

(2016) 09 OHC CK 0051

In the Orissa High Court

Case No : C.R.L.R.E.V. No. 139 of 1999(From the judgment and order dated 31.01.1998 of the C.J.M.-cum-Assistant Sessions Judge, Khurda passed in S.T. Case No.36/397 of 1997/1995 confirmed in the judgment and order dated 05.02.1999 passed by Additional Sessions Judge)

Manoj Kumar Pani and Others - Petitioners @HASH State of Orissa - Opposite Party

Date of Decision : 22-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 324

Citation : (2016) 167 AIC 816

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

Bench : Single Bench

Advocate : Mr. Sapan Kumar Pal, Advocate, for the Petitioners; Mr. Jyoti Prakash Patra, Addl. Standing Counsel, for the Opposite Party

Final Decision : Allowed

Judgement

S.K. Sahoo, J. - The petitioners Manoj Kumar Pani, Tanuja Kumar Pani and Braja Pani who are three brothers being the sons of one Bhikari

Pani faced trial along with their mother Buli Dei in the Court of learned C.J.M.-cum-Assistant Sessions Judge, Khurda in S.T. Case No.36/397 of

1997/1995 for offences punishable under sections 341/324/427/307 read with section 34 of the Indian Penal Code.

The learned Trial Court vide impugned judgment and order dated 31.01.1998 has been pleased to acquit co-accused Buli Dei of all the charges.

Similarly the petitioners were also acquitted of the charges under sections 341 and 427 of the Indian Penal Code. However, they were found guilty

under section 307 and 324 of the Indian Penal Code and sentenced to undergo R.I. for six years each under section 307 of the Indian Penal Code

but no separate sentence was imposed under section 324 of the Indian Penal Code.

The petitioners preferred an appeal in the Court of Session which was heard by the learned Additional Sessions Judge, Khurda in Criminal Appeal

No.02 of 1998. The learned Appellate Court vide impugned judgment and order dated 05.02.1999 acquitted the petitioners of the charge under

section 307 of the Indian Penal Code however found them guilty under section 324/34 of the Indian Penal Code and sentenced each of them to

undergo R.I. for six months.

2. The prosecution case, as per the First Information Report presented by one Birajini Das (P.W.1) before the Officer in Charge, Banpur Police

Station on 11.01.1995 is that when her husband Sibaram Das (P.W.3) was carrying out the construction work on his own land with the help of

mason and labourers on 11.01.1995, about ten to fifteen minutes after the start of the work, P.W.1 heard hullah and came to the place of

construction and found that the three petitioners along with co-accused Buli Dei, Kuramani Satpathy, Lalita Satpathy being armed with lathi,

crowbar, Kati, spade came to the spot, started abusing P.W.3 in filthy language and also threatened him. It is further stated in the First Information

Report that petitioner no.1 Manoj Kumar Pani dealt a blow on the head of P.W.3 by means of a crowbar as a result of which P.W.3 sustained

bleeding injury. Similarly petitioner no.3 Braja Pani assaulted on the head of P.W.3 by means of a Kati and thereafter petitioner no.1 assaulted

P.W.3 on both the hands as a result of which he sustained swelling injuries. Co-accused Buli Dei pelted stone and one Kuramani Satpathy

damaged the wall of the house of P.W.1 by means of a crowbar. Then one Lalita Satpathy also abused P.W.3 in filthy language. P.W.1 shifted her

husband (P.W.3) to the hospital where he was treated.

Basing on such report of P.W.1, in absence of the Officer in Charge of Banpur Police Station, P.W.8 Efrem Kiro, S.I. of Police attached to

Banpur Police Station received the written report, treated the same as F.I.R. and registered Banpur P.S. Case No.7 of 1995 under sections

341/323/324/427/307/294/506/34 of the Indian Penal Code and himself took up investigation.

