Narayan Behera Vs. the State

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Court : Orissa

Decided On : Apr-19-1984

Reported in : 1984(I)OLR438

Judge : B.K. Behera, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 154 and 401

Appeal No. : Criminal Revision No. 205 of 1981

Appellant : Narayan Behera

Respondent : The State

Advocate for Def. : A. Rath, Addl. Standing Counsel

Advocate for Pet/Ap. : B. Panda, Kishore Jena, P.C. Puhan and J. Rout

Disposition : Petition allowed

Judgement :

B.K. Behera, J.

1. The petitioner assails the order of conviction recorded against him by the trial court under Section 394 of the Indian Penal Code with a sentence to undergo rigorous imprisonment for a period of three years maintained by the Court of Session for having committed robbery during the night of the 9th/l0th April, 1978,

by entering into the dwelling house of Sushila Bewa (P.W. 2) and removing a gold necklace from her neck and two gold ear-rings by forcibly removing them from her ears resulting in injuries on her parson.

2. The order of conviction has been based mainly on the evidence of the sole witness to the occurrence (P. W. 2) who, it was stated, had implicated the petitioner as the author of the crime when the co-villagers (P. Ws. 3 to 6) came to the scene on hearing the cry raised by her.

3. Upon hearing the learned counsel for both the sides and on a perusal of the evidence, while I would accept the concur tent finding recorded by the courts below that P. W. 2 had been robbed of her gold ornaments by a culprit causing injuries on her, which found support in the medical evidence, which act would be culpable under Section 394 of the Indian Penal Code, it would be noticed that the evidence to connect the petitioner with the commission of the offence was far short of the mark and for the reasons to be recorded hereinafter, could not have been accepted by the trial and appellate courts.

4. The evidence on record would undoubtedly show that P. W. 2 was not in a position to say as to who actually was the author of the crime and that a deliberate attempt had been made at a later stage to rope in the petitioner. On her own showing, P. W. 2 had defective vision and hearing for about 8 to 10 years prior to the occurrence. She had claimed to have identified the petitioner with the light of a lamp burning in the room in which she was sleeping before it was put out by him. There was no evidence that immediately after the occurrence, she shouted out naming the petitioner as the author of the crime. She had claimed to have narrated the occurrence naming the petitioner before the co-villagers who came to the scene on hearing a cry raised by her and there was, in this regard, the evidence of P. Ws. 3 to 6, of them, except P. W. 5, the others were her relations.

5. The evidence of P. W. 3 would show that when he first came to the scene on hearing a cry raised by P. W. 2, P. W.2 gave out that a thief had forcibly removed the ornaments from her person although later, according to P. W. 3, she named the petitioner as the culprit. If, in fact, P. W. 2 had named the petitioner as the culprit before P. Ws. 3 to 6, it is not understood as to how and why P. Ws. 3 to 6

would not even go to the residence of the petitioner who was no other person than a co-villager of theirs and challenge him and they could as well recover the ornaments from his possession, if he was the culprit. There was no evidence that they had done so. This in action on the part of P. Ws. 3 to 6 on receiving such an information would tell its own tale and their evidence that they had learnt from P. W. 2 that the petitioner was the author of the crime would not stand to common sense, much less to reason.

6. Another telling circumstance against the bonafides of the investigation and the prosecution was the suppression or the initial report lodged by P. W. 2 at the Police Station and the production and acceptance in evidence of a delayed First Information Report (Ext. 5) lodged by P. W. 6, the grandson of P. W. 2, at 10. 00 P. M. on the 10th April, 1978. In the case of Thulia Kali v. The State of Tamil Nadu AIR 1973 Supreme Court 501, it has been laid down:

'...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the stand point of the accused. The object of insisting upon prompt lodging of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the First Information Report should be satisfactorily explained. ...'

In the instant case, the delay in lodging the First Information Report has not satisfactorily been explained. As the evidence of P. W. 2 would clearly indicate, all was not well between P. W. 6, the first-informant, on the one hand and the petitioner 6n the other. In this background, the comment of the defence is legitimate that later, after deliberation, a person who was not pulling on well with P.

W. 6, the grandson of the victim, had been implicated as the author of the crime.

7. It would be noticed from the evidence of P. W. 2 that she had gone to the Police Station in the morning following the night of occurrence and had given a report in writing by affixing her thumb mark. According to her, her nephew Maguni Sahu and her grandson Michhu Sahu (P. W. 6) had also given reports at the Police Station separately regarding this occurrence. Maguni Sahu had not been examined and I have referred to the belated report lodged by P. W. 6. The report of P. W. 2 made at the Police Station had been suppressed. Being the First Report in point of time, the prosecution should have produced the report and got it admitted in evidence to get set the truth as that report contained the first version given by the victim herself with regard to the occurrence. The non-production of her report during the trial would cast a serious reflection on the fairness and bonafides of the prosecution and an adverse inference could legitimately be drawn under Section 114 Illustration(g) of the Evidence Act that her report, if produced and proved, would have gone against the prosecution case.

8. Neither the fired court nor the appellate court took care to look into these serious infirmities and suspicious features in the prosecution evidence. The findings of the court below, concurrent though they are, are unreasonable and unfounded and do call for interference by this Court in its revisional jurisdiction.

9. I would allow the revision and set aside the order of conviction and sentence passed against the petitioner.