
(2016) 10 OHC CK 0026

In the Orissa High Court

Case No : Criminal Revision NO. 487 of 2002 (From the judgment and order dated 08.08.1997 passed by the Judicial Magistrate 1st Class, Puri in G.R. Case No. 949 of 1993 (T.R. No. 1314 of 1997) and the judgment and order dated 30.04.2002 passed by the Adhoc Addl. Se

Kalu @ Kalucharana Mangaraj APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 325, Section 34

Citation : (2016) 168 AIC 810

Hon'ble Judges : Mr. S.K. Sahoo, J.

Bench : Single Bench

Advocate : Mr. Tushar Kanta Sahoo, Advocate, for the Petitioner; Mr. Tusar Kumar Mishra, Addl. Standing Counsel, for the Opposite party

Final Decision : Partly Allowed

Judgement

S.K. Sahoo, J. - The petitioners Kalu @ Kalucharana Mangaraj and Prafulla @ Prafulla Chandra Mangraj faced trial in the Court of learned Judicial Magistrate 1st Class, Puri in G.R. Case No.949 of 1993 (T.R. No. 1314 of 1997) for commission of offences punishable under sections 341/323/325/34 of the Indian Penal Code.

The learned Trial Court vide impugned judgment and order dated 08.08.1997 while acquitting the petitioners under section 341 of the Indian Penal Code has been pleased to find the petitioners guilty under sections 323/325/34 of the Indian Penal Code and accordingly convicted them there under and sentenced each of them to undergo simple imprisonment for six months each for the offence under section 325 of the Indian Penal Code and to pay a fine of Rs.200/- each for the offence under section 323 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment for fifteen days each. The petitioners preferred an appeal before the Court of Session which was heard by

the learned Adhoc Addl. Sessions Judge (1st Track Court No. I), Puri in Criminal Appeal No.6/10/41 of 2002/99/97 and the learned Appellate Court has been pleased to uphold the judgment and order of conviction passed by the learned Trial Court.

2. The prosecution case as per the First Information Report lodged by the Jambu Pallei (P.W.2) before the Officer in charge, Sadar Police Station, Puri is that on 17.06.1993 at about noon, the petitioners quarreled with the family members of the informant and petitioner no.2, Prafulla Chandra Mangraj dealt a lathi blow to Pratap Ch. Pallei (P.W.7) as a result of which P.W.7 sustained bleeding injury on the head. Similarly, petitioner No. 1 Kalu @ Kalucharana Mangaraj dealt a blow on the right hand of one Dwijabar Palei by means of a crow bar for which he sustained fracture injury on his right hand. When the informant intervened, he was also assaulted by both the petitioners by means of lathi and crow bar as a result of which he sustained swelling injury on the left hand. It is stated in the First Information Report that P.W.3 Alekha Pallei, P.W.4 Sudhakar Chhotray and P.W.5 Purna Ch. Pallei are the eye witnesses to the occurrence.

On such report, Puri Sadar P.S. Case No.94 of 1993 was registered on 17.06.1993 under sections 323/325/34 of the Indian Penal Code against the petitioners. P.W.6 Ch. Biranchi Narayan Das who was the A.S.I. of Police attached to Puri Sadar Police Station was directed by the Officer in charge to conduct investigation of the case and accordingly, he examined the witnesses, visited the spot, sent the injured persons for medical examination, arrested the petitioners and forwarded them to Court, received the injury reports and on completion of investigation submitted charge sheet under sections 341/323/325/34 of the Indian Penal Code against the petitioners.

3. During course of trial, in order to prove its case, the prosecution examined nine witnesses.

P.W. 1 Dr. Jagadish Ch. Hazara was the Asst. Surgeon of D.H.H., Puri who examined all the three injured persons and proved the injury reports Ext.1, Ext.2 and Ext.3.

P.W. 2 Jambu Pallei is the informant in the case and he is an eye witness to the occurrence as well as injured.

P.W. 3 Alekha Pallei, P.W.4 Sudhakar Chhotray and

P.W. 5 Purna Ch. Pallei are the eye witness to the occurrence.

P.W. 6 Ch. Biranchi Narayan Das is the Investigating Officer.

P.W. 7 Pratap Ch. Pallei is another injured who also stated about the occurrence.

P.W. 8 Damodar Das produced the bed head tickets of the injured persons Dwijabar Palei and Pratap Pallei in Court who were treated as indoor patients in the District Headquarters Hospital, Puri.

P.W.9 Dr. Ramachandra Sahu was the orthopedic specialist in District Headquarters Hospital, Puri who on perusal of the bed head ticket of injured Dwijabar Palei opined that the injured had sustained compound fracture of both bones of right forearm.

The prosecution exhibited eight documents. Exts. 1, 2 and 3 are the injury reports of the injured persons, Ext. 4 is the First Information Report, Exts.5 to 7 are the injury requisitions and Ext.8 is the bed head ticket of injured Dwijabar Palei.

4. The defence plea is that there was civil dispute between the parties for which the case has been foisted. Neither any witness has been examined by the defence nor has any document been proved on behalf of the defence.

5. The learned Trial Court on analysis of the evidence has been pleased to hold that the prosecution has led no evidence at all regarding wrongful restraint, however, held that the prosecution has proved that the petitioners have voluntarily caused simple hurt and grievous hurt to the injured persons beyond all reasonable doubt.

