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Court : Orissa

Decided On : Aug-14-1968

Reported in : 1969CriLJ578

Judge : S. Acharya, J.

Appellant : Bhaskar Chandra Sahu

Respondent : State

Judgement :

ORDER

S. Acharya, J.

1. This is a revision against an appellate judgment of Sri S.K. Patro, Sessions Judge, Mayurbhanj-Keonjhar, in Criminal Appeal No. 16-M of 1966, maintaining the conviction of the petitioner under Section 457 I.P.C., and the sentence of two months' rigorous imprisonment and a fine of Rs. 50 passed on him by the Sub-Divisional Magistrate, Kaptipada.

2. The prosecution case, in short, is that on 10.9.1965, at about midnight, the petitioner was found concealing himself underneath a bench inside a room of the house of the informant Kailash Chandra Das (P.W. 4), with the intention of committing theft of Rs. 200 which was collected the-same evening by the informant from different persons in the bazar to the knowledge and information of

the petitioner. On the night of the occurrence, P.W. 4, after having bolted the doors of his rooms, slept on the inner verandah of his house with one of his children, and at about 1 A. M. when he went inside the room to get a Chadder for his child, he detected the petitioner concealing himself underneath a bench in the said room. He caught hold of the petitioner, raised an alarm and kept him tied with a rope inside his house. On hearing the alarm, some neighbours including some of the P. Ws. arrived at the place. Very soon thereafter, at 2.45 A.M. in the night, information about this matter was lodged at the police station by P.W. 4.

3. In the trial Court, the petitioner in pleading not guilty to the charge stated that he, as a tailor, had some dues outstanding against P.W. 4 towards the stitching charges of garments prepared for the informant, and to get this money he had been to the informant's house at about 9 P.M. on the said date, when the informant caught hold of him, and dragged him inside his house and kept him confined there by tying him down with a rope since that time.

4. Mr. Patnaik, the learned Counsel for the petitioner contended that the findings of the Courts below are vitiated as they have been influenced by certain illegal and; unwarranted presumptions and inferences, drawn by the said Courts. In support of his contention Mr. Patnaik drew my attention to the inferences and presumptions drawn by the Courts below as follows:

(a) that if in fact the accused-petitioner was dragged inside the informant's house and kept tied there since 9 P.M. then he would have raised alarm attracting the notice of the neighbours;

(b) that if the petitioner was kept tied at about 9 P.M. then the informant would not have waited till 2.45 A.M. to lodge information at the police station;

(c) that lodging of the F.I.R. immediately after the occurrence is a circumstance in support of the prosecution case.

5. I do not find any force in the contention of Mr. Patnaik as raised above. Under Section 114 of the Evidence Act, the Courts may draw certain presumptions regarding the existence of some facts which they think likely to happen, regard

being had to common course or natural events and/or human conduct. If a man approached somebody at about 9 P.M. in the evening for getting payment of his outstanding dues, and he suddenly found that he was dragged inside the house and kept tied there, it would naturally be expected of him to shout for help and to resist such wrongful confinement in all possible manner attracting the attention of the people in the neighbourhood. That would be the most natural reaction of a person placed in the above circumstance and the inference drawn on the above set of facts cannot be said to be either illegal or unwarranted.

6. The presumptions drawn in the other two above mentioned cases are likewise inferences which could justifiably be drawn by the Courts regard being had to the common course of natural events or of human conduct. This being so the Courts below have not committed any illegality nor have they gone wrong in drawing the above mentioned presumptions and inferences under Section 114 of the Evidence Act.

7. The next contention raised by Mr. Patnaik was to the effect that some material witnesses having not been examined in this case, the materials which could have been available to the defence from their evidence could not be placed before the Courts below.

This point was not raised in appeal. This was raised in another form in the trial Court, who found as a fact that, two other witnesses whose names appeared in the F.I.R. were not material witnesses and would not have thrown further light on the prosecution case. It was also not necessary for the prosecution, on the facts of this case, to examine the whole lot of persons who gathered at the place on hearing the alarm raised by P.W. 4. The petitioner could have examined any or all such persons if he thought that they were of any avail for his defence. This contention as such is also not acceptable.

8. The petitioner admitted his presence inside the house of the informant, and the defence case not being worthy of any credit, and was found to be an afterthought, the Courts below were justified in believing the consistent case deposed to in the Court and reported at the police station at the earliest possible opportunity by P.W. 4 to the effect that the petitioner was found at the dead of night concealing himself

inside a room wherefrom he was dragged out and kept tied as stated above. With regard to the rest of the prosecution case, the Courts below, besides the evidence of P.W. 4, relied upon the evidence of P. Ws. 1, 2, 3 and S who are some of the neighbours of P.W. 4. These witnesses were found to be disinterested persons and nothing substantial could be elicited to discredit them, and they deposed in a consistent manner with regard to this part of the prosecution case. The witnesses adduced by the defence were found to be highly interested in the accused, and the Courts below rightly disbelieved their evidence.

9. I, however, find that the allegation that the petitioner was concealing himself inside the room with the sole intent of committing theft of Rs. 200 which had been collected by the informant from the bazar on that evening, has not been brought home against the petitioner beyond all reasonable doubt. It was P.W. 4 only, who stated about the collection and keeping of that amount in that room. There is practically nothing convincing to establish the fact that this amount of Rs. 200 was kept inside that room, to the knowledge and/or information of the petitioner. It cannot, therefore, be said with reasonable certainty that the petitioner had trespassed as stated above into the house of P.W. 4 with the sole intention of committing theft of that amount. This being so, the petitioner cannot be held to be guilty of the offence of lurking house trespass by night in order to commit theft punishable under Section 457, I.P.C. as alleged against him. But this is certain that the petitioner had stealthily effected his entry into the house of P.W. 4 at night and had kept himself concealed inside a room with the intention of committing some offence. The petitioner utterly failed to prove that his presence inside the room as such was not for the purpose of committing any offence or was otherwise innocent, and therefore it can fairly be presumed that the entry had been made with such an intent as provided for under Section 456 I.P.C. In this view of the matter, I will hold the petitioner guilty of the minor offence under Section 456 I. P. C, instead of the major offence under Section 457 I.P.C. of which he stands convicted at present.

10. So while acquitting the petitioner of the offence under Section 457 I.P.C. I hold him guilty under Section 456 I.P.C. and accordingly reduce his sentence of imprisonment from two months' rigorous imprisonment to one month's rigorous

imprisonment. He is also to pay a fine of Rs. 50 on the above count. With these alterations and modification in the conviction and sentence, the revision is dismissed.

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