Dharmu Naik Vs. Rabindranath Acharya

LegalCrystal Citation : legalcrystal.com/529340

Court : Orissa

Decided On : Jan-16-1978

Reported in : 45(1978)CLT348; 1978CriLJ864

Judge : P.K. Mohanti, J.

Appellant : Dharmu Naik

Respondent : Rabindranath Acharya

Judgement :

P.K. Mohanti, J.

1. This is a complainant's appeal against an order of acquittal. The accused-respondent is a police officer who was posted as Officer-in-charge of Kok-sara Police Station in the district of Kalahandi at the time of occurrence.

2. In G. R. Case No. 351 of 1973 (wrongly registered as G. R. Case No. 361 of 1973 as deposed to by D.W. 1) the complainant and his brother (P.W. 3) were prosecuted Under Sections 294 and 323 of the IPC and Sections 24 and 25 of the Cattle Trespass Act. On 21-7-73 they surrendered in court and were ordered to be released on bail. The complainant's case was that on the same day he went ahead by a bus towards his village and P.W. 3 was to carry the bail order for delivery at the Police Station. The respondent was also travelling by the same bus up to Koksara Police Station. When the bus reached the Police Station the respondent forced the complainant to get down. He protested saying that he had been allowed bail. But the respondent dragged him out of the bus, took him to the Police Station and detained him there for the night and committed assault on him. Next morning P.W. 2 Madhusudan Chhatria went to the Police Station and produced the bail order, but the respondent threw it away and rebuked him. Then P.W. 2 returned to the village and made over the bail order to P.W. 3 Gouranga Naik who produced the same before the respondent, but he was taken to custody. Then the complainant and his brother were taken to Dharamgarh and were produced before the Magistrate who directed their release. Upon these allegations the respondent stood charged Under Sections 323 and 342 I.P.C.

3. The respondent denied the charge and contended that the case was foisted against him as he had seized some stolen paddy from the possession of the appellant in course of investigation of Koksara P. S. Case No. 58 of 1972 Under Section 379 I.P.C. He also contended that he arrested the appellant and his brother as they were accused in G. R. Case No. 351 of 1973 and they did not produce any bail order before him. He denied the allegation of assault,

4. At the trial, the complainant examined himself and five other witnesses. The respondent also examined one defence witness. The learned Magistrate on a consideration of the evidence led by both the parties came to hold that the accused had legally arrested the complainant as he was involved in a cognizable offence Under Section 294 I.P.C. and that the story of production of the bail order before the respondent was doubtful. He also disbelieved the allegations of assault. Accordingly he acquitted the respondent of both the charges. It is urged on behalf of the appellant that the findings of the learned Magistrate are against the weight of evidence on record and the order of acquittal is erroneous.

5. Ext. 2 is a certified copy of the order passed by the Magistrate, first class, Dharamgarh in G. R. Case No. 361 of 1973. It shows that the complainant and his brother surrendered in court on 21-7-73 and were allowed to be released on bail of Rs. 10001/- each with one surety for the like amount. It also shows that on execution of bail bonds they were released on bail and the Magistrate directed the office to intimate the bail order to the Officer-in-charge of the Koksara Police Station. P.W. 6 Lokanath Patra who is the Bench clerk of the Magistrate's court testified that on the same day a copy of the bail order was sent to the Officer-in-charge of the Koksara Police Station through P.W. 3 Gouranga Naik, He proved the entry in the despatch register (Ext. 1) which shows that an extract of the order passed in G. R. Case No. 361 of 1973 was despatched to the Officer-in-charge of the Koksara Police Station through Gouranga Naik who has put his signature against the entry in token of having received the extract of the order. The complainant, examined as P.W. 1, deposed that on 21-7-73 after he was allowed to be released on bail by the court he went ahead in the bus towards his village and his brother P.W. 3 waited to carry the bail order. P.W. 4 and the respondent were also travelling in the same bus. When the bus reached the Police Station the respondent forced P.W. 1 to get down and ultimately dragged him out of the bus though he expressed that he had been enlarged on bail. He also stated that P.W. 4 offered to stand surety for him, but the respondent did not listen to him and took him to the Police Station where he was detained for the night and was assaulted. In the next morning P.W. 2 Madhusudan Chhatria went to the Police Station with the release order and produced before the respondent who rebuked him and threw away the bail order. Thereafter P.W. 3 went with the bail order and produced it before the respondent, but he was taken to custody. Then both of them were taken to Dharamgarh and were produced before the Magistrate at his residence and the Magistrate directed the Officer-in-charge to release them as they were already on bail. The above evidence of the complainant has not been materially shaken by cross-examination. His evidence gains ample corroboration from the statements of P.Ws. 2, 3, 4 and 5.

