

(2007) 09 OHC CK 0027
In the Orissa High Court

Gani Behera and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 395, 427, 447

Citation : (2008) CLT 21 (Suppl CrI) : (2008) 1 OLR 131 : (2008) OLR 21 (Suppl CrI)

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard argument from the parties, hearing is concluded and the judgment is as follows.

2. Appellants were prosecuted for the offence under Sections 395/447/427, I.P.C. in the Court of Additional Sessions Judge, Jajpur, vide Sessions Trial No. 247/37 of 1988 arising out of I.C.C. Case No. 699 of 1981 of the Court of S.D.J.M., Jajpur. It is noted in the impugned judgment that the complainant and the accused persons are co-sharers and a suit for partition filed by the accused persons was decreed, and according to that decree the disputed area in the complaint petition fell to the share of the accused persons. In respect of that civil dispute ultimately the parties approached this Court in Second Appeal. Complainant states that with the allegation of demolition of a portion of the wall, a complaint was filed at an earlier stage in the year 1981, He again filed the complaint for the second time alleging that on 30.09.1981 accused persons forming an unlawful assembly, came and demolished the western side wall of the house and removed some usufructs besides taking away a brass jar ("Gara") and thereby committed offence u/s 395/447, I.P.C. Complainant also stated that he lodged F.I.R. at the police station, but police did not take action and therefore he filed the complaint u/s 200, Cr.P.C.

3. In course of the trial, during cross-examination of P.W.1, it was pointed out to him that in the Second Appeal the complainant filed application alleging that the western side wall was damaged by the accused's family on 20.03.1985. It was also confronted to the complainant/P.W.1 that in the process of enquiry into that allegation he deposed as witness No. 1 stating that on 03.09.1981 a portion of the western side wall was demolished by the accused persons. In course of the argument learned Counsel for the accused/appellants argues that such fact was placed before the trial Court, but learned Addl. Sessions Judge rejected that plea of the accused persons on the ground of minor contradictions. When the allegation in the complaint is challenged by the accused persons as a false and fabricated story because of personal rivalry and civil disputes, the aforesaid Exts. A and B play a vital role to find truthfulness or otherwise in the complaint. The fact stated in the Misc. Case, statement given by P.W.1 in the inquiry conducted by the Civil Judge vide the statement Ext. A and the fact of the complaint in Ext. B are clear enough to contradict the allegation in the complaint relating to allegation of damage of the western side wall. Such evidence could not have been avoided in the pretext of minor contradictions. Trial Court, therefore, committed illegality in rejecting such defence evidence. Such evidence creates doubt on truthfulness in the allegation made in the complaint. Apart from that, there is nothing on record except Ext. 1 to prove bona fide in filing the F.I.R. in the police station. In that respect, the Postal Acknowledgment-Annexure-2 regarding sending of the complaint to the Superintendent of Police is not of much consequence. It was suggested to P.W.1 (in course of the cross-examination) that with the fear of being caught for the falsehood, P.W.1 did not lodge F.I.R. at the police station. Complainant did not take any step to examine any person from the police station in support of the contention that F.I.R. was lodged.

4. On a conjoint reading of all the evidences and looking to the facts available on record, it is held that the occurrence is not proved beyond reasonable doubt and, therefore, accused persons are at least entitled to benefit of doubt, if not a clean-cut acquittal for the charge under Sections 395/447/427, I.P.C. Unreasonably the Trial Court refused to grant the same in their favour. As noted earlier, Exts. A and B create sufficient doubt on the truthfulness of the allegation labeled against the accused persons by P.W.1 and under such circumstance the order of conviction is set aside and the Criminal Appeal is allowed. The Bail Bonds executed by the appellants are discharged accordingly.