

(2024) 04 OHC CK 0118

In the Orissa High Court

Case No : Criminal Revision Petition No. 1121 Of 2014

Narasingha Munda & Others

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 16-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 401, 428
Indian Penal Code, 1860 — Section 34, 307, 379, 447, 506

Citation : (2024) 04 OHC CK 0118

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : H.B. Dash, P. K. Maharaj

Final Decision : Partly Allowed

Judgement

S.S. Mishra, J.

1. The present Criminal Revision filed under Sections 401 of Cr.P.C. is directed against the judgment and order dated 10.11.2014 passed by the learned Additional Sessions Judge, Keonjhar in Criminal Appeal No.17/18 of 2013-10, whereby the order of conviction and sentence passed by the learned Assistant Sessions Judge, Keonjhar in S.T. Case No.43/136 of 2009 was modified and sentenced the petitioners to undergo R.I for one year for the offence U/s 379 IPC and one month for the offence under Section 447 of the IPC, the sentences to run concurrently.

2. The petitioners were subjected to prosecution in Turumunga P.S Case No.86 dated 23.11.2006 registered under Sections 447/379/506/307/34 of IPC.

3. The case of the prosecution is that on 22.11.2006 at about 10 A.M. Krushna Mahanta (informant) found the petitioners cutting away paddy from his land which stands recorded in his name. On protest by Krushna Mahanta, the petitioners abused him in obscene language and chased him holding a sickle. After seeing them, out of fear, the informant went running towards his village.

On the way, he saw an arrow passed by the side of his ear and fell at a distance of about 16 cubits of him. When he looked back, he saw accused Narasingha preparing to shot another arrow aiming towards him. The informant raised hullah saying "RAKHYA KARA RAKHYA KARA" and went towards his village. At that time witness Jagannath (P.W.2) came to the spot and the petitioners left the spot. The entire paddy of the informant was stolen away by the accused persons/petitioners.

4. On the basis of such allegation, F.I.R. was lodged at Turumunga Police Station on 23.11.2006 which was registered as Turumunga P.S. Case No.86 of 2006 under Sections 447/379/506/307/34 of IPC. After completion of investigation, charge-sheet was submitted against the accused persons/petitioners under Sections 447/379/506/307/34 IPC and charges were framed against them under those Sections. The petitioners were put to trial.

5. To bring home the charges, the prosecution had examined as many as 8 witnesses and exhibited 5 documents. The plea of defence was that of completely denial. In proof of their plea, defence had neither examined any witness nor exhibited any document.

6. The learned trial Court analyzed the entire evidence on record, found the petitioners guilty of the offences under Sections 447/379/506/307/34 of I.P.C. and convicted them there under and sentenced each of the petitioners to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/-, in default, to further undergo rigorous imprisonment for one year for the offence under Section 307/34 of I.P.C., to undergo R.I. for six months for the offence under Section 506/34 I.P.C. and to undergo R.I. for one year for the offence under Section 379/34 of the I.P.C. and to undergo R.I. for one month for the offence punishable under Sections 447/34 of I.P.C. The sentences were directed to run concurrently.

7. The judgment of conviction and sentence dated 26.02.2010 passed by the learned Assistant Sessions Judge, Keonjhar in S.T. No.43/136 of 2009, for the aforementioned offences was called in question by filing Criminal Appeal No.17/18 of 2013-10 before the Court of learned Additional Sessions Judge, Keonjhar by the petitioners.

8. The learned appellate Court vide its judgment and order dated 10.11.2014 has modified the sentence by partly allowing the appeal inter alia stating as under:

"7. I have carefully gone through the evidence on record Krushna Mahanta (P.W.1) has stated in his examination-in-chief that he protested seeing the appellants cutting paddy from his land but the accused persons chased him holding a sickle. He started running to save his life. Accused Narasingha Munda shot him by an arrow which passed by the side of his ear. Accused Narasingh Munda uttered "SALA MAGHIAKU MARIDEBI". Accused Narashingha Munda also chased him and was about to shot him another arrow. Seeing him, he started running to the village. This evidence is also mentioned in the FIR Jagannath

Munda (P.W.2) has stated in his examination-in- chief that accused Narasingh was chasing P.W 1. Jagabandhu Mahanta (P.W 3) though has stated about the occurrence in his examination-in-chief but has not stated that accused Narasingh Munda shot an arrow to Krishna Mahanta which was passed by the side of his ear. Jayakrushna Mahanta (P.W. 4), Rama Chandra Naik (P.W 5), Bijaya Kumar Senapati (P.W 6) and Narayan Senapti (P.W. 8) though have stated about the occurrence but have not stated that accused Narasingha Munda shot an arrow to the informant Krushna Mahanta. There is no independent corroboration to the evidence of Krushna Mahanta in this regard. When there is a prior land dispute in respect of the case land feeling run high and there is personal cause for enmity, there is a tendency to entangle the culprits with higher offences. When the witnesses are interested, it is the duty of the court to adopt and analyze evidence to find out whether it is cogent or credible. So, the solitary evidence in this regard of the informant Krushna Mahanta that the appellants criminally intimidated him. So, prosecution has failed to prove the charges U/ss. 307, 506, 34 IPC against the appellants and I acquit them there under.