6. According to P.W. 4 while he was travelling in the bus with the appellant and the respondent the latter dragged the appellant out of the bus near Koksara Police Station. He requested the respondent to release the appellant as he was already on bail and he also offered to stand surety for him if there was any other case against him, but the respondent abused and threatened him. Then he went to the village and informed the mother of P.W. 1. The only criticism against this witness is that he was a witness for P.W. 3 in a case against the respondent. In my opinion, this by itself is not sufficient to discard his sworn testimony, particularly when it finds corroboration from the statements of the other witness. It is noteworthy that the evidence of P.Ws. 1 and 4 to the effect that the respondent was travelling with them in the same bus on 21-7-73 and that the respondent took P.W. 1 to the Police Station by dragging despite the protests of P.Ws. 1 and 4 remained unshaken by cross-examination.

7. P.W. 2 is a disinterested and independent witness. He pledged his oath to state that being requested by the mother of P.W. 1 he took the bail order from P.W. 3 and went by a truck in the morning of 22-7-73 and delivered the bail order to the respondent, but he rebuked him and threw away the bail order. Then he returned to the village and handed over the bail order to P.W. 3 and informed him that the complainant was under police arrest. Nothing substantial has been elicited in his cross-examination so as to discredit his sworn testimony.

8. P. W. 3 stated that being informed by P.W. 2 that P.W. 1 had been detained at the Police Station he took the bail order from P.W. 2 and went to Dharamgarh and found that his brother had been detained in the office of the C. I. He produced the bail order before the respondent who abused him and took away the bail order from him and also arrested him. It was suggested to him in cross-examination that he had previously filed a case against the respondent and he frankly admitted the fact

9. P.W. 5 is also a disinterested and independent witness. He fully supported the evidence of P.W. 2 Madhusudan Chhatria. According to him, in his presence P.W, 2 produced an envelope addressed to the Sub-Inspector, Koksara Police Station saying that it contained the release order of the complainant, but the respondent refused to accept the same and so he went back. There was absolutely no suggestion far less any proof that he is either interested in the appellant or hostile to the respondent.

10. The evidence of the above witnesses clearly establishes that the respon- dent took the appellant to the Police Station by dragging him out of the bus on 21-7-73, detained him there for that night and on the next day he also arrested P.W. 3 though the bail order was produced before him and then he took both of them under custody to the residence of the Magistrate who directed their release forthwith.

11. The Magistrate's order dated 23-7-73 in Ext. 2 shows that on that date a petition was filed on behalf of the appellant and his brother alleging that though they were allowed bail on 21-7-73 they were arrested by the respondent even after the extract of the bail order was shown to him and the Magistrate called for a report from the respondent on the allegations made against him. Thus the evidence of P.Ws. 1 and 3 gains corroboration from their previous statements made before the Magistrate.

12. During his examination Under Section 313 Cr.PC the respondent stated that he had arrested P.Ws. 1 and 3 on one and the same day in connection with G. R, Case No. 351 of 1973 and forwarded them in custody as they could not furnish bail. He asserted that he legally arrested the appellant and his brother and that he did not receive any release order of the Magistrate. The statement of the respondent that he arrested both P.Ws. 1 and 3 on one and the same day is falsified by the evidence of the C.S.I. (D.W. 1) who deposed with reference to the relevant case diary that P.Ws. 1 and 3 were arrested on 21-7-73 and 22-7-73 respectively. This evidence of D.W. 1 supports the statement of P.Ws. 1 and 3. The respondent alleged that the case was falsely started against him as he had seized some stolen paddy from the possession of the appellant in connection with a criminal case Under Section 379 I.P.C. The plea that some stolen paddy had been seized from the possession of the appellant and that he bore a grudge against the respondent on that account was not suggested to him while he was under cross-examination. No evidence was also produced to show that prior to the institution of this case any stolen paddy had been seized from the possession of the appellant in connection with any case Under Section 379 I.P.C.