The learned Appellate Court held that the independent witnesses like P.Ws. 3, 4 and 5 have corroborated the version of the injured witnesses and the version of the injured witnesses gets corroboration from the medical evidence. The learned Appellate Court further held that even though the injured Dwijabar Palei has not been examined during trial but since the other witnesses have stated about his assault and his medical report has been duly proved, that cannot be a ground for acquittal of the petitioners. Learned Appellate Court further held that even though the learned Magistrate has held that the charge under section 341 of the Indian Penal Code has not been established but there is unimpeachable evidence that the petitioners have committed the other offences and accordingly upheld the judgment and order of conviction.

6. Mr. Tushar Kanta Sahoo, learned counsel for the petitioners contended that without examination of the injured Dwijabar Palei during trial and without proof of X-ray plates and X-ray reports and without examination of the doctor who conducted the X-ray, merely basing on the bed head ticket entry, the learned Courts below should not have held that the injured Dwijabar Palei had sustained grievous injury and therefore, the conviction of the petitioners under section 325 of the Indian Penal Code is not sustainable in the eye of law.

Mr. Tusar Kumar Mishra, learned Additional Standing Counsel on the other hand contended that when there is concurrent finding of facts by both the Courts below and the evidence of the injured witnesses as well as the independent witnesses clearly establish that not only P.W.2 and P.W.7 but also Dwijabar Palei was assaulted by the petitioners during course of the occurrence and their injury reports have been duly proved by the doctors P.W.1 and P.W.9, therefore, it cannot be said that there is any illegality or infirmity in the order of conviction so as to exercise revisional jurisdiction to interfere with the same and therefore, the

revision petition should be dismissed.

7. Considering the rival contentions raised at the Bar, it is clear that so far as the injured persons P.W.2 and P.W.7 are concerned, as per the evidence of doctor (P.W.1), they have been sustained simple injuries. So far as injured Dwijabar Palei is concerned, P.W.1 has stated that he found a lacerated wound of size 1" x ?" x ?" over the right forearm and he reserved opinion regarding the nature of injury and the patient was admitted in the Orthopedic Ward. He proved his report Ext.2. P.W.9 Dr. Rama Chandra Sahoo who was the Orthopedic Specialist in the District Headquarters Hospital, Puri and attended injured Dwijabar Palei where the injured was admitted in the male Orthopedic Ward stated that as per the bed head ticket, he found that the injured had compound fracture of both the bones of right forearm as evidenced by X-ray Plate No.212 dated 18.06.1993. P.W.9 proved the bed head ticket (Ext.8).

The injured Dwijabar Palei has not been examined in the case. The learned Trial Court has been pleased to observe in para-6 of the judgment that in spite of the personal service of summons, the witness Dwijabar Palei did not turn up and as such he could not be examined and no steps have been taken by the prosecution to procure his attendance. Though P.W.9 has stated that as per the entry in the bed head ticket, the injured Dwijabar Palei has sustained compound fracture of both the bones of right forearm but such an entry is based on the X-ray Plate No.212 dated 18.06.1993 which was not proved during trial. The X-ray report has also not been proved. The person who conducted X-ray of the injured Dwijabar Palei has also not been examined. Though as per clause seventhly of section 320 of the Indian Penal Code, the fracture of a bone would amount to "grievous hurt" but in absence of proving the X-ray place, X-ray report and in absence of examination of the radiologist who conducted X-ray, merely basing on the entry made in the bed head ticket when the injured has not been examined, it cannot be said that the prosecution has proved that Dwijabar Palei has sustained grievous injury. However even though injured Dwijabar Palei has not been examined but there are ample oral evidence on record that he was assaulted during the occurrence as stated by the other two injured persons i.e. P.W.2 and P.W.7 so also three independent eye witnesses i.e. P.W.3, 4 and 5. There are also materials available on record to indicate that Dwijabar Palei was also treated in the hospital for his injury.

In view of the available materials on record, I am of the view that though the prosecution has proved that the petitioners assaulted Dwijabar Palei in furtherance of their common intention but it has failed to establish that Dwijabar Palei sustained any grievous injury. Therefore, the conviction of the petitioners under section 325 of the Indian Penal Code for the assault on Dwijabar Palei is not sustainable in the eye of law, however, they are convicted under section 323 of the Indian Penal Code.

So far as the assault on the informant (P.W.2) and injured Pratap Chandra Palei (P.W.7) is concerned, the evidence of the prosecution witnesses is consistent and

the same gets corroboration from the medical evidence. The injury reports of the two injured persons have been proved as Ext.1 and Ext.3. Therefore, I am of the view that prosecution has proved its case beyond all reasonable doubt under section 323 of the Indian Penal Code against the petitioners for the assault on the informant (P.W.2) and injured Pratap Palei (P.W.7).

8. In view of the above analysis of the evidence, the conviction of the petitioners under section 325 of the Indian Penal Code is hereby set aside. The conviction of the petitioners under sections 323/34 of the Indian Penal Code and sentence of fine of Rs. 200/- (two hundred) each for such offence and in default of payment of fine, to undergo simple imprisonment for fifteen days each as was imposed by the learned Trial Court is hereby confirmed.

Accordingly, the Criminal Revision is allowed in part.