

Santanu Kumar Sadangi Vs. the State

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Court : Orissa

Decided On : Jun-27-1989

Reported in : 1989CriLJ2355

Judge : K.P. Mohapatra, J.

Appellant : Santanu Kumar Sadangi

Respondent : The State

Judgement :

K.P. Mohapatra, J.

1. The appellant has challenged the order passed by the learned Additional Sessions Judge, Sambalpur, convicting and sentencing him under Section 353, I.P.C. to undergo rigorous imprisonment for six months.

2. Prosecution case in brief is that the informant (PW 3) was working as Special Railway Magistrate posted at Kantabangha. The appellant, a civil court employee was working as his Orderly Peon. PW 3 along with his wife, Bench Clerk, the appellant, a boy servant aged 10 years and the requisite police force had gone to Rourkela in connection with his duties. On 11-3-1980 alongwith the persons named above, he was returning from Rourkela to Sambalpur where he had fixed up a camp court by 331 Up passenger train. He was occupying a coupe of the first class bogie along with his wife and the boy servant. Another compartment in the

same bogie was occupied by the police staff, the Bench Clerk and the appellant. When the train stopped at Rengali Railway Station, some passengers got into a first class compartment without having any ticket. On being informed about it, PW 5 along with the T.T.E. (PW 6) and his Bench Clerk came to the compartment where the ticketless travellers were sitting, leaving his wife in the coupe. After finishing his work he returned to the coupe and was informed by his wife that during his absence the appellant had entered into the coupe and had attempted to bolt the door from inside. When she raised objection, the appellant came back, PW 3 saw the appellant in the corridor of the bogie and questioned him as to why he behaved in that fashion. The appellant, instead of feeling sorry and ashamed, threatened to assault PW 3. The train moved and stopped at Sambalpur Road Railway Station. When PW 3 was in the process of getting down from the train and was still in the corridor, the appellant brought out an open knife and attempted to stab and assault PW 3 by means of it. One of the constables, PW 4 caught hold of the appellant. On being prevented, the appellant assaulted PW 4 resulting in injuries. The other police personnel who were present intervened. PW 3 submitted a written report (Ext 3) about the incident, and after investigation of the case, charge-sheet was submitted against the appellant for having committed offences under Sections 307 and 332, I.P.C.

3. The appellant admitted the entire prosecution case in his statement under Section 313, Cr. P.C. except that he had denied having entered inside the coupe and making attempt to bolt the door from inside, threatened PW 3 at the first instance, brought out the open knife to stab and assault him at Sambalpur Road Railway Station later, and, when prevented, assaulted the constable (PW 4). In other words, he denied the main part of the occurrence.

4. The learned Additional Sessions Judge believed the evidence of PWs 3, 4, 5 and 7, all eye witnesses to the occurrence, and convicted the appellant for having committed the offence under Section 353, I.P.C. He was of the opinion that the appellant did not commit the offences under Sections 307 and 332, I.P.C. and acquitted him of the charges.

5. Learned Counsel appearing for the appellant took me through the judgment and the evidence of the material witnesses in extenso, and urged that independent witnesses were not examined. The wife of PW 3 and their boy servant were also not examined. Therefore, the prosecution case should be looked upon with suspicion. Learned standing counsel, on the other hand, urged that the evidence of eye witnesses to the occurrence, particularly that of PW 3, is unassailable and so it is bound to be believed that the appellant assaulted PW 3 in the manner alleged by the prosecution. He, however, pointed out that the appellant committed an offence under Section 355 and not under Section 353, I.P.C., and so the conviction should be altered accordingly without change of the sentence. The contentions require careful examination.

6. Having carefully read and considered the judgment of the learned Additional Sessions Judge, I find that he has very fairly dealt with the case and has properly appreciated the evidence of the prosecution witnesses. He reverted his attention to the substratum of the prosecution case and believed the evidence of PWs 3, 4, 5 and 7, all of whom were eye witnesses to the occurrence. I have also read and considered the evidence of PW 3. It will appear from his evidence that on 11-3-1980 he was returning from Rourkela by 331 Up passenger train and was to detrain at Sambalpur Road Railway Station where he had fixed up a camp court on the next day. He had occupied a coupe of the first class bogie along with his wife and a boy servant aged about 10 years. The appellant along with the Bench Clerk and the police staff were in occupation of another compartment in the said bogie. At Rengali Railway Station on being called by the T.T.E. he went out of the coupe in order to attend some urgent work, because some ticketless travellers had entered inside a first class compartment. When he came back to the coupe, he was informed by his wife that in his absence the appellant had entered inside and had attempted to bolt the door from inside. He found the appellant in the corridor and questioned him as to why he behaved in that manner. The appellant threatened to assault him. At that time he was not armed with any weapon. When the train stopped at Sambalpur Road Railway Station, he was moving inside the corridor to get down from the train. At that time the appellant came near him with a knife in his hand and raised it to assault. He brought the knife from his waist. PW 4 who was nearby caught hold of the appellant. The other constables also came and

intervened. There was a tussle between the appellant and the constable, in course of which PW 4 sustained injuries. He submitted a report (Ext. 3) at the G.R.P.S. It will appear from the cross-examination that nothing substantial was brought out to disbelieve him. His evidence has been corroborated by the constables (PWs 4, 5 and 7), according to whom, the appellant with an open knife in hand attempted to assault PW 3. The evidence of PW 4 in particular is material, because it was he who caught hold of the hand of the appellant, as a result of which the latter could not inflict the stab wound on PW 3. The prosecution evidence would disclose that even on the evidence of PW 3 alone, the case can well be said to have been proved. It is hard to disbelieve the evidence of a Judicial Officer working as Special Railway Magistrate who was not shaken in any manner in the cross-examination. I would, therefore, reiterate and agree with the conclusion of the learned trial Judge that the prosecution established beyond reasonable doubt that the appellant with an open knife in his hand attempted to assault PW 3.

7. As rightly pointed out by the learned Standing Counsel, the case comes within the ambit of Section 355, I.P.C. Conviction, therefore, can be altered from Section 353 to Section 355, I.P.C. and thereby no prejudice can be caused to the appellant, because the main ingredients of both the offences are identical. I find no ground to interfere with the sentence either which, in the facts and circumstances of the case, in my view, was lenient, because the appellant was working as Orderly Peon and betrayed the trust reposed on him.

8. In the result, the appeal is dismissed. Conviction of the appellant is altered from Sections 353 to 355, I.P.C. Sentence is affirmed.