
(1970) 04 OHC CK 0016
In the Orissa High Court
Case No : Criminal Appeal No. 107 of 1967

Srimati Saraswati Dei

APPELLANT

Vs

Sri Phanindra Nath Mahapatra and Another

RESPONDENT

Date of Decision : 23-04-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 367, 417, 417(3), 424
Penal Code, 1860 (IPC) — Section 323 , 352, 426, 447

Citation : (1970) 36 CLT 1103

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : B.H. Mohanty and B.K. Ray, for the Appellant; R.C. Misra, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—Respondent No. 1 was convicted under Sections 447, 426 & 323, Indian Penal Code and Respondent No. 2 was convicted under Sections 447, 426 and 352, Indian Penal Code by the trial Court. On appeal, the Sessions Judge, Balasore, acquitted both the Respondents of all the above offences. Hence this appeal by the complainant on special leave u/s 417(3), Code of Criminal Procedure.

2. The complainant's case, in short, is as follows: The complainant p.w. 1 and her husband p.w. 5 are in possession of all acres of land appertaining to plot No. 349 under Khata No. 68 in village Nischinta, on the basis of a lease granted in favour of the complainant's husband, p.w. 5, by one Banabehari Panigrahi, as per Ext. 1 dated 18-7-1944. This land constitutes the homestead and Bari of the complainant and was enclosed on all sides by green fences. Plot No. 347 to the north of plot No. 349 belongs to Narendra Mohapatra, a cousin of the accused-Respondents. This land was also enclosed on all sides by a fence. P.w. 5 worked as a ?Mulia? under above named Narendra Mohapatra. On 18-7-1965 p.w. 1 on finding the Respondents uprooting a portion of the fence on plot No. 347

belonging to Narendra Mohapatra, protested against their unlawful action, as a result of which the Respondents abused her in filthy language and threatened to assault her thereafter, they cut the northern fence of the complainant's plot No. 349, trespassed into her Bari and damaged the paddy plants grown by p.w.s. 1 and 5 on the said plot. As p.w. 1 protested against the accused's illegal and high-handed action, accused Sailendra caught hold of her and dragged her, and accused Phanindra gave two fist blows on her back, as a result of which p.w. 1 fell down and shouted for help. When her witnesses and her husband p.w. 5, arrived at the place both the accused fled away from that place.

3. The Sessions Judge, in appeal, found that p.w. 1 and her husband were in possession of the aforesaid plot No. 349, but ultimately held that the prosecution could not establish beyond all reasonable doubt that the accused cut the northern fence of the complainant's plot of land and trespassed into her land, destroyed the paddy plants standing on a portion thereof, and assaulted the complainant as alleged. On the aforesaid finding the convictions and the sentences passed by the trial Court against the accused-Respondents were set aside.

4. It was urged on behalf of the Appellant that the finding of acquittal arrived at by the learned Sessions Judge was illegal and incorrect as the same was passed without proper discussion or consideration of the evidence on record and the salient features of the complainant's case. True it is that the impugned judgment is not a satisfactory one, there being no proper resume or judicious discussion and consideration of the evidence on record. The provisions of Section 367, Code of Criminal Procedure are applicable not only to a judgment of the trial Court, but also to, that of an appellate Court other than a High Court (see Section 424, Code of Criminal Procedure) and as such an appellate Court judgment, apart from complying with the other Requirements of Section 367, should also be capable of satisfying the higher Courts that the Judge applied his mind to all the evidence on record, the salient features of the case, and the relevant points raised before him. He should also clearly indicate all the reasons and considerations that passed in his mind in arriving at the findings and his decisions. All these are essential, as in a revision against the said judgment the findings of fact are ordinarily to be accepted when the judgment reflects proper and cogent considerations of the above factors. Moreover, a judgment of acquittal either passed by an appellate Court or by a trial Court is appealable u/s 417, Code of Criminal Procedure and so such a judgment, in order that it should be able to stand scrutiny of the High Court, should conform to the standard and tests very often laid down by this Court in this connection.

5. The finding of both the Courts that the complainant and her husband (p.w. 5) were in possession of plot No. 349 was not challenged or successfully assailed on behalf of the accused Respondents. The two important aspects to be examined in this appeal are:

(i) Whether the complainant has been able to prove beyond reasonable doubt

that the accused Respondents committed criminal trespass upon plot No. 349 by cutting open its northern fence, and thereafter damaged the paddy plants standing on a portion thereof.

(ii) Whether the complainant's allegation that she was assaulted by the accused-Respondents, has been established on the evidence on record.

