
(1989) 06 OHC CK 0010
In the Orissa High Court
Case No : Criminal Appeal No. 101 of 1982

Kumari Gita Byas

APPELLANT

Vs

Smt. Surya Tanti and Others

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 354, 504, 509

Citation : (1989) 2 OCR 648

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

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; D.K. Misra, on behalf of L. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—This appeal is directed against the judgment passed by learned Judicial Magistrate, Jharsuguda, acquitting the Respondents of charges u/s 323, 354 and 509, I.P.C. The complainant is the Appellant.

2. The prosecution case in brief is as follows 80th the parties are residents of Chaukidarpara of Purunabasti in Jharsuguda town. On 18.1.1981 (date of occurrence) which was a Sunday, the Appellant had come for taking water from the public water tap. The Respondents were also present therefore the self-same purpose. It is alleged that Respondent Surya poured out the water from the Dekchi of the Appellant and further threw the water on her body. When the Appellant protested Respondent Surya rebuked her in filthy language caught hold of the Appellant's saree and pulled it and ultimately pushed her on the ground as a result of which she sustained a bleeding injury on the head. Thereafter, all the Respondents assaulted her by means of fist blows and kicks. This incident was seen by many persons who intervened and separated the parties. The Appellant came back and reported the incident to her parents. She accompanied her father to Jharsuguda Police Station where she lodged an oral report. But as the police did not take any action, a complaint petition was filed in Court on

13.2.1981, nearly 27 days later.

3. The Respondents were charged with offences under Sections 323, 354 and 504, I.P.C. Their defence was that on account of previous enmity and litigations, a false case was brought against them.

4. The Appellant examined five witnesses including herself. The learned Judicial Magistrate, on appreciation of the prosecution evidence, came to hold that the delay in filing the complaint was not satisfactorily explained; there was no injury certificate of a medical officer to corroborate the prosecution version that the Appellant had been assaulted on account of which she had sustained injuries; there were previous litigations between P.Ws. 2, 3, and 4 on one side and the Respondents including Respondent Surya on the other; P.W. 5 was not cited as a witness in the complaint petition who was examined as an independent witness and so her presence on the piece of occurrence was doubtful; independent witnesses named as, such in the complaint petition were withheld by the prosecution; and generally the evidence of the witnesses did not inspire confidence so as to prove the case beyond reasonable doubt. Accordingly he recorded the order of acquittal.

5. This being an appeal against acquittal, it is necessary to make reference to legal principles reiterated and laid down in one of the latest decisions reported in *Awadhesh and Anr Vs. State of Madhya Pradesh*, as follows:

Although the powers of the High Court to re-assess the evidence and reach its own conclusion are as extensive as in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always give proper weight and consideration to matters e.g. (i) the view of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who has the advantage of seeing the witnesses. If on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial Court for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. Unless the conclusions of the trial Court drawn on the evidence of record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal.

6. Undoubtedly, there was delay of about 27 days for filing the complaint petition in Court. It was stated by the complainant (P.W. 4) that an oral report was made at the police station. Her statement was supported by her father (P.W. 3). There was no independent corroboration to the effect that actually an oral report had been made at the police station. It was not impossible on the part of the Appellant to submit a written report or to make a station diary entry, in which

case those documents could be called for and produced in order to explain the delay. But the above course was not adopted in this case. If there is delay, there is danger of concoction, embellishment and introduction of a false story to give a colour to the prosecution case. Therefore, Courts always view with suspicion a complaint petition or an F.I.R. filed after long delay and insist upon submission of explanation for delay in this case, unfortunately the delay of 27 days has not been properly explained, and so the learned Judicial Magistrate was correct in observing that on account of the unexplained delay, the prosecution case should be viewed with suspicion.

7. P.W. 2, said to be one of the eye witnesses to the occurrence, had admitted in her evidence that she had filed a complaint case (I.C.C. Case No. 9 of 1951) against the Respondents and some others which Was then sub judice. Similarly, P.W. 3, father of the Appellant had admitted in his evidence that Respondent Surya had filed a case against him as well as the Appellant. Pendency of these litigations will show that there was no love lost between P.Ws. 2, 3 and 4 on one side and the Respondents on the other. In such an event, it was not unlikely that a false case could also be started at their instance against the Respondents. In this connection, it is worthwhile to quote the following from a recent decision of this Court reported in 1988 (II) O.L.R. 278, State of Orissa v. Biswanath Das and Ors.:

...It is well known that for reasons of enmity, previous litigations and interestedness, eye-witnesses to the occurrence cannot straightaway be disbelieved. It is only necessary for the Court while dealing with the evidence of such witnesses to exercise adequate caution if their evidence is approached with the above guideline and it is also found that there is some amount of independent corroboration, the Court should not hesitate to accept the evidence of such witnesses despite interestedness on account of hostility or previous litigations.

In this case, however, there was not much of independent corroboration. P.W. 1 said to be an independent witness to the occurrence admitted in her evidence that although she saw the incident, she did not disclose the same to anybody, P.W. 3, father of the Appellant was not an eye witness to the occurrence, P.W. 5 was not named at the first instance as a witness in the complaint petition If P.Ws. 1 and 5 had actually seen the occurrence, the former could have at least disclosed the fact to some neighbours and the name of the latter in normal course could have found place in the list of witnesses appended to the complaint petition what is more surprising is that independent witnesses though named in the complaint petition were not examined. In such circumstances, it cannot be said that the evidence of interested and inimically disposed of witnesses on account of litigations found sufficient corroboration from independent sources so as to become acceptable by court of law.

8. On a thorough reappraisal of the evidence, facts and circumstances of the case, it is found that the opinion formed by the learned Judicial Magistrate

cannot be said to be perverse. On the same set of facts and circumstances, even if this Court may come to a different conclusion, it would not be appropriate, according to the legal principle to differ from the views expressed by the trial court.

9. For the aforesaid reason, I am of the view that the appeal is without any merit and is hereby dismissed.