

Anadi Giri and ors. Vs. the State

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Court : Orissa

Decided On : Nov-02-1962

Reported in : 1963CriLJ826

Judge : R.L. Narasimham, C.J.

Appellant : Anadi Giri and ors.

Respondent : The State

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a revision against the appellate judgment of the Assistant Sessions Judge of Balasore maintaining the conviction of the three petitioners under Section 379 I.P.C. and the sentence of fins passed on them by the Second class Magistrate of Balasor', At the time of the admission of this revision petition, a Rule was issued on the petitioners to show cause why the sentence may not be enhanced to a substantive sentence of imprisonment, and they were given an opportunity of showing cause against their conviction as well.

2. The prosecution case was that plots Nos. 739 and 740 of village Jhadipipal P.S. Bhograi, in Balasore district, were in possession of one Lakhmi Narayan Patro (P.W. 3) and his joint brother Ramkrushna Patro, and that Lakhmi-narayan had raised paddy crops on the same during the cultivation season of 1959. The petitioners had previous disputes with him in respect of some other plots which had resulted in a proceeding under Section 145 Cr. P.C. which terminated in favour of Lakhmi Narayan Patro. On account of this previous enmity the petitioners were alleged to have gone on the disputed fields at about 4.30 a.m. on. 25-11-59 accompanied by about 200 persons and to have harvested the paddy crops even though they were not fully ripe. Their action was noticed by one Naktodi Giri (P.W. 1) who immediately ran to Lakhmi Narayan and informed him about the incident.

Soon afterwards a Police Constable of Bhograi, namely Panchanan Das (P.W. 7) who was then on patrol duty in that area happened to pass that area and Lakhminarayan immediately told him about the high-handed action of the petitioners. The Constable thought that he could prevent the commission of the offence and hence he went to the spot at once, without sufficient men to help him, and asked the petitioners to stop harvesting the paddy but they would not listen; and when he insisted on their desisting from harvesting petitioners Anadi Giri and Kali Giri were alleged to have caused him injuries with their latnis, and petitioner Banamali Giri also chased him

and threatened to assault him. Finding that a big mob had collected at the place the Constable ran away and then lodged a station diary entry at Nampoo Police Outpost on 25-11-59 (See Ext. 3 station diary entry No. 231) on the basis of which a regular F.I.R. was subsequently drawn up and the case was investigated. The Constable (P.W. 7) was also medically examined by Dr. B.K. Basu (P.W. 6) who found bruise and swelling on his body. The injuries were simple and were said to have been caused by a hard and blunt weapon.

3. The petitioners' defence was that no such incident took place, that they were engaged in peacefully harvesting the paddy crops raised by them, and that the entire case was foisted on them due to the machinations of Lakhminarayan Patro who was their bitter enemy.

4. As regards the actual incident - which was alleged to have taken place at about 4.30 a.m. during the night of the 24th-25th November 1959 the most important witness is undoubtedly the Police Constable (P.W. 7). He has spoken about his being informed by Lakhminarayan about the harvesting of the crops by the petitioners, his going to the spot and seeing the mob collected there, and the assault on him while he asked the petitioners to desist from cutting the paddy. The medical evidence also shows that he was injured in the attack. It was argued with great vehemence that the Constable should not be believed because he was under the clutches of Lakhminarayan Patro who is a very rich man and influential man of the locality, nevertheless I see absolutely no reason why the evidence of this public servant should not be accepted as regards the actual occurrence.

5. To prove the charge of theft the prosecution must establish beyond reasonable doubt that the crops standing on the disputed fields were grown by Lakhminarayan Patro. Lakhminarayan has spoken about it and his canasta (P.W. 2) also supported him. It is true that these witnesses are enemies of the petitioners and their evidence on the question of possession may require some corroboration. But P.Ws. 4 and 5 who have lands close to the disputed lands have supported their evidence on the question of possession; and their evidence has not been shaken in cross-examination. The strongest corroboration of the evidence of these witnesses on the question of possession is found in the evidence of the Constable, P.W. 7 to the effect that the paddy crops were then not fully ripe, and that at the time of cutting the paddy the petitioners' men were cutting the crop from the middle of the plants, Ordinarily a person who has himself grown paddy crops would not cut them unless they are fully ripe, nor would he leave uncut so much length of the stalks at the time of harvest. This shows that the aforesaid acts were committed, by persons who not having raised the crops themselves, had no compunction in acting in that manner because their main purpose was to injure their enemy. The lower Courts have believed the evidence of these witnesses on the question of possession and I also see no reason to take a different view. The defence witnesses were rightly disbelieved by the lower appellate Court.

