

Dhruba Charan Lenka Vs. the State

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Court : Orissa

Decided On : Apr-18-1983

Reported in : 1984CriLJ769

Judge : B.K. Behera, J.

Appellant : Dhruba Charan Lenka

Respondent : The State

Advocate for Pet/Ap. : Mr. Dash

Judgement :

B. K. Behera, J.

1. The appellant stood charged under Section 395 of the Penal Code with having committed dacoity along with seven others during the night of 23rd/24th June, 1977, at the house of Jogi Sahu (PW 3) at village Jhanjalia during the commission of which cash of Rs. 15,000/- and gold and silver ornaments had allegedly been removed by the culprits causing injuries to PW 3 and three co-villagers, namely, Panchu Sahu, Pahali Sahu and Dharmu Mallik. On the basis of the first information report (Ext. 1) lodged by PW 3 before the Officer-in-charge of the Gop police station (PW 14), who had come to the hospital where PW 3 had been receiving treatment, on hearing a rumour that a dacoity had been committed, investigation proceeded and on its completion, charge-sheet was placed. The

other culprits are said to be absconding. To bring home the charge to the appellant, the prosecution had examined fourteen witnesses. Of them, PW 3 was the victim and the sole witness to the occurrence. PWs 1 and 5 had been examined to establish that prior to the occurrence, the appellant, who had been working with them in the Orissa Textile Foundry, had left at about 3 p.m. on the 23rd June, 1977. PWs 2, 7 and 13 had been examined to show the suspicious movements of the appellant along with some others prior and subsequent to the occurrence. PW 12 was the doctor who had examined PW 3 and the other three injured persons, PW 14 had investigated into the case. The appellant's plea was one of false implication. He had not examined any witness on his behalf. On a consideration of the evidence, the trial court found that the charge had been established and the appellant was sentenced to undergo rigorous imprisonment for a period of ten years.

2. Mr. Dash, appearing for the appellant, has submitted that the evidence, led by the prosecution to establish the charge against the appellant was not worthy of credence and the evidence of PW 3 was untrue and untrustworthy. Mr. Indrajit Ray has supported the order of conviction as being well-founded on the evidence of PW 3 and the other evidence of a circumstantial nature. It has, however, been submitted by the learned Counsel for both the sides that the question as to whether the order of conviction would be maintained by this Court would depend on the acceptance of the evidence of PW 3. If the evidence of PW 3 is accepted, it has been submitted, the other circumstances could give some assurance to the testimony of PW 3. If on the other hand, the evidence of PW 3 is discarded by this Court, the order of conviction cannot be sustained.

3. It admits of no doubt from the evidence and it has not been disputed at the Bar that a dacoity had been committed in the house of PW 3 during the night in the course of which PW 3 and the three co-villagers of his had sustained injuries. The important point for consideration is as to whether the appellant was one of the authors of the crime.

4. As earlier indicated, PW 3 was the sole witness to the occurrence. Not even his wife who was said to be present on the scene had been examined by the

prosecution. The three co-villagers who had sustained injuries had not been examined either. No doubt, PW 3 had implicated the appellant as one of the culprits in the first information report, but it is to be kept in mind that this report was lodged on the day following at 4 p.m. at the hospital when the officer-in-charge came to that place. It was not in the evidence of PW 3 nor was there any evidence to show that PW 3 had implicated the appellant as one of the culprits either before his wife or before his relations and co-villagers prior to his going to the hospital. On his own showing, he had not disclosed the name of the appellant as one of the culprits before he lodged the first information report. The belated statement made by him naming the appellant as one of the culprits would seriously affect his evidence especially because of complete absence of evidence to show that before he had been taken to the hospital, he had disclosed before anyone that the appellant was one of the culprits.

5. The occurrence had taken place on a dark night. PW 3 claimed in his evidence that he had been able to identify the appellant because he was known to him from before and because of the light of the lantern he was holding. He had also testified that the culprits had been focussing torch lights. He had not, in terms, stated in his evidence that by the light of the torch lights, he ' had been able to identify the appellant. He had not stated in the first information report that he had been able to identify the appellant or any one else with the light of the lantern. As a matter of fact, the theory of holding of a lantern had been introduced for the first time in his evidence and he had not spoken about it either in his report or in his statement in the course of investigation. There was no evidence of any of the co-villagers in support of the version of PW 3 that he was having a burning lantern at the time of occurrence or that the culprits had been focussing torch lights. The evidence of P. W, 3 in this regard could be, but had not been corroborated.

6. It is important to keep in mind that in the first information report, P, W. 3 had not ascribed specific parts to the appellant. In his evidence, however, he stated that the appellant dealt a push to him as a result of which he fell down and then the appellant inflicted a knife-blow on him. Apart from these material omissions in the first information report, he had not even stated about the specific parts, ascribed belatedly in his evidence at the trial, when he was examined in the course of

investigation.

7. As provided in Section 134 of the Evidence Act, what is important is the quality of the evidence and not its quantity and an order of conviction can, in appropriate cases, be recorded on the evidence of a solitary witness. But it has been a settled principle of appreciation of such evidence that in order to base a conviction thereon, the evidence must be true and trustworthy, acceptable and unimpeachable. For the reasons aforesaid, I am of the view that the evidence of P. W. 3 was not of that character and the trial court went wrong in accepting his evidence and basing the order of conviction mainly thereon.

8. It is, no doubt, seen from the evidence of p. Ws. 1 and 5 that on the 23rd June, 1977, the appellant left the place where all of them had been working at about 3 P. M., but due notice had not been taken by the trial court of the fact that as deposed to by P. W. 1 himself, the appellant left the place saying that his daughter was ill and requesting him to inform the Manager about it. The purchase of some articles by the appellant on the day following the night of occurrence, which had been admitted by him in his statement at the trial, would not be a guilt-pointing circumstance in the absence of clear evidence that the appellant was in such straitened circumstances financially that he was not in a position to purchase the articles. P. Ws. 2, 7 and 13 had testified about the movements of the appellant along with others prior and subsequent to the occurrence. It was not in their evidence that the appellant had been found at or near the place of occurrence near about the time when the occurrence had allegedly taken place. According to P. W. 13, he called the appellant when he was moving with others during the night of the 23rd June, 1977, but he did not listen and left on a bicycle. In the absence of other evidence pointing to the guilt of the appellant, his movements with some other persons would not justify an inference of his guilt. Conduct which destroys the presumption of innocence of an accused person can alone be considered against him (See : 1960 CriLJ682 Anant Chintaman Lagu v. State of Bombay).

9. There was no other evidence to establish the charge against the appellant and he was entitled to an acquittal.

10. In the result, the appeal succeeds and the same is allowed. The order of conviction passed against the appellant under Section 395 of the Penal Code and the sentence passed against him. thereunder are set aside. The appellant be set at liberty forthwith.

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