

Lokanath Panda Vs. State

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Court : Orissa

Decided On : Nov-13-1965

Reported in : AIR1966Ori205; 1966CriLJ1180

Judge : G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 367;
[Evidence Act, 1872](#) - Sections 24

Appeal No. : Cri. Revn. No. 80 of 1965

Appellant : Lokanath Panda

Respondent : State

Advocate for Def. : R.K. Mohapatra, Adv. for ;Standing Counsel

Advocate for Pet/Ap. : B.K. Ray and ;B.H. Mohanty, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.K. Misra, J.

1. The petitioner has been convicted Under Sections 380 and 457, I.P.C and sentenced to R.I. for four months and to pay a fine of Rs. 250, in default, to

undergo R.I. for one month more Under Section 380 I.P.C. No separate sentence has been passed Under Section 457 I.P.C. There was a direction for return of the seized cash to the complainant.

2. On 24-1-64 P.W. 6, son of the complainant (P.W. 11), borrowed Rs. 1000 from P.W. 9 of Sundargarb town From Sundargarh town P.W 6 came to his own village Telijoro in the company of the accused. The accused is a resident of ex-State of Narsinghpur. He carried on the business of a book-seller in the district of Sundargarh. While he comes to the village of P.W. 11, he used to stay in his house. On the way from Sundargarh, P.W. 6 told the accused that he had borrowed Rs. 1000. The accused also was present while P.W. 6 handed over the cash to his mother. The amount was kept by the mother in a box in the bed room of P.W. 11.

On 25-1-64 at about 5 p.m. P.W 6's younger brother's wife had labour pain. PW. 7, P.W 8 (a compounder) and the accused slept that night on the verandah in front of the bed-room of P.W 11. Sometime later P.W. 6 and his mother told the compounder that the lady, who gave birth to a child, was fainting. The compounder, P.W. 6 and his mother went to the confinement room of the lady in a separate courtyard intervened by other rooms to administer medicine and to give injection The bed room of P.W. 11 had not been locked up. Accused was all alone on the verandah near the bed room. The key of the box remained attached to the lock. On the morning of 26th the accused left the place. At about 8 a.m. some persons brought rice and paddy for sale. When P.W 6 went to bring money, he found the box lying open without being locked up and the entire cash of Rs. 1000 was missing P. W. 6 came to Sundargarh to inform the matter to his father who was then staying there They suspected the accused, who was taken to their house As the accused denied his complicity F.I.R was lodged

In the meantime the accused made an extra judicial confession before P.Ws. 4 and 5 and other villagers that he had stolen the money He gave recovery of Rs. 675 from a hole in between the wall and the roof of his house of one Sajia Sahu where the accused was residing at Sundargarh. P.W 1 used to reside in the same house with the accused. He produced Rs. 207 before the police from the bedding

of the accused. The accused subsequently made a judicial confession before a Magistrate. First Class (P.W 10)

The plea of the accused is that the complainant did not want him to stay in his house occasionally and has falsely implicated him. He admits that Rs. 207 was recovered from his bedding He claims the amount as the collection of dues from credit purchasers. He also admits to have given discovery of Rs. 675 to the Police from a hole of the wall. He, however, claims this amount as his own money obtained from D.W. 1 for purchase of books from Cuttack. He gave recovery to the police as the latter demanded of him to produce his own money wherever he had kept it.

3. Nobody has seen the accused actually committing the theft. The following pieces of circumstances have been amply established by the prosecution evidence and the findings in that regard have not been assailed by the petitioner.

(i) The accused saw P.W. 6 bringing Rs. 1000 and handing over that money to his mother who kept the same in a box in the bed room of PW 11

(ii) For sometime on the night of occurrence the accused was all along sleeping on the verandah of the bed room in which the box containing the cash had been kept and the bedroom was unlocked.

(iii) Accused had entered into the bedroom of P.W 11.

(iv) Rs. 207 was recovered from the bedding of the accused.

(v) Accused gave recovery of Rs. 676 from a hole of the wall of the room in which he was residing at Sundargarh

4. The courts below have placed reliance on the confessional statement (Ex. 6) made by the accused before the Magistrate (P.W. 10), The confessional statement may be extracted.

I stayed in the house of the Gountia (meaning P.W. 11) of Telijora. The youngest son of the Gountia does not pull on well with his mother That boy wanted to purchase Ganji and shirt for the jatra I said I had no money. That boy suggested

that he should commit theft in their house. Both of us committed theft in their house that night. I confessed guilt before the Officer-in-charge and returned the money

The confessional statement does not indicate as to in which night the theft was committed. In specific terms it does not say that theft was committed on the night of 25-1-64. There is also no confession that theft of Rs. 1000 was made. Moreover, it is not the prosecution case that the accused and the youngest son of P.W. 11 jointly committed the theft.

In AIR 1939 PC 47, *P Narayan Swami v. Emperor*, their Lordships observed that confession must either admit in terms the offence or, at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. In this case, the petitioner does not admit the offence in terms nor does he admit substantially all the facts which constitute the offence. There is, therefore, no confession at all. The Courts below fell into error in placing reliance on Ex. 5 a piece of evidence for conviction of the petitioner. Ex. 5 is accordingly excluded from consideration.

5. Prosecution placed reliance on the ex-trajudicial confession of the petitioner before P.Ws. 4 and 5 and some other villagers. The learned Assistant Sessions Judge placed no reliance on the extra-judicial confession on the following reasons.

