 (1-A) Cr. P. C. That sub-section says:

'(1-A) No summons or warrant shall be issued against the accused under Sub-section (1) until a list of prosecution witnesses has been filed'. The complainant did not file a separate list of his witnesses on the day on which he filed the complaint before the Magistrate (25-9-56) but in the petition of complaint he gave the names of 4 witnesses, viz. Shafir Mohammad, Krishna Chandra Behera, Keshabananda Das, and Kailash Chandra Behera, and further added as follows: 'Besides these there were many other witnesses whose names would be revealed at the time of giving deposition. The accused being an influential and rich man will win over witnesses, for which their names will be revealed afterwards'.

6. On 22-11-56 after the accused had entered appearance the complainant filed a list of seven witnesses including the four persons mentioned above in the petition of complaint. Subsequently, on 19-12-57, he gave the names of two more

witnesses. Many of these witnesses were given up during trial and the complainant gave some explanation for this, in cross-examination, which was accepted by the two lower courts.

7. On these facts the question for consideration is whether the provisions of Section 204 (1-A) Cr. P. Code have been substantially complied with. That sub-section does not expressly say that a separate list of witnesses should be filed, or else that the list should be exhaustive. I therefore see no illegality if instead of giving a separate list, the complainant incorporates the names of witnesses in the petition of complaint itself. This is not a case of complete omission to give a list of witnesses altogether, and the question as to how far such an omission would vitiate the entire proceeding may be left open.

8. Mr. Mohanty however urged that when the complaint petition itself shows that apart from the aforesaid four witnesses there were some more eyewitnesses to the occurrence and the complainant deliberately withheld their names on the ground that an attempt might be made by the petitioner to gain them over, it must be held that he wilfully flouted the Section 204 (1-A) of Cr. P. C. I am unable to accept this argument. It is always open to the complainant, later on, to add to the witnesses originally given and also to give up some of the witnesses mentioned in the original list. See *Soma-sundaram v. Gopal*, AIR 1958 Mad 341 and *Ali Jan v. Amir Khan*, (S) AIR 1957 Cal 332. Doubtless the omission of the names of any important witnesses in the first list may adversely affect their credibility in the absence of any satisfactory explanation. It is for the court of fact to take this into consideration while assessing the weight to be given to the evidence of those witnesses. The complainant's statement in the petition of complaint to the effect that he intentionally withheld some names as he was afraid that an attempt would be made by the accused to gain them over may or may not be true, but he was subjected to cross-examination on this point and the trial court was entitled to draw its own inference from his answers.

9. The primary object of sub-section (1-A) of Section 204 Cr. P. C. appears to be to give the accused adequate notice about the persons who would depose against him so that he may be ready to cross-examine them and unnecessary

adjournments may be avoided. If new names are disclosed at a later stage of the trial the accused may be entitled to an adjournment for the purpose of enabling him to adequately cross-examine those persons. So long as an adequate opportunity is thus given to the accused to cross-examine the witnesses and he himself at no stage of the trial asks for further adjournments for such purpose, it cannot be said that any prejudice was caused on account of the failure of the complainant to disclose exhaustively the names of all the eye-witnesses at the earliest opportunity.

A perusal of the order-sheet would reveal that charge was framed on 9-2-57 and several adjournments were given for the purpose of cross-examination which was completed only on 9-5-58. The Magistrate freely granted innumerable adjournments either at the request of the complainant or of the accused or else because of his pre-occupation with other works, There was thus an interval of several months between the date of disclosure by the complainant of the names of all the eye-witnesses and the dates of their cross-examination. I must in these circumstances hold that there was a substantial compliance with the provisions of Sub-section (1-A) of Section 204 Cr. P. C. and that no prejudice was caused to the petitioner.

10. Mr. Mohanty then relied on Chaturbhuj v. Nahab Khan, AIR 1958 Madh Pra 28. That case is distinguishable. The report is somewhat brief but it appears that along with the complaint petition no names of any of the eye-witnesses were given. Hence the learned Judge held that there was non-compliance with Sub-section (1-A) of Section 204, Cr. P. Code.

11. For the aforesaid reasons I would maintain the order of the lower appellate court and dismiss this revision petition.