8. Krushna Mahanta (P.W.10) has clearly stated in his examination of chief that the appellants cut and took away rice paddy from his land. This fact is also mentioned by Krushna Mahanta in his F.I.R (ext.3). This fact is also stated by other witnesses and thereby corroborated his evidence. 38 bundles of rice paddy were seized by police during investigation vide to seizure list (Ext.1) and given those rice paddy to Krushna Mahanta (P.W. 1) in zima vide zimanama (Ext.5). in cross examination by defence Krushna Mahanta (P.W. 1) has stated that he has been in litigating terms with the accused persons relating to the case land since 8 years. The accused persons filed a case against him in the court of Sub-collector, Keonjhar (O.L.R. Case No.146/06) U/s. 3-A of Orissa Scheduled tribe regulation. He has appeared in the court in the case after receipt of notice. He denied that ex-parte order was passed against him by the court and the accused persons have filed another case for execution of order. These evidence go to show that there is dispute in respect of the case land between the informant Krushna Mahanta and the appellants. Even though there is dispute for right, title and interest among the parties, one cannot forcibly take possession of a land from the other without the process of the court. Cutting away rice paddy from the land of the informant forcibly without the process of court while the informant had cultivated the land amounts to commission of offence of criminal trespass and theft."

9. The petitioners have challenged the aforementioned judgment/order of conviction and sentence in the present Criminal Revision Petition.

10. Heard Mr. H. B. Dash, learned counsel for the petitioners and Mr. P.K. Maharaj, learned Additional Standing Counsel for the State at length.

11. The learned trial Court after analyzing the evidence brought on record by the prosecution and convicted all the petitioners for the offences under Section 307/379/447/34 of the IPC and awarded various sentences to run concurrently.

The maximum sentence for the offence under Section 307 of the IPC was awarded to the petitioners to undergo R.I. for a period of three months. Apart from that various sentences were awarded for the commission of other offences.

12. The prosecution examined eight witnesses to bring home the charges leveled against the petitioners. P.W.11 is the informant, P.Ws.2,3,5 & 6 were the witnesses to the occurrence. P.W.4 was examined to prove the seizure. P.W.7 is the I.O. of the case. In the present case, the prosecution has not examined any Doctor who alleged to have been medically examined the informant. P.Ws.2,3,5 & 6 have deposed that they found the accused persons were cutting paddy crop from the land of the informant inspite of protest of the informant. The accused persons have threatened the informant holding bow and arrow and out of fear, the informant left the spot. The evidence further reveals that the accused persons were cutting the paddy and stolen the same. P.W.6 was the Sarpanch of the village who deposed that the wife of the informant had called him to inform about the occurrence. The police seized the paddy crop, one bow and arrow, Xerox copy of the Record of Right and demarcation report of the R.I. from the informant and prepared a seizure list, which was proved through P.W.4. Taking into account the aforementioned evidence on record the learned trial Court returned the following finding;

"14. On scrutiny of the evidence of the informant Krushna Mohanta (p.w.1), it is seen that he is the recorded owner of the plot No.1098, Khata No.104 along with other persons for which land dispute between the parties took place. The I.O. has also seized one certified copy of the R.O.R. of the case lands supports to the prosecution but this fact has not been controverted by the accused persons by adducing any oral or documentary evidence to that effect. Therefore, it is crystal clear that p.w.1 is the owner in possession of the case land. The evidence of p.w.1 that on the alleged date and time of the occurrence, the accused persons entered into his land, cut half-ripe paddy and removed the same. When he protested such illegal action of the accused persons, one of the accused Narasingh chased him to assault holding a sickle in his hand. This fact is corroborated by p.ws.2,3,5 in their evidence. Nothing has been elicited from the cross-examination of either p.w.1 reveals that accused Narasingh's land adjoins to the case land which pertains to Khata No.125, Plot No.1097 and plot No.1099. It is further elicited in his evidence that plot No.1097 is situated to the East of the village. Therefore, mountain and jungle around the case land. The identity of the case land having fully established by the evidence of p.w.1. Therefore, it is to be inferred that the accused persons have no right, title, interest and possession over the case land. Further, their entry to the said land for the purpose of cutting half ripe paddy and removing the same from the case land is found to be unlawful. It is also in the evidence of p.w.1 that due to unlawful action of the accused person i.e. cutting and removal of the half ripe paddy from the case land, he sustained a loss of Rs.1600/-. This fact has not been challenged by the defence in any manner. It is the evidence of p.w.1 that when he protested the illegal action of the accused p persons, Naransingh chased him holding with

sickle. Thus, the accused are found guilty for the offence punishable U/s-447/379/34 of I.P.C.”

