
(1967) 03 GAU CK 0001
In the Gauhati High Court

Bachaspatimayum Thambou Sharma and Others	APPELLANT
Vs	
State of Manipur	RESPONDENT

Date of Decision : 18-03-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 294, 34, 379, 506

Citation : AIR 1967 Guw 30 : (1967) CriLJ 1347

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a Criminal Revision Petition filed u/s 438 read with Section 561 A Cr. P.C. by the accused in F.I.R. case 898 (8) I.P.C. against the judgment of the Additional Sessions Judge in Cr. Appeal 8-7-1966 on his file sentencing them to pay fine of Rs. 30 each or to suffer S. I. for 15 days on default and otherwise dismissing the appeal filed by them and upholding their conviction by the First Class Magistrate u/s 506 I.P.C. in F.I.R. Case 898 (8)/64 on the latter's file.

2. The case of the prosecution, which was launched by the Police, is that at about 6/7 A.M. on 9-6-1964 the revision-petitioners (accused) came to the gate of the complainant, Shri Th. Suresh Singh of Khagempali, when he was washing his mouth in his pond near his house and held out a threat to kill him and also abused him by using obscene language and that they are liable to be punished under Sections 294 and 506 I.P.C. The complainant filed Ext. A/1 report in the police station in Imphal on the next day of 10-8-1964 at about 1-30 P.M.

3. The Magistrate framed charges against the appellants under Sections 294 and 506 I.P.C. The prosecution examined the complainant as P.Ws. 1 and 6 witnesses viz. R. K. Sanajaoba Singh, N. Gandhar Singh, P. Kullachandra Singh, H. Nodiachand Singh, H. Nila Singh. H. Bhubon Singh as P.Ws, 2 to 7 and the Investigating Officer as P.W. 8.

4. The case of the petitioners is that there was enmity between the brother of

P.W. 1 the complainant and the petitioners, who are their neighbours, that P. W. 1's brother filed a false criminal case against them - alleging that they committed burglary in his house, but that they were discharged and that P.W. 1 falsely implicated them. They examined Ch. Priyo-kumar Singh as D.W. 1 to prove Ex, D. 1 final order of discharge in Ext. D-2 F.I.R. case 758 (7J/1964.

5. The learned Magistrate held that the prosecution improved upon the case and that the offence u/s 294 I.P.C. was not made out. With regard to the second charge u/s 506 I.P.C, he held that, though P.Ws. 5 and 6 (N. Nodiachand Singh and H. Nilo Singh) were declared hostile, the evidence of P.Ws 1 to 4 (the complainant. R. K. Sanajaoba Singh. N. Gandhar Singh, and P. Kulla-chandira Singh) was sufficient to show that the petitioner intimidated P.W. 1 the complainant by threatening to kill him and that they are liable to be punished u/s 506 I.P.C He convicted them thereunder and sentenced them to undergo simple imprisonment for 15 days each.

6. The petitioner carried the matter in appeal in Criminal Appeal Case 8-7-1966 on the file of the Additional Sessions Judge -I. Manipur. He held that out of the P.Ws. 1 to 4 (the Complainant, R. K. Sanajaoba Singh. N. Gandhar Singh and P. Kullachandra Singh) P.W. 4 (P. Kullachandra Singh) was interested in the prosecution, as there were personal ill-feelings, enmity and litigation (civil and criminal) between him and the first accused petitioner. So he disregarded the evidence of P.W. 4 (P. Kullachandra Singh). He, however, relied on the evidence of P.W. 1 (Complainant) and P.W, 2 (R. K. Sanajaoba Singh) who is a student, and P.W. 3 (N. Gandhar Singh), though he is the husband of the aunt of P.W. 1 (Complainant) and closely related to P.W. t and held that the accused-appellants before him held out a threat only to alarm P.W. 1 and not to kill him. He differed from the Magistrate in the tatter's view that the petitioner attempted to kill P.W. 1 (Complainant) and held that they had no intention to kill him. So, he altered the sentence of imprisonment into a fine of Rs. 30 each with a direction that they should suffer S. I, for 15 days each on default and confirmed the conviction of the petitioners u/s 506 I.P.C.

7. Being aggrieved with the judgment of the Additional Sessions Judge, Manipur, the accused filed the present criminal revision petition.

