
(1956) 02 OHC CK 0005
In the Orissa High Court
Case No : Criminal Revision No. 22 of 1955

Hari Panda and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-02-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 162, 290, 367
Evidence Act, 1872 — Section 11, 114, 14, 15, 3
Penal Code, 1860 (IPC) — Section 143, 379

Citation : AIR 1956 Ori 212 : AIR 1956 Ori 20(1) : (1956) 22 CLT 247 : (1956) CriLJ 1421

Hon'ble Judges : Narasimham, J

Bench : Single Bench

Advocate : A.L.J. Rao, for the Appellant; Assistant Government Advocate, for the Respondent

Judgement

Narasimham, J.—The 34 petitioners were tried by a. Second Class Magistrate of Chatrapur for offences under Sections 143 and 379, I. P. C. on the allegation that on 28-11-1952, they formed themselves Into an unlawful assembly at village Aladigam, P. S. Chatrapur with the common object of committing theft of paddy crops from survey Nos. 864, 900 and 1134 in the possession of the complainant Mangalu Panda and that in furtherance of the said common object, they also committed theft of the said paddy crops. They were convicted and sentenced to various amounts of fine. Their appeal to the appellate Deputy Magistrate, Chatrapur was dismissed.

2. The disputed lands are 2.51 acres in extents & it is admitted that they originally belonged to one Shrimati Pandiani who was the adoptive mother of petitioner Hari Panda. In execution of a decree against Srimati Pandiani in E. P. No. 757 of 1940, one Haribondhu Palo purchased the property through the Civil Court and the sale certificate (Ext. 2) in his favour is dated 24-10-41. The delivery of possession was given to him on 22-1-42 (Ext. 3/a) and it was confirmed in March 1942.

The prosecution case is that since the date of the delivery of possession, the auction purchaser Haribondhu Palo remained in possession of the disputed property till he sold the same by Ext. 1 to the complainant Mangalu Panda (P.W. 1) on 8-12-44 Mangalu Panda stated that he remained in possession since then through some bhag tenants who used to given registered muchalikas. During the year of occurrence (1952) according to Mangalu Panda, his tenants Kondhai Sethi and Panda Sethi raised paddy crops on the disputed land.

3. Petitioner Hari Panda had filed a claim case when the property was under attachment in the aforesaid execution proceeding. His claim was rejected sometime in March 1939 (Ext. 14), but he did not care to file a civil suit to establish his claim. He is the main accused in the case find his defence is that notwithstanding the Civil Court sale and delivery of possession, the property remained all along in his possession through his tenants and that they cut away the crops peacefully on 26-11-52 that is, two days before the alleged date of occurrence.

4. Both the lower Courts" rightly observed that in a dispute of this type, the main question for consideration by a criminal Court is whether the prosecution has established beyond reasonable doubt that the complainant and his tenants had raised the crops on the disputed land. They believed the evidence of the prosecution witnesses which was fully corroborated by muchalikas (ext. 5 series), rent receipts (Ext. 4 Series) and the record of rights of the Current Settlement of the year 1932 (Ext. 6) in which the possession of Mangalu Panda was shown.

Petitioner Hari Panda pleaded complete ignorance of the attachment & sale in the Civil Court. But the lower appellate Court rightly rejected this plea as untrue in view of the order in the claim case (ext. 14) which shows that he was the unsuccessful claimant. It is true that on behalf of the petitioners also several witnesses were examined to prove their possession. Their evidence has been disbelieved by the two Courts of fact, and sitting in revision. I am not inclined to interfere with the concurrent findings on the question as to Who grew the crops on the disputed land.

5. Mr. Rao however has raised two interesting questions of law. Firstly, he urged that both the lower Courts used the order of the claim case (ext. 14) as evidence supporting the prosecution case of possession and that such use was unwarranted by law. Secondly, he urged that the investigating police officer was not examined in this case and his non-examination has materially prejudiced the petitioners.

6. In my opinion, neither of these contentions can prevail. The lower appellate court has not used the order of the claim case (ext. 14) as the evidence supporting the prosecution case on the question of possession. He has merely used it to show that Hari Panda's denial of all knowledge of the execution proceeding cannot be believed. Doubtless, the falsity of a statement made by an

accused j in a criminal case does not necessarily show that the prosecution case is true.

The lower Courts were "fully aware of this principle and have independently examined the evidence of the prosecution witnesses on the Question of possession and believed the same. I do not think, Ext. 14 has been used in a manner not warranted by law.

