

Rathi Das and ors. Vs. the State

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Court : Orissa

Decided On : Jun-17-1974

Reported in : 1975CriLJ1393

Judge : S. Acharya, J.

Appellant : Rathi Das and ors.

Respondent : The State

Judgement :

S. Acharya, J.

1. The three appellants were committed to sessions in one commitment proceeding and one set of charge under Section 436 read with Section 34, I.P.C. was framed against all the three appellants in S. T. No. 16/27 of 1972 by the Assistant Sessions Judge, Balasore, and he in one trial found all the three appellants guilty of the aforesaid charge framed against them and sentenced each of them thereunder to undergo R. I. for five years and to pay a fine of Rs. 500, in default to undergo R. I. for a further period of six months. After conviction, each of the appellants separately preferred the three jail appeals as shown above against the judgment of conviction passed by the Assistant Sessions Judge in S. T. No. 16/27 of 1972. Mr. S. C. Lal, Advocate of the local bar, who was engaged amicus curiae to appear for all the three appellants in the abovementioned three criminal appeals, addressed one set of argument on behalf of all the three appellants. So

all the three criminal appeals are hereby being disposed of by this one common judgment.

2. The accused persons and P.W. 9 were ill disposed towards each other since a few years prior to the date of occurrence. On the report of P.W. 9 the police instituted a G. R. case (G. R. No. 498/69) against the accused persons for causing grievous injury to P.W. 9. In the said case the accused persons were acquitted. Again at the instance of P.W. 9 the police initiated a proceeding under Section 107, Cr. P. C. against the accused persons and some others, and that proceeding was dropped after some time, It is alleged by the prosecution that on 1-6-71 the accused persons abused P.W. 9 and his wife in filthy language and also assaulted P.W. 9 on that occasion. P.W. 9 states that he informed that matter to the police. The prosecution case in short is that after the aforesaid incident in village Palasia on 1-6-71, P.W. 9, being afraid of the accused persons, left that village and went away with his wife to village Raisuan (about more than half a mile from village Palasia) and there stayed in the house of his cousin brother, P.W. 5. Thereafter P.W. 9 engaged Mangal Singh (P.W. 8) to watch his house in village Pajasia at night. On 12-6-71, i.e. on the night of occurrence, the accused persons came to the house of P.W. 9 by about midnight, and threatened P.W. 8 with dire consequences and asked him to immediately go away from that place. On being threatened thus by the accused persons P.W. 8 left that place. While he was going away towards village Raisuan to inform about the matter to P.W. 9, he (P.W.8) from some distance noticed that the house of P.W. 9 was set on fire by the accused persons. Without raising any hullah or informing anything to anybody in village Palasia he went away to village Raisuan and there informed P.W. 9 and his cousin brother P.W. 5 about the incident. On receiving the aforesaid information P.Ws. 5 and 9 went to P.W. 6, who advised P.Ws. 5 and 9 to meet P.W. 1, a school teacher in the village. Thereupon P.Ws. 5 and 9 met P.W. 1 and all three of them made efforts to secure the services of the Fire Station people at Balasore. but their efforts went in vain. On the next day, as alleged, P.W. 9 went to the Basta Police Station and there submitted a written report about the incident scribed by P.W. 1 and signed by P.W. 9, and on that report the F.I.R., Ext. 1, in the case was drawn up. Very soon thereafter the police came to the village and after investigation and commitment proceeding the accused persons were tried,

convicted and sentenced as stated above.

3. The accused persons pleaded not guilty to the charge and they stated that due to previous enmity a false case was foisted against them by P.Ws. 5 and 9.

4. It is urged by Mr. Lal, the learned Counsel for the appellants, that on the evidence on record it is not established beyond reasonable doubt that the accused persons set fire to the house of P.W. 9 in the night of occurrence. Excepting P.W. 8 there, is no eye-witness to the occurrence. After going through his evidence along with that of P.Ws. 1, 6 and 9 it becomes extremely difficult for me to say that the prosecution has been able to establish the charge against the accused persons beyond reasonable doubt. The evidence of P.W. 8 on various important and salient features of the case does not get corroboration from the evidence of P.W. 9. Rather on certain important aspects of the case his evidence is directly in conflict with that of P.W. 9. According to P.W. 8 his wage in cash for watching the house was Rs. 2 per night, but according to P.W. 9, P.W. 8 was to get only Re, 1 per night as his wages for that job. P.Ws. 8 and 9 do not make consistent statements as to the actual number of days for which P.W. 8 actually watched the house of P.W. 9. P.W. 8 in his examination-in-chief stated that he watched the house for about 8 days, but in his cross-examination he stated that he guarded the said house for two nights and the occurrence took place on the third night. While P.W. 8 stated as above P.W. 9 stated that P.W. 8 watched his house for about 6 days, it is also significant to note that though he allegedly guarded the house for some days, he, as stated by him, did not have any talk with any of the villagers of Palasia during the period he guarded that house. He has also stated that during the days he was watching the house of P.W. 9 in village Palasia, none of the villagers of that village either saw him or had any talks with him during that time. P.W. 8 is a man of village Bachhada, and it sounds improbable that he would come unnoticed to village Palasia to watch the house of P.W. 9 and would go back from that village without coming in contact in any way with any of the villagers of that village. P.W. 8, as it appears from his evidence, knew well that P.W. 9 had to go away from village Palasia as the accused persons very often quarrelled with him and his wife and also assaulted him on one occasion. That being so it was not ordinarily expected of him not to make any contact with anybody in village Palasia

and to take the risk of coming to and going out of that village at night all by himself and watching the house alone for the whole night. Any outsider like P.W. 8 in that village, and entrusted, if at all, with the job of watching a house at night of another person, who had enemies in the village, was expected to avail of all possible opportunities to come in contact with some villagers of that village, if not for anything else, at least for his own safety or for timely help.

