

Sudhakar Sarangi Vs. State

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Court : Orissa

Decided On : Jul-10-1991

Reported in : 1992CriLJ1866; 1991(II)OLR272

Judge : A. Pasayat, J.

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

Appeal No. : Crl. Revision No. 619 of 1987

Appellant : Sudhakar Sarangi

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R. Mohapatra, D. Mohapatra, A.K. Kanungo and D.P. Dhalsamant

Judgement :

A. Pasayat, J.

1. Petitioner assails his conviction and sentence under Secs. 354/448 of the Indian Penal Code, 1860 (in short, I. P. C. ').

2. On the allegation that in the evening of 15-3-1982, the accused-petitioner trespassed into the house of the husband of the informant and outraged the latter's

modesty, the petitioner faced trial. The learned Judicial Magistrate, first class, Baripada, convicted him under Secs. 354/448, IPC and sentenced him to undergo rigorous imprisonment for 6 months and 3 months respectively for outraging the modesty of the informant and for committing house trespass, and the sentences were directed to run concurrently.

3. Prosecution case is that on the pretext of finding out whether the husband of the informant (Minaketan) was present at home on the date of occurrence, the accused went to his house and when asked the informant came out of the house. The accused enquired about Minaketan's presence from her to which she answered in the negative, Instead of going out, the accused went behind her and put out the lantern which was burning inside the house, and caught hold of her right hand and while pulling the same, asked the informant to come outside, with an ulterior motive. In course of such pulling the bangles worn by the Informant were broken and she suffered from scrap injuries on her right fore-arm. On hearing shout of the informant, one Harihar Das (PW 5) came running and saw bleeding injuries on the hand of the informant. After Minaketan's return, first information report was lodged on 16-3-1982 at about noon. The informant was medically examined on 17-3-1-1982, and after completion of investigation to, charge sheet was submitted against the accused-petitioner who faced trial.

4. The plea of the accused was one of denial of the occurrence as alleged. According to him, however, he had filed a criminal case against Harihar alleging that he had assaulted him. The scenario as described by him is that he had advanced some money to Minaketan for supply of a sal log, and when he went to enquire about as to why the sal log was not delivered, assault was made on him. According to him, the case filed by the informant was a counterblast to the case filed by him earlier.

5. The learned trial Judge on consideration of the evidence of seven witnesses examined by the prosecution and three examined by the defence, came to hold that the petitioner was guilty. He, accordingly, convicted and sentenced him as aforeindicated. In appeal, the learned Sessions judge while confirming the conviction modified the sentence to two months' R. I. for the offence under Sec,

354, IPC and one month's R. I. for the offence Under Section 448, IPC .

6. The learned counsel for the petitioner submits that the evidence as led by the prosecution is highly discrepant and is improbable It is also submitted that the statutory mandates of Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') are not complied with.

The learned counsel for the State, however, submits that there has been proper evaluation of evidence and the guilt of the petitioner has been established beyond the shadow of doubt. It is, therefore, submitted that there is no scope for interference in this revision application, and a detailed analysis of evidence is not permissible.

7. The learned counsel for the petitioner has rightly pointed out the vulnerability of the prosecution case in view of slipshod manner in which the statement of the accused was recorded Under Section 313, Cr. P. C.

The only important question put to the accused is as follows :

Q. 1 It is transpired from the evidence of PWs that in the month of last Chaitra you outraged the modesty of Bharati Das by entering into her house. What have you got to say ?

A.._No.

Section 313 of 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 It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and, failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question

has. been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice, or prejudice. Similar view was also taken in 70 (1990) CLT 558 :Nidhi Sahu v. State. Supreme Court also expressed similar view in AIR 1976 SC 2140 : S. Harnam Singh v. The State, while dealing with Section 342 of the Code of Criminal Procedure, 1898 (corresponding to Section 331 of the Code). Non- indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. A bald statement asking the accused whether he committed an act of indiscretion like outraging modesty of a woman without even indicating when the alleged occurrence is supposed to have taken place is not compliance of statutory mandate. Recording of a statement of the accused Under Section 313 is not a purposeless exercise. The petitioner, therefore, has been materially prejudiced.

8. In certain cases when there is perfunctory examination Under Section 313 of the Code, the matter is remanded to the trial Court with a direction to re-try from the stage at which the prosecution was closed. In the instant case, I find that the occurrence took place about a decade back. No useful purpose would be served if the matter is remanded to the trial Court for retrial. In the peculiar circumstances, therefore, I set aside the order of conviction and sentence awarded to the petitioner

The revision accordingly disposed of, Bail-bond be discharged.

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