

(2001) 02 OHC CK 0020
In the Orissa High Court
Case No : Criminal Revision No. 1 of 2000

Bhagabat Marandi and others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 491
Penal Code, 1860 (IPC) — Section 147, 148, 149, 279, 304

Citation : (2001) 91 CLT 425 : (2001) 20 OCR 449 : (2001) 1 OLR 387

Hon'ble Judges : M. Papanna, J

Bench : Single Bench

Advocate : Mr. A.K. Acharya, for the Appellant; Mr. P.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Papanna, J.—This Criminal Revision is directed against the impugned judgment dated 29-11-1999 passed by the learned Addl. Sessions Judge, Rairangpur in Criminal Appeal No. 121/3 of 1997-98 confirming the judgment passed in S. T. No. 34/123 of 1994 by the learned Assistant Sessions Judge, Rairangpur convicting the appellants under sections 147/148/323/ 341/342/149, I. P. C. and sentencing each of them to undergo R. I. for six months on each count except for the offence u/s 341, I. P C. in respect of which each of them has been sentenced to S. I. for one month and directing the sentences to run concurrently.

2. Case of the prosecution is that on 20-3-1993 at about 9.45 a.m. at Bhatchhatar crossing on N, H. 6, a truck bearing Registration No. WB-23-2191 dashed against one Aswini Kumar Nanda who succumbed to the injuries on the spot. On the information lodged by the A.S.I. of Bisoi Police Station, Bisoi, P. S. Case No. 26/93 was registered under sections 279/304A. I.P.C.. During investigation the I.O. found commotion on the spot among the public who blocked the traffic demanding construction of humps on the road for which he

communicated this fact over VHF to the O.I.C., Bisoi Police Station who in turn intimated the same to the S.D.M as well as S.D.P.O., Rairangpur. It is also alleged that on the way to the spot the O.I.C. found one Kasinath Majhi of Majhgaon riding a Moped bearing No. OR-11-O250 in the middle of the road thereby obstructing the Jeep boarded by the S.D.M. and the S.D.P.O. from proceeding ahead inspite of horns blown for which the O.I.C. detained him and on demand when he failed to produce the documents of the Moped, he seized the vehicle and arrested him. After clearing the road while the O.I.C. was returning to the Police Station accompanied by the Havildar, D.N. Nayak, the accused persons along with others being armed with lathis and axe obstructed his Jeep and also the Jeep of the S.D.M. by putting logs on the road at about 5.30 p. m. , It is further alleged that the accused persons abused the S-D,M. and others in obscene languages such as "SALA, MAA GIHA, BHAUNI GIHA ETC.". Thereafter the accused persons took away accused Kasinath Majhi forcibly from the Police Jeep thereby facilitating his escape from the police custody. That apart the accused persons dragged the informant, A.S.I. and Havildar out of the Jeep forcibly and confined them. Accused Bhagirathi while trying to give lathi blow on the informant, the latter snatched away the same from his hands lest he could have killed both of them. In the meantime when Mobile parties and O.S.A.P. force came there the accused persons fled away from the spot along with the wooden logs. After completing investigation the I.O. placed charge sheet against all the accused persons.

3. The accused persons who pleaded innocence took a plea of complete denial and false implication by the police.

4. The prosecution, in order to prove the guilt of the accused persons, examined twelve witnesses of whom p. w. 1 is the informant, p. w. 2 is Kasinath Mahanta, p. w. 3 is Kalicharan Mahanta, p. w. 4 is Sarat Chandra Rout, p. w. 5 is Dargha Marandi, p. w. 6 is Basanta Kumar Barik, p. w. 7 is jayagovinda Behera, p. w. 8 is Pratap Chandra Mahanta, p. w. 9 is Bishnu Prasad Panda, Sub-Collector-cum-S.D.M., Rairangpur, p. w. 10 is Debendranath Nayak, p. w. 11 is Janak Nayak whereas p. w. 12 is the I.O. who investigated into the case and placed the charge sheet against the accused persons.

5. On the other hand, one Chandra Mohan Hembram was examined as d. w. 1 on behalf of the accused persons.

6. The learned Asst. Sessions Judge, Rairangpur having believed the evidence on record convicted the accused persons under sections 147/148/341/342 and 149, I. P. C. and sentenced them as stated above. On appeal the learned Addl. Sessions Judge, Rairangpur confirmed the above order of conviction and sentence which is under challenge in the present revision.