6. The complainant (p.w. 1) besides herself examined four other witnesses. p.w. 5 is the husband of p.w. 1, who admittedly was not present at borne at the time of the occurrence. The mother of the complainant, though admittedly present at home at the time of the occurrence, has not been examined as a witness. The complainant in her examination-in-chief, after narrating her case as stated above, said that her witnesses came to that place after she fell down being assaulted by the Respondents and when she shouted for help. From her above statement it becomes evident that p.w.s. 2, 3 and 4 were not actually present at the time and place of occurrence till the complainant shouted for help after being allegedly assaulted by the Respondents. That being so, it was not possible for these witnesses to have actually seen all that preceded the complainant's shouting for help. But p.w.s. 2 to 4 narrated the incident as if they were present there at the spot from the beginning and witnessed the entire occurrence till the end. According to p.w. 1 it was she who protested against the Respondents cutting the fence on Narendra's plot of land, and so the Respondents reacted against her in that high-handed and illegal manner. But p.w.s. 2 and 3 stated that the Respondents had a quarrel with p.w. 4, Baishnab Behera, because of the cutting of the fence on Narendra Mohapatra's plot. p.w. 4 himself said the same thing. According to p.w. 1 the two Respondents only out and broke the fence of Narendra Mohapatra and participated in the entire occurrence, which followed, but according to p.w. 4 the accused persons and one Hemendra with 8 to 10 of their children uprooted the fence of Narendra Mohapatra. p.w. 2 while stating about the presence of the children at the place of occurrence did not state about their participating in the alleged occurrence in any manner whatsoever. p.w. 3 also claimed to have seen the entire occurrence from the beginning to the end, but he did not see Hemendra nor the 8 or 10 children as mentioned by p.w.s. 3 and 4. In his examination-in-chief he stated that the two Respondents and their permanent farm servant, Hasanta Barik, uprooted the fence of Narendra., and as p.w. 4 tried to stop them from their said Act, they quarrelled with p.w. 4. But in cross-examination he stated that about 15 to 16 persons actually participated in cutting the fences. Thus from the above discussion it is evident that the complainant and his witnesses, each one had his own different story to tell regarding participation of persons in the prosecution evidence regarding other material particulars of the alleged incident. While p.w. 1 stated that in all only one fence was out by the Respondents on the date of occurrence, p.w.s. 2, 3 & 4 stated that the Respondents out in all four fences, three belonging to Narendra and one belonging to the complainant. There is also divergence regarding the place, the extent of damage caused to the fences and as to whose fence actually was damaged by the Respondents on the date of occurrence. As stated by p.w. 3

and admitted by p.w. 5, to the north of the complainant's land is the garden of Respondent Phanindra and other co-sharer Zamindars. Narendra is a respondent of the Respondents. p.w. 4 stated that Narendra and his brothers were quarrelling and litigating amongst themselves over fence cutting since a long time. The complainant's case is that the fence to the north of her plot was cut out by the Respondents. That being so it is just possible that the Respondents were cutting and removing the fence on their own land, regarding which they had dispute with Narendra. On such evidence, materials and the discussion made above I am satisfied that the finding of the Court below, that the complainant could not establish beyond reasonable doubt that the Respondents cut, removed and damaged the fence on plot No. 349 is correct.

7. The allegations of criminal trespass, mischief by destroying paddy plants on plot No. 349, and assault on the complainant as alleged by her, do not get suitable corroboration from her witnesses. According to the complainant, the accused persons trespassed into her said plot by cutting open a portion of the fence to the north of that plot, and damaged the paddy seedlings standing on a portion thereof, and when she protested she was assaulted as a result of which she fell down and shouted for help, and then her witnesses arrived at the spot. Thus on her evidence the presence of p.w.s. 2 to 4 at the time of the occurrence proper, is falsified or at least becomes improbable. There are also discrepancies about the exact portion and the extent of the fence cut, the portion of the land on which the paddy seedlings were damaged, and about the person who actually assaulted p.w. 1. While p.w. 1 stated that Sailendra caught hold of her right hand and dragged her, and accused Phanindra, gave her two blows on her back as a result of which she fell down on the ground, p.w. 2 stated that p.w. 1 fell down on the ground as accused Phanindra gave a push on her back. p.w. 2 did not state about Phanindra giving blows on the back of p.w. 1 or about Sailendra catching hold of her hand and dragging her. He rather stated that Sailendra at that time was cutting paddy at another place in the field. I do not understand this story of cutting paddy, the occurrence being in the month of July, 1965.

8. On such evidence, consideration and discussion made above I am satisfied that the Court below arrived at the correct finding that the complainant could not establish beyond a reasonable doubt that the Respondents cut the northern fence of her plot, trespassed into the same, destroyed the paddy plants standing on a portion thereof, and assaulted her. Thus the order of acquittal passed by the Court below cannot be interfered with in any manner.

There is therefore no merit in this appeal which is accordingly dismissed.