

(1992) 11 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 444 of 1989

Jagabandhu Behera

APPELLANT

Vs

Dinabandhu Kabi and Others

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 436

Citation : (1993) CriLJ 2512

Hon'ble Judges : K.C. Jagadeb Roy, J

Bench : Single Bench

Advocate : P. Kar, D.K. Sahee, M. Mohanty and J.K. Misra, for the Appellant; D.P. Dhal, S.K. Nayak, N. Jena and Mirakar Jena, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Jagadeb Roy, J.—The informant in C.R. Case No. 254 of 1988 is the petitioner in this criminal revision. On the FIR having been lodged by him stating that at 9 p.m. on 12-3-88 the accused persons had set fire to his shop situated on the National High Way near village Asura which resulted in burning of the shop, a police case was registered on the FIR. The case was forwarded to the court and was registered as G.R. case No. 254 of 1988. On commitment it was tried by the Addl. Sessions Judge, Bhadrak in S.T. No. 10/5 of 1989. The motive as indicated by the informant is that the accused persons, out of a village quarrel were inimical towards him and ultimately caused the shop to be burnt by setting fire to it. The accused persons were tried after being charge sheeted u/s 436, IPC.

2. The prosecution had examined 7 witnesses out of which P.W. 1 is the informant himself, P.W. 2 is a person of a nearby village who was a post-occurrence witness and had seen the shop room burning who came there after hearing the hullah. P.W. 3 is a resident of village Jhutanga, a nearby village who came to see the burning of the shop only after hearing hullah. The Sub-Inspector of police who started the investigation was examined as P.W. 4 and the S.I. of

police who completed the investigation was examined as P.W. 7. P.Ws. 5 and 6 are villagers of Asura who are said to be the only eye-witnesses. According to the prosecution, these two witnesses had seen the accused persons setting fire to the shop room at the material time.

The accused persons denied the occurrence, but examined no witnesses from their side in their defence.

3. Since the State did not choose to prefer appeal against the order of acquittal, the informant whose shop was alleged to have been burnt preferred this revision with a prayer that the order of acquittal be set aside and the case be remanded back to the trial court for rehearing of the case. The grounds which are urged by the learned Counsel for the petitioner are :

(a) The trial court committed serious error in procedure in discarding the evidence of P.W. 5 as untrustworthy without any basis.

(b) Though the occurrence took place on 12-3-88 at 9 p.m. the FIR was lodged on 13-3-88. The I.O. had examined the alleged witnesses P.Ws. 5 and 6 on 20-3-88 and this delayed examination of these two material witnesses amounts to serious error in procedure vitiating the entire trial and requires the impugned order to be set aside.

I am not in a position to accept any of the contentions of the learned Counsel for the petitioner. The apex court in case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, had observed that the power of the High Court to set aside the finding of acquittal in revision only be done in exceptional cases. Though criteria for determining such exceptional cases cannot be enumerated in detail, High Court would be justified to interfere with the order of acquittal when the trial court had no jurisdiction to try the case but had acquitted the accused, or where the trial court had wrongly shut out evidence which the prosecution wished to produce or where the appellate court had wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. In paragraph 7 of the said judgment, the apex court held thus :

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the state may not have thought fit to appeal, but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice....

4. In the present case nothing has been shown to me in support of the allegation that there was any glaring defect in procedure. To me, there is absolutely no miscarriage of justice has been occasioned in the present case and no material evidence had been overlooked. In paragraphs 4, 5 and 6 of the judgment, the

trial court has discussed the evidence adduced by the prosecution in detail. The evidence of P.W. 5 has been duly considered and the court rightly did not place reliance on the evidence of P.Ws. 5 and 6. In the case reported in 1985 CLR 164 (Kara Pradhan v. State), a Bench of this Court had not placed any reliance on the evidence of the witnesses who were examined late after having returned to village. Police had indicated that they were not examined because they were absent from the village. The Court refused to rely on their evidence on the ground that the witnesses did not say that they were not available in the village for examination and there was no evidence that they disclosed the occurrence to any other person after the criminal act. In the present case there was delay in examining the two eye-witnesses, who were examined on 20-3-88. The case of the Investigating Officer is that those witnesses could not be examined earlier as they left the village and were examined on their return to village. There was no statement from P.W. 5 and P.W. 6 in their evidence that they were actually absent when the matter was investigated by police immediately after the alleged occurrence. In view of this, the reasoning of the trial court not relying on the evidence of P.Ws. 5 and 6 in bringing home the charge against the accused persons cannot be said to be a glaring defect or error in procedure. As it transpires from the materials on record, the prosecution failed to produce evidence as to the quantum and nature of goods which were burnt in the arson except a half burn stool and a bench which were exhibited as M.O.I and M.O.II. In paragraph 8 of the judgment, the trial court has stated that except M.Os.I and II no other articles kept in the shop for sale was burnt or found in half burnt condition. All these weighed the mind of the trial court to hold the accused persons not guilty of the alleged offence and accordingly passed his order of acquittal. I, therefore, do not consider this a fit case justifying interference with the order of acquittal. The revision petition is, accordingly, dismissed.