13. On a careful appraisal of the entire evidence on record referred to above, I am convinced that the respondent illegally arrested the appellant and his brother and detained them in police custody though they had been previously enlarged on bail and the bail order was produced before him by P.Ws. 2 and 3. It is hard to believe that the appellant and his brother who had, in apprehension of their arrest, obtained the release order after surrendering in court would keep quiet and would not produce the bail order and would silently submit to police custody without protest.

14. It is to be observed in this connection that the appellant and his brother were prosecuted Under Sections 294 and 323 I.P.C. and Under Sections 24 and 25 of the Cattle Trespass Act. All the offences are bailable. Under the law the accused persons had the right to be released on bail. Even assuming that no bail order was produced before the respondent, yet it is in evidence that P. W. 4 offered to stand as surety for P. W. 1 at the time of his arrest. The respondent was, therefore, bound to release him on bail. In the case of bailable offences to which Section 436 applies, a police officer has no discretion at all to refuse to release the accused on bail, so long as the accused is prepared to furnish surety.

15. The learned Magistrate did not appreciate the evidence properly and acquitted the respondent on flimsy grounds. One of the grounds taken by the learned Magistrate for acquitting the respondent of the charge Under Section 342 I.P.C. is that the evidence regarding production of the release order before the respondent was very shaky. I have carefully gone through the evidence and am of the view that the evidence of P.Ws. 1, 2, 3 and 5 is clear, consistent and cogent. Another ground taken by the learned Magistrate is that there was no clear evidence to show that the envelope produced by P.W. 2 before the respondent contained the release order and that the respondent was not bound to accept whatever was produced before him. As mentioned earlier, the entry in the despatch register (Ext. 1) coupled with the evidence of the Bench clerk (P.W. 6) clearly establish that the copy of the bail order passed by the Magistrate on 21-7-73 was made over to P.W. 3 on that very day for delivery at the Police Station. The evidence of the witnesses also establishes that the envelope was addressed to the Officer-in-charge of the Koksara Police Station and it was disclosed to the (respondent that it contained the release lorder of the Magistrate, but he threw it away and ultimately after arresting P.W. 3 he took away the release order from him. I have, therefore, no hesitation in holding that the respondent was well aware of the release order before he took P.Ws. 1 and 3 to custody and that he deliberately disobeyed the same and wrongfully confined P.Ws. 1 and 3. The grounds taken by the learned Magistrate are untenable. Correct inferences have not been drawn from the facts proved in the case and on account of the misappreciation of evidence wrong conclusions have been drawn on proved facts. The analysis of the evidence of the witnesses is very vague and misleading. The approach of the learned Magistrate is not only perverse but also legally erroneous. On a careful appraisal of the entire evidence on the record the conclusion is inescapable that the respondent is guilty of an offence punishable Under Section 342 I.P.C.

16. As regards the charge Under Section 323 I.P.C. there is no other evidence save and except the uncorroborated testimony of P.W. 1 that the respondent committed assault on him at the Police Station. According to P.W. 1 he sustained injuries by the assault, but the medical officer who examined him refused to grant a certificate. The trial court did not accept this evidence. In the absence of any corroborative evidence about the allegation of assault, I see no cogent ground to differ from the findings of

the learned Magistrate and to interfere with the order of acquittal of the respondent of the offence Under Section 323 I.P.C.

17. In the result, the appeal is allowed in part. The respondent is convicted Under Section 342 I.P.C. and is sentenced to a fine of Rs. 200/-. In default of payment of fine he should undergo R.I. for two months. The order acquitting the respondent of the offence Under Section 323 I.P.C. is maintained.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com