Nandu Vs. State

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Court : Himachal Pradesh

Decided On : Sep-21-1978

Reported in : 1979CriLJ342

Judge : T.U. Mehta, C.J.

Appellant : Nandu

Respondent : State

Judgement :
ORDER

T.U. Mehta, C.J.

1. The petitioner is convicted and sentenced for committing the offence under Section 325 I.P.C. He is sentenced to simple imprisonment of two months for this offence.

2. Simple facts of the case are that according to the prosecution the petitioner-accused is a nephew of the injured person Lahari Ram and litigation between the two is going on about some dispute over the agricultural land. It is said that on 1-12-1976 at about 4 P.M. when Lahari Ram was basking in sunlight along with his family members, namely, his wife Achhari Devi and daughter-in-law Biasa Devi, the accused suddenly came from behind with a Danda and gave Danda blows to Lahari Ram. Lahari Ram began to bleed. At the relevant time there was some marriage at the adjacent village with the result that many persons of the village,

including the neighbours and some family members of the injured person had gone to attend that marriage, '.therefore, Lahari Ram could not avail of the assistance of other villagers or neighbours. Ha was, however, taken to hospital at Sar-kaghat by his wife Achhari Devi and admitted in the hospital on the next date, that is, 2-12-1976. The doctor on examination suspected some fracture. On X-ray examination it was found that transverse processes of first, second, third and fourth left lumber vertebrae were fractured.

3. It was after the injured was admitted in hospital that his wife Achhari Devi lodged the report about the incident at the police station on 5-12-1976 at about 2 P.M.

4. The prosecution relied upon the evidence of Lahari Ram himself, his wife Achhari Devi and his daughter-in-law Biasa Devi, who were the eye-witnesses of the incident.

5. The learned trial Judge has passed the order of conviction and the said order is confirmed by the learned Additional Sessions Judge, Mandi in appeal. Being aggrieved by this order, the petitioner-accused has preferred this revision application.

6. The learned Advocate of the petitioner strenuously contended that the information which is lodged at the police station on 5-12-1976 is very late because the incident took place on December 1, 1976. He contended that looking to the decision given by the Supreme Court in Thulia Kali v. State of Tamil Nadu, re-ported in : 1972 CriLJ1296 this late filing of the information about the offence is fatal -to the case, H further contended that it was for the prosecution to explain this delay and since the prosecution has failed to explain this delay in filing the information about the incident, the accused should be given benefit of doubt and should be acquitted.

7. I have gone through the whole record of the case and I have heard the learned Advocate of the petitioner even on merits. It is undoubtedly true that the information has been lodged four days after the incident. Therefore, the first question to be determined is whether this delay in filing the information is fatal

looking to the facts of the present case, Now the Supreme Court in the above referred decision has nowhere said that delay in filing the information must necessarily be considered as fatal to every prosecution case. It is undoubtedly true that delay in filing the information of the crime is an important factor which the court has to take into consideration while deciding whether the evidence produced by the prosecution is reliable or not. If a reference is made to the decision of the Supreme Court in the above referred case, it will be found that the facts of that case revealed that the incident was known by several villagers and yet none of them lodged any report against the accused of that case. The Supreme Court has then observed that these villagers did not know about the actual assailant of the deceased and on the following day their suspicion fell on the accused and accordingly they involved the accused in that case. The Supreme Court has, thereafter considered the importance of the first information report and has rightly observed that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial.

So far as the principle is concerned, there can be no dispute about this proposition. But the question is whether the court should come to the conclusion of acquittal the moment it is found that the first information report was delayed. In my opinion, there is nothing in the decision of the Supreme Court to show that acquittal should automatically follow the moment it is found that the first information report is delayed. The court has to consider the question of delay in filing the first information report in the set of the special circumstances of each case and should give due importance to the fact of the first information being delayed and should appreciate the evidence adduced in the case in the light of this aspect.

8. Now speaking of the facts of this case, it is satisfactorily shown by the prosecution that there had been a good deal of bad blood between the parties. The incident took place in broad day light and, therefore, there was no question of any mistaken identity of the assailant of the injured. The injured himself has given deposition and considering the facts of the case I have no doubt in my mind that the injured was in a position to fix the identity of the person who gave blows to

him. There is nothing in evidence to show that Achhari Devi, the wife of the injured and Biasa Devi the daughter-in-law of the injured were not present at the time of the incident. They also must have been able to fix the identity of the assailant. The fact that the injured person received several injuries resulting in fracture of his bones can also not be disputed because the same is sufficiently proved through the deposition of P.W. 5 Dr, Roshan Lal.

9. Under the circumstances, the question is if the injured and the two eyewitnesses could identify the assailant, why should they rope in a wrong person in this case, allowing the real assailant who was responsible for these injuries to escape. There is no satisfactory answer to this question. In ordinary course the person who received the injuries at the hands of his assailant would never like to let go the assailant and involve a person who is in no manner responsible for hurting him. Under the circumstances, even though the injured and the two eye-witnesses are interested persons, there would be no objection in relying on their testimony.

10. It is evident that the injured person Lahari Ram was suffering from the pain and agonies of the injuries received by him. His wife, Achhari Devi and daughter-in-law Biasa Devi were two illiterate ladies who could have immediately communicated the news of the incident to the police. But it is obvious that their main worry would be to look after the injured person rather than the approaching the police station. Under the circumstances, if Achhari Devi has taken some time in approaching the police station for the purpose of filing a complaint, that by itself, is not so abnormal as to discard the whole of the prosecution story as concocted one. The duty of the members of the family is first to attend upon the injured person and to give medical aid to him. At any rate, giving late information at the police station about the incident is in essence the evidence of conduct. Therefore, before the person who gave the late information is condemned on the ground of conduct, opportunity should be given to that person to explain his conduct. Reference to the cross-examination of Achhari Devi shows that no question is put to her in her cross-examination to give her any opportunity to explain why she filed the first information so late. Under the circumstances I find that filing of the first information report late is not fatal in this case.

11. The defence of the accused is that even he had gone to the nearby village to attend the marriage ceremony, and therefore, at the time when the incident is said to have taken place, he was not present. This is an evidence of alibi. It is not necessary to discuss this evidence of alibi, for two reasons, namely, the prosecution has satisfactorily established its case through positive evidence and, secondly, the only thing which the accused has shown in his defence evidence is that he had attended the marriage. It is very likely that he had attended the marriage after the commission of this offence, because the marriage ceremony took place at a nearby village where he could have gone immediately after the incident.

12. It was contended that the accused should either be given admonition or should be released on probation. I do not find sufficient reasons for releasing the accused on probation or altering the sentence because the sentence which is passed is simple imprisonment of' only two months.

13. For the reasons stated above, this revision application fails and the same is dismissed.