

Sriram Chandra Das Vs. Krushna Chandra Roy

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Court : Orissa

Decided On : Jun-24-1969

Reported in : 35(1969)CLT788; 1970CriLJ264

Judge : S.K. Ray, J.

Appellant : Sriram Chandra Das

Respondent : Krushna Chandra Roy

Judgement :

S.K. Ray, J.

1. This is an appeal preferred by the complainant against the order of so. quittal passed by Sri P.C. Patro. Judicial Magistrate, second class, Cuttack on 21-1-66 in complaint case No. 259 C-1/64.

2. The prosecution case is that the complainant was called to the shop of the accused through the latter's son on 27-8-64 at 11 a. m. When he reached the shop the accused suddenly flared up and abused him in filthy language. The words of abuse need by the accused have been quoted both in the complaint petition and also in the judgment of the trial Court. After abuse, the accused rushed towards the complainant and threatened him with assault. A gentleman of the locality intervened and the matter subsided. On these allegations charges under Sections 504 and 852 were framed against the accused.

3. The trial Court has found as a fact, which is no longer in dispute, that the accused has got a shop and the complainant was abused. The motive as stated in the complaint petition has been sought to be made out in the following facts:

The complainant purchases goods from the shop of the accused on credit. There is an account maintained in the shop in his name in which the goods purchased on credit are entered. The complainant, however, had advanced a sum of money to the accused some five year? ago for getting the lands of one Rangelata Dai conveyed to him. The accused was to act as intermediary in that transaction of sale. Nothing came out of it, and no sale took place. Despite repeated reminders the accused had not repaid that money. On the day previous to the date of occurrence when the accused was absent and the shop was being attended to by his son, the complainant purchased goods equivalent to the amount advanced by him for purchase of land and got the same amount entered in his credit account. The accused on coming to know of it later on felt that he had been tricked by the complainant. This angered him which led to the incident on the date of occurrence.

4. The defense is one of a denial. The accused not only denied the occurrence, but also the allegations that he had received a sum of money from the complainant for seeing' through the sale transaction.

5. The trial Court has found that the complainant is a regular customer of the accused who owns a grocery shop in the village. He also finds that there is no satisfactory evidence regarding the advance of any money by the complainant to the accused for getting; some lands conveyed by Rangelata to him.

6. The first finding is not disputed and the second finding appears, on a perusal of the evidence on record to be correct. P. W. 1's evidence on This point is uncorroborated. He admits that there were witnesses for this advance of money, but such corroborative evidence has not been put in.

7. As regards the motive, P. W. 1, the complainant says that five years ago he had advanced a sum of Rs. 56.11 to the accused who was to act as intermediary in the matter of getting some land of Rangelata sold to him. The sale never took place and the complainant as a matter of fact had advanced the money. The accused

had verbally told the complainant that the money would be paid back by way of adjusting price of articles which the complainant takes on credit from his shop. Belying on such assurance, the complainant had in fact-taken articles equivalent to the value of the amount advanced to the accused from the latter's shop just the previous day. If this evidence is true, there is apparently no cause for the accused to be angry and to behave in the manner he did, on the date of occurrence. If the accused had agreed to such a thing, there is no conceivable reason why he would alter his attitude. Thus, the motive for the occurrence is a very weak one.

8. There was a delay of six days in filing the complaint-petition. Some explanation (or the delay has been stated in the complaint, petition. It is said that some gentlemen desired to settle the matter and detained him in the village for that purpose and this caused the delay in filing the complaint. P. W. I however, does not breathe a word about this in his examination in chief. Thus, the trial Court was justified in saying that there is some amount of suspicion due to the non-explanation of the delay in filing the complaint petition.

9. The prosecution seeks to prove its case through P. Ws. 2, 3 and 4. It is argued on behalf of the defence that none of the prosecution witnesses cited in the complaint petition has been examined. Though that is not the finding of the trial Court, nevertheless, I feel there is Borne force in that argument. P. W. 2 is one Batakrushna Pati of mouza Champes. war. One of the witnesses mentioned in the complaint-petition is one Batakrushna Pati of mouza Dantual, Samil-Champeswar. Dantual is the main village of the accused. Therefore, it cannot be definitely said that P. W. 2 is the same person mentioned in the complaint petition as Batakrushna Pati. P. W. 3 Sricharan Das is of village Routpada. The complaint-petition mentions one Sricharan Das of Khairabasta-Samil-Routpade. This indicates that his main village is Khairabaeta which adjoins Routpada.

10. It is argued on behalf of the com-plainant that normally people name the major mouza as their own instead of the minor mouza to which they actually belong and while P. W. 8 stating in Court that his own mouza is Routpada has given the name of his village in the popular sense. This may be so, but it cannot be said definitely that it is so. This P. W. 3, however, says that his house is at a distance of one mile

from Routpada and he has two grocery Shops in his own village. The defence, therefore, characterises this witness as a chance witness. The purpose of his coming to the shop of the accused was to purchase some molasses. It is argued that he could have purchased molasses in his own village and there is no reason why he would come to the village of occurrence near about midday. P. W. 4 is not mentioned in the complaint-petition at all. He is also not named by any other witnesses examined on behalf of the complainant as one who was present at the time of occurrence. The complaint petition discloses names of two persons belonging completely to two different villages as having witnessed the occurrence. They have not been examined. In this state of evidence the trial Court has drawn some adverse inference against the truth of the prosecution story on account of non-examination of witnesses mentioned in the complaint. I am also not in a position to discard the defence argument that P. Ws. 2 and 3 are not the same Batakrushna Pati and Sricharan Das respectively mentioned in the complaint petition. It must, therefore, be held that none of the prosecution witnesses mentioned in the complaint petition has been examined and in place of named witnesses the complainant has examined chance witnesses like P. W. 4. In these circumstances, the trial Court has correctly held that the prosecution has failed to prove its case beyond all reasonable doubt.

11. Section 504, Penal Code., comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause him to break the public peace or to commit any other offence. Therefore, mere abuse will not come within the purview of the section, The offence under this section can be made out only on proof of the aforesaid three elements including intention or knowledge of the offender that provocation given by him will cause the complainant to break public peace, beyond all reasonable doubt either by positive evidence or by such evidence from which those facts can be conclusively inferred. I have gone through the evidence carefully and I am satisfied that the evidence does not establish all the three aforesaid ingredients of the offence under Section 504. Therefore, even accepting the evidence on record, it must be held that the offence under Section 504 has not been made out and as such, there cannot be any conviction thereunder.

12. The other section under which the charge is made is Section 352, Penal Code, The question therefore is whether the facts mentioned in the complaint have been made out. According to the prosecution the accused after abusing him in filthy language rushed towards him with a view to assault him. 'Assault' is defined in Section 351 in the following terms;

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person is said to commit assault.

In my opinion if the evidence as laid by the prosecution is accepted, a conviction under Section 352 will naturally follow.

13. The defence relied upon a case in (1908) I L R 30 Cal 97, Birbal Khalipa v. Emperor

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