Narasingha Gopal Vs. State of Orissa

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Court : Orissa

Decided On : Jun-22-1998

Reported in : 86(1998)CLT717; 1998CriLJ3587; 1998(II)OLR114

Judge : P.K. Misra, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307 and 342

Appeal No. : Criminal Revision No. 60 of 1995

Appellant : Narasingha Gopal

Respondent : State of Orissa

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : M. Mishra, U.C. Pattnaik, P.K. Das, B. Mishra and D.S. Mohanty

Disposition : Petition allowed

Judgement :

P.K. Misra, J.

1. The petitioner challenges the order of conviction under Section 307, Indian Penal Code, and sentence of two years' rigorous imprisonment. Initially, the petitioner and two other accused persons faced trial under Sections 307, 342/34,

Indian Penal Code, on the allegation that they had wrongfully confined P.W. 4 and had attempted to commit the murder of P.W. 1, the informant. The trial Court convicted the three accused persons including the petitioner under Sections 307, 342/34, Indian Penal Code, and sentenced each of them to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1 ,000/-, in default, to undergo rigorous imprisonment for two months under Section 307/34, Indian Penal Code, and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for one month under Section 342/34, Indian Penal Code. In appeal, the appellate Court allowed the appeal in part and set aside the conviction under Section 342/34, Indian Penal Code, in respect of ail the three accused persons and also acquitted the two other co-accused persons of the charge under Section 307, Indian Penal Code. While confirming the conviction of the petitioner under Section 307, Indian Penal Code, the appellate Court reduced the sentence to two years' rigorous imprisonment for one month. The aforesaid order of conviction and sentence, as imposed by the appellate Court, is under challenge in the present revision.

2. As per the prosecution case, while the informant (P.W.I) was sleeping on the verandah of his house in the night of 28.12.1992, one person removed the cloth from the face of the informant and showed an axe. It is alleged that the present petitioner assaulted on the head, left hand and leg of the informant with the axe. On hearing hullah, when his wife and co-villagers came to the spot, the accused persons left the place of occurrence. On these allegations, a case was registered under Section 307/34, Indian Penal Code. However, in course of the investigation, it transpired from the statement of P.W. 4 that he had been illegally confined in the night of occurrence by the accused persons and ultimately, charge sheet was submitted against the three accused persons under Sections 307. 342/34, Indian Penal Code.

3. The plea of the accused persons was one of denial. It was pleaded by the present petitioner and his father, co-accused Gobardhan, that they were not present at the place of occurrence at the time of the alleged occurrence.

4. The injured-informant was examined as P.W. 1. His wife claiming to be an eye witness was examined as P.W. 3. P.W. 4 who is a post-occurrence witness so far as assault on P.W. 1 is concerned has also deposed about his alleged wrongful confinement. P.W.2 is a doctor. P.W. 8 is the Investigating Officer and the other witnesses are the seizure witnesses.

The present petitioner has examined D.W. 1 in respect of his plea of alibi. He has also examined himself as D.W. 3. D.W.2 is a witness who has supported about the plea of alibi of co-accused Gobardhan.

5. Since other two accused persons have been acquitted of all the charges by the appellate Court, it is not necessary to discuss the evidence as against them. The appellate Court has not placed any reliance on the evidence of P.Ws. 3 and 4. However, relying upon the evidence of P.W. 1, the injured-informant, as corroborated by the evidence of doctor, the appellate Court has convicted the present petitioner under Section 307, Indian Penal Code.

6. In the present revision, the learned counsel for the petitioner has raised the following contentions :

(i) The prosecution has suppressed the earliest oral report which was reduced to writing;

(ii) The prosecution case should be discarded in view of the contradictions in the evidence of P.W. 1 and hi wife (P.W. 3). Moreover, adverse inference should be drawn for non-examination of Motisingh; and

(iii) The evidence of the petitioner, examined as D.W. 3, as supported by the evidence of D.W. 1 indicated that the petitioner was not present at the place of occurrence and as such, the prosecution case should be discarded.

The learned counsel for the State has supported the decision of the lower appellate Court and has submitted that there is no scope for interfering with the order of conviction in exercise of revisional jurisdiction.

7. According to the evidence of P.W. 8, on receipt of a written report (Ext. 7) from the informant, he treated the same as F.I.R. and Ext. 7/2 is the formal F.I.R. drawn by him. The evidence of P.W. 1, the informant, is as follows :

'.....Next morning, I orally reported the incident to the police at the P.S., which was reduced into writing and I gave my L.T.I, on the same.....'