'But the extra judicial confession was made before the villagers including P.W. 11 the Gountia of the village who is undoubtedly a person in authority. This confession was elicited after the accused was subjected to some amount of force as appears from the evidence of P.Ws. 4, 5 and 11. So it is not according to law and it should not have been utilised'

The learned Magistrate has accepted the extra-judicial confession before P.Ws. 4 and 5 as voluntary and true. The learned Assistant Sessions Judge rejected the same on the ground that it was made before the Gountia. P.W. 11 who, according to him, was undoubtedly a person in authority. This basic assumption has no foundation. Gontia system has been abolished and the Gountia has no part to play in the criminal administration of the State.

Section 24 of the Evidence Act lays down: A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court, to give the accused persons grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The learned Judge has made no reference to the section at all and has not examined whether all the ingredients have been satisfied so as to exclude the extra-judicial confession.

The expression 'person in authority' has not been defined. No illustration of the expression has been appended to the section. Generally speaking 'person in authority' is one who is engaged in the apprehension, detention or prosecution of the accused, or one who is empowered to examine him. P.W. 11 is not a person having anything to do with the apprehension, detention or prosecution of the accused. No statutory law or rule has been placed before me to show that P. W. 11, as the Gountia, has any such function. On the other hand, after the abolition of Gountia system, the name of Gountia is possibly continuing as relic of the past. At any rate, the defence has failed to prove that P.W. 11 has anything to do with the aforesaid matter. P.W. 11 also has no power to examine the accused. It has been held in AIR 1933 Pat 149 (SB) that a Tahasildar, who has no interest in the prosecution of the accused other than the interest, which every citizen has in the maintenance of law and order, is not a person in authority, and a confession to him is admissible in evidence. P.W. 11 is merely an ordinary citizen and is not a person in authority. The learned Asst. Sessions Judge over-simplified the matter by merely stating, without any materials, that P.W. 11 is undoubtedly a person in authority.

There is also no material to show that the extra-judicial confession was made or caused by any inducement, threat or promise. The observation of the learned Judge 'The confession was elicited after the accused was subjected to some

amount of force as appears from the evidence of P. Ws. 4, 5 and 11' is based on no discussion of the evidence. Mr. Ray took me through the evidence of these three witnesses and was unable to impress upon us that any force was applied to the petitioner to extort the confession. I am satisfied that the extra-judicial confession that the accused committed the theft of Rs. 1000 from the house of P.W. 11 is voluntary and true and is admissible in evidence.

6. Accused admits to have given recovery of Rs. 676 from the hole of the wall of the room in which he was residing at Sundargarh. He, however, claimed this amount as his own money having obtained the same from D.W. 1 for purchase of books from Cuttack. The courts below have discarded the evidence of D.W. 1 as unreliable. His evidence has not been pressed into service by Mr. Ray. On a perusal of the evidence, however, I am satisfied that the Courts below took the correct view and rightly rejected the statement of D.W. 1 that he paid Rs. 675 to the accused.

Prosecution has, however, failed to establish that Rs. 675, recovered from the hole, belonged to the complainant. Currency notes are unidentifiable. There is no evidence to prove that Rs. 675 recovered from the hole constituted a part of Rs. 1000 stolen from the wooden box of P.W. 11. If the recovery of Rs. 675 from the hole constituted the only piece of evidence on record, it would have been difficult to convict the petitioner under Section 379 or 411 I. P. C. as the prosecution failed to establish that the recovered notes constituted a part of the notes stolen (See 17 Cut LT 93 : (AIR 1952 Orissa 162). *Pahali Das v. State of Orissa*). Keeping the notes by the petitioner in an unusual place might raise grave suspicion. But that by itself does not establish the amount as belonging to the complainant. This circumstance of recovery of Rs. 675 from an unusual place is, however, to be taken into consideration along with other circumstances of the case.

7. To sum up, the following circumstances have been well established by the prosecution--

(i) The accused saw P. W. 6 bringing Rs. 1,000 and handing over the same to his mother who kept the amount in a box in the bed room of P. W. 11.

(ii) This amount was found stolen in the morning of 26-1-1964 when P. W. 6 wanted to pay money to some persons from whom rice was purchased.

(iii) For some time in the night of 25-1-64 the accused was sleeping all alone on the verandah of the bed room in which the box containing the cash had been kept and the bed-room was unlocked

(iv) The accused entered into the bed room of P. W. 11

(v) The accused made an extra-judicial confession to P. Ws. 4, 5 and 11 that he had stolen Rs 1,000 from the box in the bed room of P. W. 11.

(vi) Rs 207 was recovered from the bedding of the accused which may not be unusual. But the recovery of Rs 675 from the hole of the wall of the room in which the accused resided, is somewhat unusual

The question is whether from the aforesaid facts and circumstances a reasonable inference can be drawn that the accused stole Rs 1,000 In my view the aforesaid circumstances establish beyond reasonable doubt that the accused committed theft of Rs. 1,000 from the box of the complainant (P. W. 11) If there had been no extra judicial confession, the residual circumstances might not have been sufficient to bring the charge home beyond reasonable doubt. With the extra-judicial confession the recovery of the money establishes the prosecution case beyond reasonable doubt Though a major part of the reasoning given by the learned Judge has been rejected by me. I agree with his ultimate conclusion

8. The accused belied the trust reposed in him by P. W. 11. He is a stranger to the house He was being accorded hospitality by way of temporary accommodation. In the circumstances the sentence passed on him is not heavy.

9. In the result the revision fails and is dismissed.