

(1989) 11 OHC CK 0019
In the Orissa High Court
Case No : Criminal Rev. No. 43 of 1986

Rankanath Das and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 325, 34, 341

Citation : (1990) 3 OCR 7

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : B.B. Mohanty and P.K. Biswal, for the Appellant; G.S. Das, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalaswamy, J.—This revision is preferred against the judgment of the Second Additional Sessions Judge, Puri, convicting the Petitioners u/s 323/34, I.P.C. and sentencing each of them thereunder to pay a fine of Rs. 100/- in default, to suffer rigorous imprisonment for 15 days and further convicting them u/s 341/34, I.P.C. without imposing any separate sentence thereunder.

2. The prosecution case, briefly stated, is that on 3.9.1981 at about 8. 30 P.M. while the informant (P.W. 1.) with his wife P.W. 3 and niece P.W. 4 was returning to Tangi on a motor cycle, on the way near Kalupada Ghat crossing, the Petitioners stopped the motor cycle and thereafter the Petitioner Rankanath Das assaulted the informant with a thenga on the right hand and subsequently all the Petitioners dragged the informant to the side of the road when the Petitioner Tushar Kanta Das assaulted him on his back by means of a cycle chain and thus the Petitioners rendered themselves liable for offences under Sections 323/34 and 341/34, I.P.C.

3. The defence plea is one of denial and the Petitioners pleaded that the case was falsely foisted against them owing to their previous enmity with the

informant and his wife. D.W. 1. was examined in support of their plea.

4. The prosecution has examined in all nine witnesses to prove its case. P.W. 1, the informant, was a teacher of Singarama M.E. School. His wife is P.W. 3, a teacher in the Tangi Girls' High School and both of them were residing at Tangi. Informant's sister's daughter is P.W. 4. P.Ws. 1, 3 and 4 were examined as eye-witnesses to the occurrence. P.W. 2 is the informant's brother-in-law and he arrived at the spot on being informed by P.W. 4 about the assault on P.W. 1. P.W. 5 is the driver of the auto-rickshaw in which both P.Ws. 3 and 4 went to Tangi soon after the occurrence. P.W. 5 was declared hostile by the prosecution. P.W. 6 is the brother of P.W. 4 and he is a post-occurrence witness. P.W. 8 is the doctor who examined P.W. 1 regarding his injuries. P.Ws. 7 and 9 are the Investigating Officers in the case.

5. The evidence of P.W. 1 shows that on 3.9.1981 at about 8.30 P.M. while he was returning to Tangi on a motor cycle along with his wife (P.W. 3) and niece (P.W. 4), near Kalupadaghat crossing as the Petitioners stood on the middle of the road obstructing his way he had to stop his motor cycle when accused Rankanath Das assaulted him with a lathi and as he tried to ward off the blow the lathi fell on his right hand causing a fracture and thereafter the Petitioners and others dragged him to the side of the pitch road and at that time as his wife (P.W. 3) came to his rescue, accused Hrushikesh Das dragged her away. It is in Evidence of P.W. 1 that on seeing the assault on him, his niece P.W. 4 ran to the crossing and raised an alarm that P.W. 1 was being assaulted and then P.Ws. 2 and 6 arrived at the spot and that in the meanwhile accused Tushar Kanta Das assaulted him (P.W. 1) on his back by means of a cycle-chain. The evidence of P.W.1 about his being assaulted by accused Rankanath Das with a thenga on his right hand and about the assault on him by accused Tushar Kanta Das with a cycle chain on his back, has not been shaken in cross-examination. There is nothing in the evidence of P.Ws. 1, 3 and 4 which discredits their testimony that as they were coming to Tangi on a motor-cycle, near Kalupadaghat the Petitioners had stopped the motor-cycle. So P.Ws. 3 and 4 are also competent witnesses to depose about the occurrence of assault on P.W. 1. P.W. 3 fully corroborates the evidence of P.W. 1 regarding the events which took place subsequent to the stopping of the motor cycle. But nothing substantial was elicited to discredit P.W. 3 when she deposed about the assault on her, husband by accused Rankanath Das with a thenga and by accused Tushar Kanta Das with a cycle chain causing a fracture of his right hand and injury on his back. The evidence of P.W. 4 also corroborates the version of P.W. 1 regarding the lathi blow given by accused Ranka on his right hand. It is in the evidence of P.W. 2 that as soon as he was informed by P.W. 4 about the assault on P.W. 1, he rushed to the spot and found the motorcycle lying on the road and saw accused Tushar Kanta Das giving a blow on the back of P.W. 1 by means of a cycle-chain. P.W. 6 stated that as his sister P.W. 4 informed him about the assault on P.W. 1, he rushed to the spot of occurrence and found the motor-cycle lying on the road and saw a mark of injury by means of a cycle-chain on the back of P.W. 1. The very

fact that P.W. 6 does not claim to be an eye-witness to the occurrence of assault on P.W. 1, is a circumstance which shows that he is a truthful witness.

