

Sadananda Das Vs. State of Orissa

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Court : Orissa

Decided On : Nov-07-1990

Reported in : 1991(I)OLR66

Judge : A. Pasayat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Revision No. 136 of 1986

Appellant : Sadananda Das

Respondent : State of Orissa

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.D. Das and A.S. Nandy

Disposition : Revision allowed

Judgement :

A. Pasayat, J.

1. The petitioner assails the order-of conviction and sentence as awarded by the learned Subdivisional Judicial Magistrate, Hindol, and modified by the learned Sessions Judge, Dhenkanal. Originally, the sentence was rigorous imprisonment for three years and a fine of Rs. 5,000/-, with default sentence of one year's

rigorous imprisonment, which was modified to a rigorous imprisonment for one year, and a fine of Rs. 2,000/- with default sentence of six months' rigorous imprisonment.

2. The case of the prosecution, bereft of unnecessary details, is that the petitioner who was a student of Nabapalli High School falsely represented to the informant's wife (P.W.3) that her husband (P. W. 1) who was working as the Headmaster of the said school, was involved in a criminal case having allegedly murdered one of his colleagues, and to get him out of the clutch of law money was required. On this representation being made, in her anxiety to save her husband from 'prosecution and humiliation, the informant parted with Rs. 4,500/- in cash and a gold necklace weighing about 2 1/2 tolas. The movements of the petitioner were found suspicious by Chakradhar Sahu (P. W, 2), who wanted to ascertain the truth and at about 4 p.m. he learnt from the informant that there was no incident as alleged, and his wife had been deceived and the petitioner had falsely made a wrongful gain of money and the jewellery. Even though the alleged incident took place around 1 p. m. on 20-7-1981, the F.I. R. was lodged next day morning at about 7. 30 a. m.

3. Seven witnesses were examined in support of the prosecution case, while the accused took the plea that a criminal proceeding had been instituted by him Under Section 406, IPC, against the informant's wife and the case was a counter blast. He, however, did not examine any witness in support of his version. On consideration of the evidence, the trial Court as well as the appellate Court came to hold that the petitioner was guilty of the offence as provided Under Section 420, IPC, and sentence as aforestated was awarded.

4. Though several grounds of challenge were pressed into service by the learned counsel for the petitioner, I feel that this revision application can be disposed of on the ground of delay in launching the prosecution and the unsatisfactory manner in which statement of the accused was recorded. The accepted position is that the occurrence took place at about 1 p. m. and the informant had detailed knowledge about the occurrence between 4 to 5 p. m. The only explanation for non-lodging of the F. I. R. till 7-30 a. m. of the next morning, is alleged rain in the evening. This

aspect has been considered by the Courts below, who have found that the explanation given for delay in lodging the F. I. R. has been sufficiently explained away. A bare perusal of the evidence of P. Ws. 1 and 2 who have spoken about the rain, leaves no manner of doubt that the police station was situated at a short distance of about: 2 to 3 miles from . the house of the informant. There is no evidence to show that the rain was so intermittent or heavy, that it rendered any access to the police station impossible. The evidence of P.W. 1 is to the effect that he returned home at about 5 p. m., it had already been raining by the time he returned, and the rain continued till the evening. According to P. W. 2, after arrival of the informant (P. W. 1) at his home, rain started and It was decided that information was to be lodged on Monday. Significantly, the date of occurrence was not a Sunday and therefore, if the decision of the informant was to lodge information next day, then the question of taking a decision to lodge information on Monday did not arise. P. W. 3 has stated that she did not want to send her husband to the police station on the night of occurrence as it was dark. She has not stated about the decision to defer lodging of F.I. R., on account of rain. On the contrary, according to her, because the night was dark, she dissuaded P. W. 1 from lodging information. If by 5 p. m., the informant had details of occurrence, there was no reason as to why any decision was taken in the light not to lodge the FIR immediately.

The conduct of the informant is abnormal. According to him more than Rs. 10,000/- had been taken away by the petitioner on a false pretext practising deception. The amount is certainly heavy considering the financial status of the informant. It is hard to believe that a person who has been deceived of a heavy sum, would wait till the next morning. It also transpires from the evidence of P. W. 1 that he made no attempt to enquire from the petitioner as to why such deception was practised by him, admittedly when the petitioner was a student of his school, and was frequently visiting his house. It is also unnatural that the informant did not associate any of his villagers and/or make any effort to get back the money and the necklace and was satisfied by keeping silent till next day morning when admittedly, the F. I. R. was lodged. In all cases, delay in lodging the F. I. R. may not be fatal to the prosecution case, but it would vary from case to case. Where circumstances indicate that there is like-lihood of exaggeration being introduced or

false accusations being of, certainly the onus lies on the prosecution to explain the delay satisfactorily. The Court's below have erred in not attaching importance to this vital aspect.

5. I am surprised to note the manner in which the statement of the accused was recorded. The questions as put to the accused, have really no relevancy. The two main questions asked are quoted below.

'Prosecution case reveals that you on 20-7-1981 at about 1 p. m. have taken a cash of Rs. 4500.00 and a gold necklace In cheating the wife of the informant Adikanda Sahu. You have given several false statements for releasing the murderer. You have taken the gold necklace from Swarnalata Sahu and cash with the expression that you would put her in grave situation if she would not give you the cash and gold necklace. What have you got to say ?

P. Ws. deposed that you have given false statements before the wife of the informant. You have given terrific expression before her that if she would not give the cash amount to you, she would be put to grave situation. You have taken cash of Rs. 4500.00 and gold necklace from the wife of the informant from her house when her husband was in the school at that time who is a teacher. What you are to say ?'

It was nobody's case that accused had given any statement for releasing any alleged murderer. There was also no evidence by any of the P. Ws that the accused threatened Swarnalata Sahu (P. W. 3) that he would put her in grave situation if she did not give cash and necklace. The purpose of examining an accused is to bring to his notice the substance of accusation. As held by me in the case of Nidhi Sahu v. State reported in 70 (1990) CLT 558, there is a purpose in the examination of the accused and this has been reduced to a mockery in the instant case. The substance of accusation cannot be said to have been indicated to the accused. The entire prosecution evidence should not be encapsulated into few question;, without relevant details being indicated. Section 313 of the Criminal Procedure Code, 1973 (in short the 'Code') casts a duty on the Court to put, in any enquiry or trial, questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. As a necessary

corollary it follows that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately. This view of mine finds sustenance from the decision of the Supreme Court in AIR 1976 SC 2140 : S. Narayan Singh v. The State (Delhi Admn.), Perfunctory questioning adds to the vulnerability of conviction, The prosecution case has been rendered vulnerable on both the scores and therefore, conviction of the petitioner is interdicted. He is entitled to acquittal.

6. In the result, the revision is allowed, conviction and sentence as awarded by the Courts below are set aside and the petitioner is acquitted. Fine, if any realised be refunded to the petitioner. The bail bonds be discharged.

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