8. The first point which was urged by the learned Counsel for the petitioners is that there was delay of about 30 hours on the part of P W. 1 (Complainant) in filing the F. I. R. (Ext. A/1) against them, that P.W. 1 (Complainant) made embellishments in his complaint and improved the case in the meanwhile and that the case was hatched up against the petitioners. The complainant (P.W. 1) tried to explain away the delay of 30 hours by stating that he took time to consult his father whether he should file the criminal case against the petitioners or not as they are his neighbours. P.W. 1 (Complainant) is said to be a Master of Arts, working as a "Lecturer" in a Higher Secondary School. The petitioners' counsel stated that one of the brothers of P W 1 (Complainant) is working as Deputy Superintendent of Police.

The learned Magistrate held that P.W. 1 (Complainant) improved his case so far as the offence u/s 294 I.P.C. is concerned and that the accused are not guilty of the offence u/s 294 I.P.C. and acquitted them. The Additional District and Sessions Judge also accepted the explanation of P.W. 1 (Complainant) in filing Ext. A/1 more than 1 day after the alleged offence was committed. He held that P.W. 1 (Complainant) took time to consult his father and that the delay was not intended to embellish the account of the incident. There is no hard and fast rule that a case must be thrown out, if there, is any delay. If there is no satisfactory explanation for the delay, the delay is to be taken into account in considering the veracity of the witnesses and in judging the truth of the case of the prosecution.

The present case is a simple one. If really P.W. 1 (Complainant) felt intimidated and annoyed, then, he would have rushed to the Police Station, which is said to be only three miles from his house and lodged the report at least on the same day of 9-8-1964. He did not file the report on that day. He did not file the report even in the morning of the next day. He lodged it at 1-30 P.M. on 10-8-1964. The delay on his part in filing the report in the Police Station is suspicious, especially in view of the finding that he improved his case by implicating the petitioners u/s 294 I.P.C. The explanation of P.W. 1 the complainant in filing the F.I.R. late is not satisfactory.

9. The second contention of the petitioners" counsel is that in Ext. A/1 P.W. 1 (Complainant) did not mention the name of any witness, that P.Ws.2 to 4 (R. K. Sanjaoba Singh. N. Gandhar Singh and P. Kullachandra Singh) are interested witnesses and that their evidence cannot be believed. In support of Ms contention that the absence of the names of the witnesses in F.I.R. throws doubt over their evidence, he relied on Ramanand Vs. Krishan Chand, It was held that, where the names of the witnesses for the complainant were not mentioned in the first information report - although the allegation of the complainant was that they were only 10 paces from him at the time of the occurrence and though the complaint petition was filed three days after the occurrence, the testimony of the witnesses was a doubtful one and that some other corroboration of the complainant was necessary.

Generally, the names of the prosecution witnesses, must be mentioned in the complaint petition. But. the complaint petition is not the end-all and the be-all of the complaint. The absence of the names of the witnesses in the first "information report raises some suspicion about their evidence and it will have to be scanned carefully. In the present case P.W. 1 (Complainant) did not furnish any valid explanation for having failed to mention the names of the P.Ws. in Ext. A/1. even though he filed Ext. A/1 about 30 hours after the incident took place after consulting others. He had ample time and opportunity to mention the names of the P.Ws. who were said to have witnessed the alleged occurrence. He did not do so. So. the evidence of P.Ws. 1 to 4 (the (Complainant. R. K. Sanajaobn Singh. N. Gandhar Singh and P. Kiillachandra Singh) has, to be weighed with caution.

10. In support of his contention that the evidence of interested witnesses cannot be relied upon in the absence of corroboration, the counsel for the petitioners cited *Jit Singh v. Emperor* AIR 1935 Lah. 922 where it was held that when the evidence is entirely oral and of interested witnesses and if there is absence of circumstantial evidence against the accused, he cannot be convicted. In *Karam Singh Vs. State*, it was held that, where the prosecution witnesses are angry victims, having suffered irreparable wrong at the hands of the co-villagers of the accused, their evidence alone cannot in the absence of other independent witnesses form the basis of conviction.

But it is not as though the evidence of an interested witness is liable to be rejected on the ground of interestedness. But, it was to be carefully scrutinised and a higher standard of proof is required. In the present case, P.W. 2 (R. K. Sanajaoba Singh) is a student and can be said to be under the influence of P.W. 1, the complainant. The complainant is a lecturer. P.W. 3 (N. Gandhar Singh) is admittedly the husband of the aunt of P. W. 1, P. W. 4 (P. Kullachandra Singh) is admittedly an enemy of the accused and the learned Additional Sessions Judge rejected his evidence as not being worthy of credence. So, there is the evidence of the complainant P. W. 1 and that of P. W. 2 (R.K. Sanajaoba Singh) a student and P.W. 3 (N. Gandhar Singh) a close relation of P.W. 1.