During course of investigation, he examined the witnesses and sent the injured

to the hospital. He visited the spot, arrested the accused persons and forwarded them to Court, received the injury report and after completion of investigation on 07.05.1995, P.W.8 submitted charge sheet under sections 341/323/324/427/294/506/34 of the Indian Penal Code against the petitioners and Buli Dei showing Buli Dei and petitioner no.2 Tanuj Kumar Pani as absconders.

Subsequently, the absconding accused persons were taken into custody and the case was committed to the Court of Session for trial after

observing due committal procedure where the learned Trial Court charged the petitioners and co-accused Buli Dei under sections

341/324/427/307 read with section 34 of the Indian Penal Code and since the accused persons refuted the charge, pleaded not guilty and claimed

to be tried, the sessions trial procedure was resorted to prove their guilt.

3. During course of trial, the prosecution examined eight witnesses.

P.W. 1 Birajini Das is the informant in the case and she is the wife of the injured. She is an eye witness to the occurrence.

P.W. 2 Sachi Barik, P.W. 4 Pravas Baral and P.W. 5 Subas Sahu are the eye witness to the occurrence.

P.W. 3 Sibram Das is the injured and he also stated about the assault on him by the accused persons.

P.W. 6 Dandapani Baral stated that he was present at the spot at the time of occurrence but could not see the assault as he was in the back.

P.W. 7 Dr. Rajendra Kumar Seth examined P.W.3 on police requisition on 11.01.1995 at C.H.C., Banpur and proved his report Ext.3.

P.W. 8 Efren Kiro was the S.I. of Police, Banpur Police Station who was the investigating officer.

The prosecution exhibited three documents. Ext.1 is the F.I.R., Ext.2 is the discharge certificate and Ext.3 is the medical report.

4. The defence plea of the petitioner was one of denial and it was pleaded that in order to grab the land, the case has been foisted.

No witnesses have been examined on behalf of the defence.

5. Mr. Sapan Kumar Pal, learned counsel appearing for the petitioners contended that there are discrepancies between the ocular evidence vis-a-

vis the medical evidence and the eye witnesses have stated about the occurrence in different manner and there is no consistency in their statements.

He further stated that neither the weapon of offence was seized and produced during trial nor the wearing apparels of the injured which were stated to be bloodstained were produced. The learned counsel for the petitioners further submitted that when the accused persons have been acquitted of the major charge under section 307 of the Indian Penal Code, relying on the self same evidence, it was not proper to convict the petitioners under section 324 of the Indian Penal Code.

Mr. Jyoti Prakash Patra, learned Additional Standing Counsel on the other hand contended that when two Courts have given concurrent findings and they have accepted the version of the eye witnesses so also the medical evidence, it would not be a proper to interfere with such findings in exercise of the revisional jurisdiction. The learned counsel for the State further contended that the discrepancies appearing in the statements of the witnesses are minor, insignificant, natural and not material and does not go to the root of the case and therefore, it cannot be said that in view of such discrepancies, the entire prosecution case should be viewed with suspicion.

6. Considering the submissions made by the respective parties and on perusal of the evidence of the doctor (P.W.7), it appears that he examined

P.W.3 on police requisition on 11.01.1995 at C.H.C., Banpur and found one lacerated wound of size 1½" x ¾" x ¾" longitudinally situated on

the scalp 4" above the left ear. He opined such injury to be possible by hard and blunt weapon and the nature of injury was simple. Similarly the

doctor noticed an abrasion of size 1½" x ¾" on the forehead ½" above the glabella which was possible by the hard object and opined it to be

simple in nature. The doctor further opined that injuries have been caused within six hours of the time of examination which is 10.45 a.m. on

11.09.1995. He proved the injury report which has been marked as Ext.3. Nothing has been brought out in the cross-examination of P.W.7 to

discard his evidence. He has proved the discharge certificate Ext.2 which indicates that P.W.3 was discharged on 17.01.1995. Both the Courts

below have rightly placed reliance on the evidence of P.W.7 and therefore, I am of the view that there is no infirmity in the evidence of P.W.7.