6. The rule for enhancement was issued mainly because of the charge under Section 353 I.P.C. viz. assaulting a public servant in the discharge of his duty. This offence requires to be punished severely and a mere sentence of fine would not suffice. Hence the main question for consideration is whether on the evidence on record the charge under Section 353 I.P.C. can be said to have been made out against the petitioners. Mr. Mohanty contended that the Police Constable was not on duty inasmuch as the Command Certificate issued to him (Ext. 5) merely directed him to

patrol over the area with a view to watch the movement of bad characters and he was not entrusted with the duty of guarding the crops of the disputed fields. This argument does not appear to be correct because apart from the instructions contained in the Command Certificate it is the duty of every Police Officer to prevent the commission of a cognizable offence. Section 149 Cr.P.C. says that he shall, to the best of his ability, interpose and prevent the commission of such an offence. Similarly Section 23 of the Police Act, 1861, requires him to prevent the commission of 'offences'. Hence when Lakhminarayan Patro told the Constable that his crops were being cut away by the petitioners, the Constable was, in duty bound to go there and prevent the commission of the offence of theft. It was not his duty to carefully examine witnesses and come to a decision as to whether Lakhminarayan Patro had established that he was in possession of the lands and whether the petitioners were guilty of the offence of theft. These are all matters to be decided by law Courts subsequently. But on receipt of credible information there were reasonable grounds for him to believe that the petitioners were committing the offence of theft. The unearthly hour 4.30 a.m. at which the harvesting took place and the fact that the paddy crops were not fully ripe were sufficient for the Constable to believe that the petitioners were committing a cognizable offence of theft and therefore satisfied that the Constable was discharging his duty when he was assaulted.

7. But it was the duty of the prosecution also to establish that the petitioners knew that P.W. 7 was a Police Constable when he intervened. If he had gone there, with his uniform it may reasonably be inferred that the petitioners must have known that he was a public servant. But unfortunately the Constable was not questioned as to whether he was in uniform when he intervened and attempted to prevent the harvesting of paddy by the petitioners. The learned Government Advocate however urged that on the evidence of the Constable it was clear that news about harvesting of paddy was communicated to him just when he was returning from Patrol duty and there was thus not sufficient interval for him to remove the uniform prior to his reaching the spot. Unfortunately there is some gap in the evidence in this respect. The Constable should have been specifically asked as to whether he had removed his uniform when the news about the commission of the crime was reported to him by Lakhminarayan Patro or whether he was in uniform at that time. The benefit of this omission to question him must go to the petitioners.

8. It is true that even if the Constable was not in uniform, if the prosecution could show that the petitioners knew that he was a Police Constable the charge under Section 353 I.P.C. may be said to have been established as pointed out by the Nagpur High Court in *Lava v. Emperor* AIR 1917 Nag 231. But here there is no material on which such knowledge may be attributed to the petitioners. The Constable did not state that when he went to the spot he told the petitioners that he was a Police Constable on duty and that they should stop the harvesting of paddy as directed by him. There is no evidence to show that he disclosed his identity to the petitioners. In the absence of such evidence I must hold that the charge under Section 353 I.P.C. is not sustainable though the petitioners are guilty of the lesser offence under Section 352 I.P.C.

9. But as the rule for enhancement of sentence was issued in respect of the offence under Section 353 I.P.C. and that offence has not been established, I do not think this is a fit case for enhancement of the sentence for the offence under Section 352 or 379 I.P.C. The petitioners have been let off with a sentence of fine and there is no reason to reduce it further.

10. The rule for enhancement is discharged, the conviction and sentences are maintained and the revision petition is dismissed.

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