In cross-examination, he has stated that : -

'..... I had not got my written report scribed through any one. Again says, after I was medically examined in the evening, one Patnaik Mast of Kendugudia scribed my written report, on which I gave my L.T.I.. It was then about 5.00 P.M. or 6.00 P.M. On the direction of the Police, I got the written report scribed.....'

Reading together the aforesaid evidence of the informant himself along with the evidence of P.W. 8, it is apparent that the written report which had been scribed by one Patnaik Mast of Kendugudia was treated as the FIR. From the evidence of P.W. 1 it is further clear that the said written report was scribed in the evening at about 5.00 P.M. or 6.00 P.M. The FIR is purported to have been lodged in the morning at about 8.30 A.M. From the evidence of P.W. 1 in examination-in-chief, it is apparent that an oral information had been lodged which had been reduced to writing. If the written report as scribed by one Patnaik Mast (not examined) was apparently scribed around 5.00 P.M. or 6.00 P.M. in the evening, what has happened to the oral report given in the morning which had been reduced to writing. The only possible conclusion is that the oral report given in the morning which was reduced to writing has been suppressed and subsequently a written report scribed by one Patnaik Mast has been treated to be the FIR. It is further apparent that though such written report as scribed by Patnaik Mast could have been given only after 5.00 P.M. or 6.00 P.M. in the evening, the Investigating Officer has madean endorsement as if the said written report was lodged at 8.30 A.M,, in the morning. Suppression of the oral information as well as the attempt by the Investigating Officer to substitute a subsequently scribed report as the FIR creates a strong doubt regarding the veracity of the prosecution case. In the present case, it is apparent that the prosecution has suppressed the earliest oral information which had been reduced to writing and has tried to treat a

subsequently scribed written report as the FIR. Such conduct on the part of the prosecution has created sufficient doubt regarding the veracity of the FIR itself.

8. From the evidence of P.W. 1 himself, it is apparent that one Motisingh was sleeping near him at the time of occurrence. From the evidence of the Investigating Officer, it is apparent that the aforesaid Motisingh was examined by the investigating authority, yet he has not been cited as a charge-sheet witness. The evidence of Motisingh who was sleeping near the injured and must have waken up during the incident, would have been relevant for the prosecution, more so, in view of the fact that the appellant Court has not placed any reliance on the evidence of P.W. 3, the wife of the injured, as well as P.W. 4, a co-villager. Moreover, there are some contradictions in the evidence of P.W. 3 regarding the assault on P.W. 1. In view of such contradiction in the evidence of P.W. 3, who claims to be an eye witness, it would have been proper on the part of the prosecution to examine Motisingh.

9. The accused-petitioner has tried to prove that he was not present at the time of occurrence. The appellate Court has merely noticed the evidence on this aspect, but has not given any particular reason to discard the evidence of D.Ws. 1 and 3. D.W. 1, has stated that in the night of occurrence, he along with the accused and Sarpanch were present in the Panchayat Office as they were preparing for the visit of Panchayat officials on the next day. Except making certain bald suggestions, nothing has been elicited from the evidence of D.W. 1 to discard his evidence to the effect that the accused was present at the Panchayat Office. As admitted by P.W. 1 himself, the distance between the Panchayat Office and his village was considerable and it would take about five hours to cover the distance by walking. It is, of course, stated by D.W. 1 that he went to sleep at about 10 P.M. The present petitioner who has examined himself as D.W. 3 has categorically stated that he himself was present in the said office throughout night. Apart from the fact that such evidence has not been disclosed in any manner, even assuming that the accused was present only till 10 P.M., it would not have been possible on his part to come to the place of injured by the time of occurrence which is stated to be the midnight of 28.12.1992. Such evidence regarding the absence of the petitioner at the place of occurrence at the time of the alleged occurrence coupled with the

suppression of oral FIR given in the morning and non-examination of relevant witnesses and contradictions in the evidence of P.Ws. 1 and 3, raise sufficient doubt regarding the complicity of the present petitioner.

It is, of course, true that both the Courts below have convicted the present petitioner and ordinarily, a revisional Court should be slow to interfere with the question of appreciation of evidence in such matters. However, as already noticed above, certain salient features have not been considered by the Courts below and as such, it is a fit case where in exercise of revisional jurisdiction, the order of conviction is to be set aside.

10. In the result, the Criminal Revision is allowed and the orders of conviction and sentence passed by the Courts below against the petitioner are set aside.