13. Accordingly, the learned trial Court opined that the prosecution had successfully proved the charges alleged against the accused persons for the offences under Sections 447/379/506/307/34 of the IPC. Accordingly, sentenced all the accused persons as mentioned in the preceeding paragraphs.

14. The petitioners took up the matter to the appellate Court by filing Criminal Appeal No.17/18 of 2013-10. The learned Additional Sessions Judge, Keonjhar vide its judgment dated 10.11.2014 has confirmed the conviction recorded against the petitioners in so far as the offences under Sections 447/379/34 of the IPC are concerned, but acquitted the petitioners from the charges under Sections 307/506/34 of the IPC. But the sentence awarded by the trial Court has been maintained by the learned appellate Court for the offences they were convicted.

The appellate Court appreciated the evidence meticulously and came to the conclusion that in the absence of any physical hurt caused to the informant by the petitioners and in the absence of cogent evidence regarding threat given by the petitioners to the informant the prosecution has failed to prove the charges for the offences under Sections 307/506 of the IPC. The relevant would be re-produced Paragraph-7 of the appellate court judgment:

“7. I have carefully gone through the evidence on record. Krushna Mahanta (P.W.1) has stated in his examination-in-chief that he protested seeing the appellants cutting paddy from his land but the accused persons chased him holding sickle. He started running to save his life. Accused Narasingha Munda shot him by an arrow which passed by the side of his ear. Accused Narasingha Munda uttered “SALA MAGHIAKU MARIDEBI”. Accused Narasingha Munda also chased him and was about to shot him another arrow. Seeing him, he started running to the village. This evidence is also mentioned in the F.I.R. Jagannath Munda (P.W.2) has stated in his examination-in-chief that accused Narasingha was chasing P.W.1 Jagabandhu Mahanta (P.W.3) though has stated about the occurrence in his examination-in-chief but has not stated that accused Narasingha Munda shot an arrow to Krushna Mahanta which passed by the side of his ear. Jayakrushna Mahanta (P.W.4), Rama Chandra Naik (P.W.5), Bijaya Kumar Senapati (P.W.6) and Narayan Senapati (P.W.8) though have stated about the occurrence but have not stated that accused Narasingha Munda shot an arrow to the informant Krushna Mahanta. There is no independent corroboration to the evidence of Krushna Mahanta in this regard. When there is a prior land dispute in respect of the case land and feeling run high and there is personal cause for enmity, there is a tendency to entangle the culprits with higher offences. When the witnesses are interested, it is the duty of the court to adopt a careful approach and analyze evidence to find out whether it is cogent or credible. So, the solitary evidence in this regard of the informant Krushna Mahanta without independent corroboration is not reliable, believable and

trustworthy. Similarly, there is no independent corroboration to the evidence of Krushna Mahanta that the appellants criminally intimidated him. So, prosecution has failed to prove the charges U/ss. 307, 506, 34 I.P.C. against the appellants and I acquit them thereunder.”

15. If the judgments of the Courts below are weighed vis-à-vis the material on record, the petitioners cannot escape from the charges under Sections 447/379/34 of the IPC, because the un rebutted testimony of P.W.1 has been corroborated with the evidence of all the witnesses to the occurrence. Apart from that the evidence of P.W.6, the Sarpanch, who is a post-occurrence witness, has also lend support to the prosecution case. P.W.4 being the seizure witness, has also deposed firmly in favour of the prosecution. Therefore, the prosecution, according to my view, could successfully prove the charges against the accused persons under Sections 447/379/34 of the IPC. The appellate Court has rightly acquitted the petitioners for the offences under Sections 307/506 of the IPC because none of the witnesses had whispered a single sentence regarding the injury being caused to P.W.1 by the accused persons. There is no medical evidence worth the name as the prosecution did not adduce the Doctor’s evidence. None of the witnesses have supported the prosecution story regarding the physical attack being made by the accused persons on P.W.1. Therefore, no fault could be found from the judgment of the appellate Court in so far as recording of acquittal in favour of the petitioners for the charges under Sections 307/506 of the IPC are concerned.

16. Taking into consideration the cogent reasoning recorded by the court below weighing the evidence on record, I am of the considered view that the charges against the petitioners in so far as the offences under Sections 447/379/34 of the IPC are concerned, have been proved by the prosecution beyond all reasonable doubts. Accordingly, the conviction recorded by the courts below for the said offences are upheld. However, the sentence of one year imposed by the learned Court below for the offences under Sections 379/34 of the IPC and the sentence of one month imposed for commission of offence under Sections 447/34 of the IPC are modified. While maintaining the sentence awarded by the Court below in so far as the offence under Sections 447/34 of the IPC is concerned, the sentence of one year awarded to the petitioners for the offences under Sections 379/34 of the IPC is modified to six months R.I. The sentences shall run concurrently. The period of detention undergone by the petitioners shall be set off against the sentence of imprisonment as per Section 428 of the Cr.P.C.

17. Criminal Revision petition is partly allowed.

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