7. During the course of hearing Shri A.K. Acharya, learned counsel for the petitioners has contended that the courts below have failed to appreciate the evidence on record thereby committing a gross illegality in holding the accused

petitioners guilty of the charges. According to him the prosecution has failed to prove its case beyond all reasonable doubt. His further contention is that the findings of the trial and appellate courts are based on tainted and untrustworthy evidence. As a result, the order of conviction has become perverse and unreasonable and the same is liable to be set aside. On the otherhand, Shri P. K. Mohanty, learned Addl. Govt. Advocate for the State has supported the impugned judgment as quite justified. Moreover, when there are concurrent findings of both the courts below, there is little or no scope for interference in the revision.

8. In view of the aforesaid contentions raised by the learned counsel for both the sides, I am called upon to examine if the concurrent findings are based on no evidence or otherwise vitiated and no reasonable conclusion regarding guilt of the accused persons can be drawn.

9. The law is well settled that in case findings of fact are shown to be perverse, revisional court can interfere with the said findings. A finding is said to be perverse when no reasonable man on a consideration of materials on record can arrive at such findings. This Court in its revisional jurisdiction can set aside an order when there is glaring defect in the prosecution case resulting thereby a miscarriage of justice. In earlier decisions of this Court it is held that concurrent findings of trial and appellate courts cannot be stamped as infallible because they are concurrent nor can the conviction recorded by the two courts be maintained if they are legally unfounded and unreasonable. This view is taken in 1986 1 Crimes 456 (Panchanan @ Panchu Sahu and others v. Sanatan Bank). This shows that if the judgments are unreasonable and unfounded this Court can interfere with the concurrent findings of the learned courts below. This view is taken in 1984 1 O L R 438 (Narayan Behera v. The State).

10. In the instant case, from the state of evidence available on record, it is seen that p. ws. 3 to 8 and 11 have been declared hostile for having not supported the prosecution case for which to bring home the guilt against the accused persons the prosecution has relied on the evidence of p. ws. 1,2, 9, 10 and

12. All the above witnesses being official witnesses, it is to be seen whether their evidence without being corroborated by the independent witnesses can be relied upon or not, P. w. 9 was working as Sub-Collector-cum-S. D. M., Bamanghati. Rairangpur at the material time. His evidence shows that after subsiding the disturbance that took place on the public road there was free movement of the vehicle on the road. Thereafter while he was returning followed by the A. S. I. of Bisoi P. S. in another Jeep some persons blocked the road. As a result, the police jeep could not proceed. Those persons released two of the persons from the police jeep but he has failed to identify any of those persons who blocked the road and prevented him and the police jeep to proceed towards the P. S. So the evidence of p. w. 9 is equally of no help to the prosecution. 11. So far as the evidence of p, w. 1 is concerned, he has stated that the accused persons such as Bhagirathi Marandi, Ramesh Marandi and Daman and others also forcibly dragged him and the Havildar from the jeep and started assaulting them by means of

thengas. They were also detained by them till the O. I. C. and others came to the spot. Evidence of p. w. 1 does not find corroboration from the evidence of p. w. 2, though he was also returning to the P. S, along with p. w. 1 and the Havildar in one jeep. Now coming to the evidence of p. w. 10 in, the Havildar it is seen that he has failed to say specifically the role played by each of the accused persons who were on the spot along with many others. As such, it is hard to believe his version whether any overt act was done by these accused persons. So far as evidence of p. w. 12 (I. O.) is concerned) he investigated into the case and laid charge sheet against the accused persons. From the evidence discussed above, it is seen that though p. w. 1 has stated to have been assaulted by the accused persons by means of lathi, he was not medically examined. In such a case, evidence of p. w. 1 cannot be relied upon. As a matter of fact, the evidence of p. ws. 1 and 10 is not clear, cogent and consistent regarding the rioting alleged to have been committed by the accused-appellants. Similarly, the charge under sections 341 and 342, I. P. C. could not be proved beyond doubt. In the absence of corroboration from the independent witnesses it is not safe to believe the evidence of A. S. I. (p. w. 1) and his subordinate Havildar (p. w. 10). In such a view of the matter concurrent findings of the courts below unfounded and unreasonable and the same are liable to be set aside. It is further held that the impugned judgments of the courts below being perverse particularly when no reasonable man on a consideration of the materials on record can arrive at such findings, I am bound to interfere with the same.

12. In the ultimate result, the revision is allowed and the impugned judgments of the courts below are set aside.

13. Revision allowed.