5. Apart from the above, it is also seen from the evidence of P.W. 8 that after he was driven out from the house of P.W. 9 by the accused persons and he saw thereafter that the accused persons set fire to the house of P.W. 9 he did not raise any alarm or inform any of the villagers about the occurrence and stealthily Went away to village Raisuan, about more than half a mile away from village Palasia. In his cross-examination he stated that out of fear he did not raise any hullah in village Palasia. But this explanation does not appeal to common sense and sounds as a very improbable proposition. If he was really afraid of the accused persons he could have at least informed about the alleged acts of the accused persons to at least some of the villagers at some distance away from the house of P.W. 9 before going away to village Raisuan. Moreover, apart from P.Ws. 5 and 9 nobody saw him anywhere in village Palasia or Raisuan in the night of occurrence. His plea that after informing P.Ws. 5 and 9 about the occurrence he got fever and so he remained quietly in the house of P.W. 5 in the night of occurrence does not inspire confidence. The above unsatisfactory features create doubt on the evidence of P.W. 8.

6. There is yet another incongruity in the evidence of P.Ws. 8 and 9. Whilst P.W. 8 states that there were no house-hold articles in the house of P.W. 9, P.W. 9 states that he had kept in his house at Palasia some paddy, utensils, fuel, husk and some other house-hold articles and locked that house; and when he asked P.W. 8 to watch his house he informed P.W. 8 that he had left the abovementioned articles in that house. The above incongruity in their evidence militates against the veracity of P.W. 8 and also that of P.W. 9.

7. Apart from the abovementioned contradictions, deficiencies and frailties in the prosecution evidence it is also seen from the evidence of P.W. 8 that he was

closely associated with P.W. 9 in private life. P.W. 8 has admitted in his cross-examination that one of the sons of P.W. 9 was staying in his house and he was rearing up that child in his house. That shows that P.Ws. 8 and 9 were very closely associated with each other, if there was so much of intimacy between the two it sounds somewhat improbable that P.W. 9 would engage P.W. 8 on payment of wages to watch his house and P.W. 8 would agree to such a proposition. Mr. Lal's suggestion that the intimacy between the two enabled them to falsely implicate the accused persons cannot be lightly brushed aside in view of the various frailties and unsatisfactory features in their evidence. There is again a discrepancy in the evidence of P.Ws. 8 and 9 on the above aspect of the matter. Though P.W. 8 admitted the above fact in the categorical term stated above, P.W. 9 in his deposition has flatly denied the said fact.

8. Apart from the above, there are other unsatisfactory features in the prosecution evidence. After P.Ws. 5 and 9 received information about the occurrence from P.W. 8 in village Raisuan, they went to the house of P.W. 6 and informed him about the occurrence. But P.W. 6 in his cross-examination has stated that P.W. 9 did not then name anybody as the person setting fire to his house. That shows that P.Ws. 5 and 9 did not know till then as to who actually set fire to the house of P.W. 9. From the above fact it can be deduced that P.W. 8 had not informed P.Ws. 5 and 9 as to who set fire to the house. This conclusion also finds support from the entry 'unknown' made in the formal F.I.R. against column 2 wherein the name and residence of the accused is to be mentioned. From that it appears that the Officer-in-charge of the police station was not informed about the names of the accused persons when information about the incident was lodged at the police station on 14-6-71. In the statement on the plain paper attached to the formal F.I.R. it is stated that the accused persons assaulted P.W. 9 on a previous occasion. Later on in that statement it is mentioned that the persons who assaulted P.W. 9 on the previous occasion set fire to his house. In view of the aforesaid entry against column 2 made by the Officer-in-charge of the police station himself, the said statement in the plain paper becomes an irreconcilable proposition.

9. Though P.Ws. 5 and 8 stated that P.W. 6 went to village Palasia in the night of occurrence to extinguish the fire on the house of P.W. 9, P.W. 6 says that he went

to the spot only on the next day morning.

10. Apart from the above unsatisfactory features in the prosecution evidence, the F.I.R. in this case was lodged at about 10 A. M. on 14-6-71 though the occurrence took place by about the midnight of 12/13-6-71,

In Thulia Kali's case reported in : 1972 CriLJ1296 their Lordships of the Supreme Court have observed:

The object of insisting upon prompt lodging of the report to the police in respect of commission 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 the advantage of spontaneity, danger also 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.

P.W. 9 who lodged the F.I.R. in this case has in no way explained the delay in lodging the said F.I.R.

11. P.W. 9 moreover has stated that he got the F.I.R. written out by P.W. 1 and took it to the police station on the next day of the occurrence (i.e. on 13-6-71) and submitted the same before the Officer-in-charge, His evidence to that effect is falsified by the fact that the said F.I.R. was lodged on 14-6-71 and not on 13-6-71. Moreover, P.W. 1 nowhere states that it was he who wrote out the F.I.R.

12. Thus on a perusal of the prosecution evidence I find various unsatisfactory features therein due to which it becomes difficult for me to place reliance on the prosecution allegation against the accused persons. Because of the aforesaid and some other deficiencies and unsatisfactory features in the prosecution case I am inclined to hold that the prosecution has not been able to establish its case against the appellants beyond reasonable doubt. Accordingly the appellants are en-titled

to the said benefit of doubt on which they are liable to be acquitted of the charge framed against them.

13. On the aforesaid discussions and considerations, the conviction of the appellants under Section 436 read with Section 34, I.P.C. and the sentence passed against them thereunder have to be and are hereby set aside and they are acquitted of the same. They be set at liberty forthwith.

All the three appeals accordingly are allowed.

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