The learned Additional Sessions Judge states in his judgment that though it is the case of the prosecution that the petitioners used language threatening to kill P.W. 1, the threat was merely a challenge for a free fight in which the complainant (P.W. 1) could kill the accused and not that the accused would kill the complainant, that the evidence of P.W. 1 (Complainant) "was tainted with some element of exaggeration of the incident and that it does not follow that the Court should disregard the other portion of his evidence relating to the threat. It is not the number of witnesses, which is material. The evidence is not to be counted; but, it has to be tested and it is the quality which counts. Even if the evidence of P.Ws. 2 and 3 (R. K. Sanajaoba Singh and N. Gandhar Singh) is disregarded as being interested, still the evidence of P.W. 1 the complainant was found by the Additional Sessions Judge to be exaggerated. So, it cannot be said that the prosecution proved the guilt of the petitioners to the hilt even with regard to the offence u/s 506 I.P.C.

11. The third contention of the petitioners' counsel is that the prosecution did not prove the ingredients of Section 506 I.P.C., that it did not prove that the petitioners had any intention to cause alarm to P.W. 1 complainant and that, therefore, the petitioners are entitled to be acquitted. He relied on *Bhagwan Sahai and Another Vs. Divisional Forest Officer, Hazaribagh*, where it was held that the onus lies on the prosecution to prove that the accused acted "dishonestly" to make out the offence u/s 379 I.P.C.

In *Nivas Singh Vs. Amar Sao*, the petitioner so abused the complainant that he began to run away and was pursued by the petitioner with a brick bat in his hands. It was only the interruption of others that prevented the petitioner going

any further. It was held that his conduct amounted to a threat which caused alarm to the complainant leading him to apprehend that he might be assaulted and that it was clearly criminal intimidation. In *Hajee Abdul Rehman and Others Vs. Gulam Nabi*, it was held that before an offence of criminal intimidation can be made out, it must be established that the accused had an intention to cause an alarm to the complainant, that mere threats given by the accused, not with an intention to cause alarm to the complainant, but with an intention to deter him from interfering with what the accused believed to be his exclusive right of passage through a door, would not constitute criminal intimidation.

But "intention" is a mental condition which has to be gathered from the circumstances of the case. If the evidence of P.W. 1 that he went inside his house on account of the threats is believed, then the petitioners must be said to have intended to cause alarm to him. So, Section 503 Cr, P.C. would apply. But. as there are embellishments in the case of the prosecution, his evidence in this regard also cannot be believed.

12. The fourth contention of the Petitioners' counsel is that there are three licensed in this case, that the Courts below did not give any finding as to who out of them threatened P.W. 1 (Complainant), and that in the absence of separate findings against each accused, their conviction cannot stand. He relied on *In re K. Verraiiah* AIR 1949 Mad. 22 . It was held that in a case where a number of persons have been jointly tried for an offence u/s 147 I.P.C. along with an offence resulting from specific acts, the Court should consider the evidence against each accused separately and give definite findings as regards the presence and part played by each. Vide also *In re Basappa* *In Re: Basappa and Others*,

In the present case both the courts below went wrong in failing to discuss the evidence against each accused and in giving findings against them separately as to the part played by each of them. The learned Government Advocate also conceded the same and stated that the conviction can be upheld u/s 34 I.P.C. The Magistrate should have added Section 34 I.P.C. in each charge. But if there is reliable evidence, then the conviction of the petitioners u/s 506 I.P.C. can be confirmed even by this Court by invoking Section 34 I.P.C. in aid. But as the evidence is not reliable, the question of invoking Section 34 I.P.C. does not arise.

13. Finally the petitioners' counsel stated that the alleged incident was so very trivial that u/s 95 I.P.C. it could not be termed as an offence. a Section 95 I.P.C. runs as follows:

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so light that no person of ordinary sense and temper would complain of such harm.

The alleged incident near the gate of the house of P.W. 1 must have been a trivial one. He too at first must have felt it as a trivial one. That was the reason why he filed the report before the police about 30 hours after the incident took place and

after due deliberation by making some improvements in the case," so that it might appear to be a grave offence. The petitioners had sufficient punishment for the same, by being in the custody of the Police for 7 days as under trial prisoners and by being in the prison for 3 days after the conviction by the Magistrate.

14. Thus, the prosecution has not been able to prove even the second charge u/s 506 I.P.C. and the petitioners are entitled to the benefit of doubt.

15. In the result, the revision petition is allowed and the conviction of the petitioners is set aside. Refund the lines if already collected.