7. Coming to the evidence of the injured (P.W.3), he has stated that he was assaulted by all the three petitioners. According to him, the petitioner

no.1 Manoj Kumar Pani first dealt a blow by means of a crowbar on his head

causing bleeding injury, the petitioner no.3 Braja Pani then dealt a blow by means of a Kati which struck on the side of his head and then petitioner no.1 Manoj Kumar Pani and petitioner no. 2 Tanuja Kumar Pani dealt lathi blows on his arm.

If this ocular version is compared with the medical evidence then it is found that even though P.W.3 has stated that petitioners nos.1 and 2

assaulted him by means of lathi on his arm, no injury on the arm was noticed by the doctor (P.W.7). Similarly though it is stated by P.W.3 that

petitioner no.3 Braja Pani dealt a blow by means of a Kati on the head but no corresponding injury was noticed by the doctor (P.W.7). P.W.3 has

stated that his napkin and lungi were drenched with blood and he changed his clothes in the hospital. No such bloodstained wearing apparels of the

injured was produced in Court during trial of the case nor any weapon of offence was seized.

If the evidence of the other eye witnesses are compared with the evidence of the injured, it is found that P.W.4 has not stated about any assault by

petitioner no.2 to P.W.3. P.W.2 has also not stated about any assault by petitioner no.2 Tanuja Kumar Pani. Though, P.W.1 has stated that co-

accused Buli pelted stones at the time of occurrence but that part has not been stated either by P.W.2, P.W.3 or P.W.5. Therefore, the learned

counsel for the petitioners is right in submitting that not only there are discrepancies between the ocular evidence of P.W.3 vis-a-vis medical

evidence as adduced by P.W.7 but also there are discrepancies in the statements between the eye witnesses to the occurrence.

Minor discrepancies or variance in evidence on trivial matters not touching the core of the case should not be given undue importance as minor

variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. Sometimes such discrepancies occur due to normal

errors of observation, normal errors of memory due to lapse of time and due to mental disposition such as shock and horror at the time of

occurrence. Trivial discrepancies ought not to obliterate otherwise acceptable evidence.

8. Law is well settled that when the concurrent findings of the Trial Court as well as the Appellate Court are supported by proper appreciation of

evidence, no interference is necessary. However, where the material evidence

has not been considered by the lower Courts in proper legal perspective but has been misconstrued resulting in failure of justice or the findings are perverse and based on no legal evidence, the High Court would certainly be justified in its revisional jurisdiction in interfering even with concurrent findings of the fact otherwise it would result in miscarriage of justice. When the High Court is satisfied that in the broad interest of justice, conviction is not sustainable, the revisional Court has power to interfere and rectify the wrong even if the findings are concurrent. Therefore, I am unable to accept the contentions raised by the learned counsel for the State that merely because there is concurrent findings of the fact, the revisional jurisdiction should not be exercised.

9. Coming to the evidence on record, it is already noticed that there are discrepancies in the ocular testimony of the injured vis-a-vis the medical evidence which cannot be said to be minor or trivial in nature. Similarly there are discrepancies in the statements of the eye witnesses. The initial accusation was against six accused persons, out of which charge sheet was submitted against four persons. One of the accused was acquitted by the learned Trial Court. The petitioners were acquitted of some of the offences by the learned Trial Court. The learned Appellate Court acquitted the petitioners of the charge under section 307 of the Indian Penal Code. The Investigating Officer has stated that he has not found any blood or any mark of violence at the spot and he has not even seized any bloodstained wearing apparels of the injured which according to the injured were changed in the hospital.

10. In view of the above discussions, I am of the view that it is very difficult to hold that the prosecution has successfully proved its case beyond all reasonable doubt against the petitioners and accordingly, the revision petition is allowed and the impugned judgments and orders of conviction of the petitioners under sections 324/34 of the Indian Penal Code and the sentence passed there under is hereby set aside and the petitioners are acquitted of the charge under sections 324/34 of the Indian Penal Code. The petitioners are on bail by virtue of the order of this Court. They are discharged from liability of their bail bond. The personal bond and the surety bond stand cancelled.

11. In the result, the CRLREV is allowed.