

Narahari Prusty Vs. the State

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Court : Orissa

Decided On : Jul-19-1983

Reported in : 1984(I)OLR1

Judge : B.K. Behera, J.

Acts : Indian Penal Code (IPC) - Sections 394 and 395; Code of Criminal Procedure (CrPC)

Appeal No. : Criminal Appeal No. 168 of 1980

Appellant : Narahari Prusty

Respondent : The State

Advocate for Def. : D.P. Sahu, Standing Counsel.

Advocate for Pet/Ap. : B. Panda, Kishore Jena and P. Mohanty

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant assails the judgment and order recorded by the learned Assistant Sessions Judge, Athagarh, finding him to be guilty of the charge of dacoity, convicting him under section 395 read with section 75 of the Indian Penal Code

(for short, the 'Code') in view of his previous conviction in a case of dacoity and sentencing him thereunder to undergo rigorous imprisonment for a period of nine years. Another co-accused person, namely, Satyabadi alias Bajia Naik, also stood trial and was convicted under section 395 read with section 75 of the Code in view of his previous conviction in a case of robbery and sentenced thereunder to undergo rigorous imprisonment for a period of seven years. The case of the prosecution was that during the night of the 18th/19th August, 1979, the appellant and the co-accused person along with three others, being armed with deadly weapons, committed dacoity in the house of Mukunda Charan Khuntia (P.W. 13) at village Badabara singh, causing hurt and keeping the inmates of the house under wrongful restraint and removed cash, ornaments and other articles. On the basis of the first information report (Ext. 8) lodged by P. Ws. 13, the case was investigated into and a charge-sheet was placed. To bring home the charge to appellant and the co-accused person, the prosecution has examined eighteen witnesses. The plea of the appellant and the co-accused person was one of false implication. The co-accused Satyabadi alias Bajia Naik had examined two witnesses in his defence in order to probabalise his plea that prior to his identification in the court, he had been shown to the witnesses. The learned trial Judge accepted the prosecution case and recorded the order of conviction.

2. Miss P. Mohanty, the learned counsel for the appellant, has not challenged the finding recorded by the trial court holding the appellant to be guilty of the charge and rightly so, in view of the acceptable evidence of identification of the appellant and the co-accused person and the fact that a large number of stolen articles, property identified by the owners as belonging to them, had been recovered from the possession of the appellant. She has strenuously urged that the initial case as disclosed in the first information report was one of robbery by four persons for which a case under section 394 of the Code had been registered and subsequently, the prosecution had developed its case and made it one of dacoity through its evidence that five persons had committed the offence. The learned Standing Counsel has fairly submitted that P. W. 13, who was no other person than the victim of dacoity and an eye-witness to the occurrence, had definitely stated in the first information report that four persons had committed the offence and he had reiterated it by saying that the number of persons seen by them was

four, but later some witnesses had added that there was another person although in their statements to the Investigating Officer, they had given out the number of the culprits to be four. In view of the submissions made by the learned counsel for both the sides, it is not necessary to discuss this aspect in details by referring to the divergent statements made by the prosecution witnesses at the trial and in the course of investigation. In my view, the addition of one more person was an embellishment to an otherwise true story to what had happened. The appellant and the co-accused person could not be convicted for the offence of dacoity, but were liable to be convicted for the offence of robbery punishable under section 394 of the Code.

3. In the result, the appeal is allowed in part. The order of conviction and sentence passed against the appellant under section 395 read with section 75 of the Indian Penal Code is set aside and in lieu thereof, he is convicted under section 394 read with section 75 of the Indian Penal Code and sentenced thereunder to undergo rigorous imprisonment for a period of five years which, in my view would meet the ends of justice.

4. It has been brought to my notice that the co-accused Satyabadi alias Bajia Naik has not preferred any appeal against the order of conviction recorded against him under section 395 read with section 75 of the Code. At the stage of hearing of this appeal, notice was given to the learned Standing Counsel to submit on behalf of the State as to why the order of conviction recorded against this co-accused person under section 395 read with section 75 of the Code should not also be set aside and as to why he should not be convicted under section 394 read with section 75 of the Code in view of the fact that a robbery punishable under section 394 and not a dacoity punishable under section 395 had been committed. The learned Standing Counsel has fairly submitted that in view of the facts and evidence of the case and as the proper offence in respect of which the order of conviction should have been recorded was one of robbery, this Court, in its revisional jurisdiction, has the power to set aside the order of conviction and modify it. By the exercise of its revisional powers, the revisional Court can set aside the order of conviction and sentence passed against a non-appealing accused person after giving notice to the State to have its say and even without giving notice to the convicted person as

the order would be to his advantage. In my view, it is necessary in the interests of justice that the order of conviction and sentence passed against the non-appealing co-accused person is also set aside and he is convicted of the offence of robbery,

5. I would set aside the order of conviction and sentence passed against the co-accused Satyabadi alias Bajia Naik under section 395 read with section 75 of the Indian Penal Code and in lieu thereof, he is convicted under section 394 read with section 75 of the Indian Penal Code and sentenced thereunder to undergo rigorous imprisonment for a period of four years which, in my view, would meet the ends of justice.

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