7. Similarly, the non-examination of the Investigating police officer, in my opinion, has not materially prejudiced the case against the petitioners. The trial Court has discussed this question at some length and has also pointed out that despite the use of coercive processes including steps for his prosecution u/s 174, I. P. C. his attendance could not be secured. It has also pointed out that his non-examination has really helped the defence inasmuch as one of the seizure list witnesses has appeared as a defence witness and denied his signature in the seizure list (Ext. 18) and the prosecution was not in a position to contradict him on account of the non-examination of the S. I.

8. It is true as a general statement of law that the non-examination of the investigating police officer, specially in a serious case, may very often cause material prejudice to an accused. But the question ultimately depends on whether taking all the circumstances into consideration a Court can reasonably hold that prejudice has been caused.

The investigating police officer is generally examined by the prosecution for two purposes, firstly to prove the statements made before him by some of the prosecution witnesses during investigation u/s 162, Cr. P. C. after their attention has been drawn to the same during their cross-examination, and secondly to prove the facts noticed by him during his local inspection of the place of occurrence.

In the present case, I notice that no material contradiction between the statements of the prosecution witnesses in Court and their statements before the police has been brought out during their cross-examination. The only contradictory statement, to which Mr. Rao could refer, is in the evidence of P.W. 2 to the effect that he stated before the police that P.W. 1 was not related to him whereas it is now urged that he has in fact stated to the police that P.W. 1 was his relation.

Even if it be assumed that he made such a statement to the police and that P.W. 1 is his relation the finding on the question of possession will not be materially affected. No other serious contradictory statement has been brought out.

9. Again, as regards the facts which the S.I. might have noticed at the spot during local inspection it does not appear that in a case of this type those facts have any material significance. The cutting and removal of crops from the disputed field is admitted, though according to the defence it took place two days before the alleged date, as given out by the prosecution witnesses.

The S.I. seized some cut crops from the house, of petitioner Hari Panda. As to the variety of paddy that was seized, the seizure list contains some particulars. Similarly in the F.I.R. also the variety of paddy has been mentioned. The prosecution witnesses also have spoken about the same. There was thus ample material on record not only to show the variety of paddy that was grown on the disputed field, but also the variety as stated by the informant before the police and as found at the time of seizure. Therefore, the non-examination of the S. I. to prove the facts observed during his local inspection would not materially affect the present case. I would, hold that it is a curable irregularity only.

10. As regards the convictions and sentences however, I should point out that the Nahak accused persons (petitioners 15 to 34) are admittedly labourers who merely obeyed the orders of petitioner Hari Panda. There is no sufficient evidence to show that they were fully aware of the previous quarrel between Hari Panda and the complainant or else that they were aware that the crops had been grown by the complainant's tenants and that they went there with the dishonest intention which is an essential requisite for establishing a charge of theft. They are therefore entitled to benefit of doubt.

Petitioners 2 to 14 did not go there as labourers, but according to the prosecution case they went there as helpers of Hari Panda (petitioner No. 1), and they stood near the ridge of the field, armed with deadly weapons instigating the labourers to cut and remove the paddy. In their case, therefore, dishonest intention may be reasonably inferred. But as, petitioner Hari Panda is the ringleader, there should be some discrimination so far as the sentence is concerned. The trial Court's order is modified as follows:

11. Petitioners Nos. 15 to 34 (Sana Nahak, Oura Nahak, Bhaiga Nahak, Chakra Nahak, Madana Nahak, Hanu Nahak, Markanda Nahak, Madhab Nahak, Parikhita Nahak, Bata Nahak, Kusia Nahak, Suma Nahak, Murali Nahak, Dharmu Nahak, Bijuli Nahak, Pata Nahak, Kalu Nahak, Suma Nahak, Madhab Nahak and Iswar Nahak) are acquitted of the offences with which they were charged and their conviction and sentences are set aside.

The conviction and sentence passed on Hari Panda (petitioner 1) are maintained and his revision petition is dismissed. The conviction of petitioners nos. 2 to 14 (Gopal Krishna Panda, Jaganath Panda, Dasarathi Panda, Radhamohan Patro, Patita Panda, Adikanda Panda, Nanda Biswal, Satya badi Panigrahi, Radha Panda, Gobinda Panda, Gopi Sahu, Dinabandhu Panda and Damodar Panda) under Sections 143 and 379, I. P. C. are maintained, but the sentence passed on them is reduced to a fine of Rs. 20/- each for the offence u/s 143, I. P. C.

No separate sentence need be passed on them for the offence u/s 379. I. P. C. In default of payment of fine, petitioners Nos. 2 to 14 should undergo R. I. for 15 days each. The order for payment of compensation u/s 545, Cr. P. C. is maintained. The revision petition is disposed of accordingly.