6. P.W. 1 promptly reported about the occurrence at about 9 P.M. at the Tangi Police Station and a case was registered against the Petitioners under Sections 341, 325 and 324 read with Section 34, I.P.C. and this is a circumstance which goes in favour of the prosecution. The evidence of the Investigating Officer shows that he visited the spot of occurrence and seized the motor-cycle and the said evidence supports the version of P.Ws. 1, 3 and 4 that they were returning to Tangi on a motor-cycle at the relevant time.

7. The doctor, P.W. 8, had examined P.W. 1 on medical requisition at about 10 P.M. on 3.9.1981 and noticed fracture of middle shaft of the right radial besides bruises on the right scapular region and on his right fore-arm. He opined that the fracture was possible by means of cycle chain. He further opined that the age of the injuries was within two hours from the time of his examination. The learned Counsel for the Petitioners contended that as the informant's brother was a compounder in the Tangi P.H.C. on that score alone, the evidence of the doctor P.W. 8 should have been discarded. The above contention merits no consideration, because it is difficult to believe that the doctor P.W. 8 would be prepared to perjure himself for the purpose of foisting a false case only because the informant's brother happened to be a Compounder in his P.H.C. Hence it is seen that the reliable medical evidence in the case also supports the version of P.Ws. 1 and 3 regarding the assault on P.W. 1 by accused Rankanath Das and Tushar Kanta Das.

8. As the evidence of D.W. 1 did not inspire the confidence of the trial Court as well as the appellate Court, both the Courts below were justified in rejecting the evidence.

9. The learned Counsel for the Petitioners contended that as P.Ws. 1 to 4 and 6 are interested witnesses, their evidence should not have been accepted without independent corroboration. The proposition that when the eye-witnesses to the occurrence are interested persons, there should be corroboration of their evidence by independent witnesses cannot be of universal application. See *Mangal Singh and Others Vs. State of Madhya Bharat*, . Even otherwise also in the present case the nature of the evidence of P.Ws. 1, 3 and 4 is such that the same can be safely relied on. The prompt lodging of the first information report the seizure of motor-cycle from the spot and the prompt examination of P.W. 1 by the doctor on medical requisition, are the circumstances which corroborate the version of P.Ws. 1, 3 and 4 regarding the occurrence of assault on P.W. 1.

10. There is reliable evidence to show that by the date of occurrence there was enmity between the informant and his wife in the one hand and the Petitioners on the other. The learned Counsel for the Petitioners urged that in view of the admitted enmity between the parties, it should have weighed with the Courts below in coming to a finding that the prosecution version is not true, But this

enmity is a double-edged weapon The facts of the case disclosed that the existence of such enmity was the motive for the assault on P.W. 1.

11. The learned Counsel for the Petitioners next contended that as the occurrence had taken place near the Kalupadaghat independent witnesses any of such independent In this context he relied crossing there might have been several available and so the non-examination of witnesses is fatal to the prosecution case, on some decisions of the Supreme Court.

The learned Counsel for the Petitioners relied on the decision *Awadhesh and Anr Vs. State of Madhya Pradesh*, . In that case the prosecution very much relied on the evidence of P.Ws. 17 and 19 but their presence at the scene of occurrence was found to be highly doubtful and their testimony was held to be not free from doubt, as their statements were recorded by the police after two months of the occurrence without there being any explanation for the delay. It is in this background of facts, the non-examination of the District Magistrate, Superintendent of Police and other officers, who reached the spot within few minutes of the incident, was considered fatal to the prosecution case, *Jagdev Singh v. State* 1979 Cri. L.J. 236 is another decision relied on by the Petitioners. In that case there were indications in the prosecution evidence to the effect that most probably, the deceased was done to death by unknown persons and the Appellants, have been falsely implicated due to enmity. Further, the prosecution relied on three eye-witnesses, but their presence at the time of occurrence was disbelieved. Under those circumstances, the non-examination of any of the inmates of any the houses of the vicinity of the place of occurrence was considered fatal to the prosecution case.

So the above two decisions will not be of any help to the Petitioners in the facts of the present case.

On the other hand, in *Ram Prasad and Others Vs. The State of U.P.*, , the Supreme Court held that

It cannot be laid down as a rule that if a large number of persons are present at the time of the occurrence, the prosecution is bound to call and examine each and everyone of those persons. The answer to the question as to what is the effect of the non-examination of a particular witness would depend Upon the facts and circumstances of each case, In case enough number of witnesses have been examined with regard to the actual occurrence and their evidence is reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining the other witnesses. Likewise, if any of the witnesses is won over by the accused party and as such is not likely to state the truth, the prosecution would have a valid ground for not examining him in court.

In view of the reliable evidence placed on record, in the facts of the present case, the mere non-examination of some more witnesses to the occurrence, cannot be said to be fatal to the prosecution case.

12. It is on a careful consideration of the evidence on record, both the Courts below found that on the relevant night as P.Ws. 1, 3 and 4 were coming on a motor-cycle, the Petitioners stopped them and that in furtherance of their common intention two accused persons Rankanath Das and Tushar Kanta Das assaulted P.W. 1 causing injuries on his person, On a perusal of the judgments of the Courts below I see no reason to differ with the above concurrent findings arrived at by both the lower Courts. Hence both the Courts below were justified in holding the Petitioners guilty under Sections 323/34 and 341/34, I.P.C.

13. In the result, I find no merit in the revision and the same is, therefore, dismissed.