
(2008) 01 OHC CK 0047
In the Orissa High Court
Case No : Government Appeal No. 45 of 1993

State of Orissa

APPELLANT

Vs

Babula Girl and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324, 325, 34

Citation : (2008) 1 OLR 172 Supp

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; D.P. Dhal, S.K. Nayak for Respondent 3, A.K. Acharya, B.K. Panda and D.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The State of Orissa has assailed the judgment and order dated 18.01.1993 passed by the Asst. Sessions Judge-cum-Chief Judicial Magistrate, Balasore in S.T. Case No. 27/77 of 1992 wherein he acquitted the accused-Respondent of the charge under Sections 341/323/324/325/379/307 read with Section 34 of I.P.C.

2. The prosecution case in nub is that on 24.7.91 at about 10.00 P.M. while P.W.2 was returning from the house of Kalicharan Sahu of village Nachindiha, on the way near the Tati gate of accused Ananta Naik, all the accused persons in furtherance of their common intention to do away with the life of P.W.2 assaulted him with crow bar and knife for which he sustained severe bleeding injuries including fracture. It is further alleged that accused-Respondent Ajit Dey snatched away Rs. 1027 from his chest pocket. Hearing hullah raised by him, P.W.6 rushed to the spot and while lifting him, P.Ws. 1, 4 and one Prabir Patra arrived at the spot. Immediately, the injured was removed to Baliapal dispensary, but as his condition was serious after preliminary treatment he was referred to the District Headquarter Hospital, Balasore on the next date, where he underwent treatment for 21 days.

3. On the very night of occurrence, as per the instruction of P.W.2, his son Prabir Patra scribed the F.I.R. and lodged it before the O.I.C., Baliapal Police Station (P.W. 10) on the next date. As the allegation contained in the F.I.R. revealed a cognizable case, P.W.10 registered Baliapal P.S. Case No. 38 dated 25.7.1991 and took up investigation. In course of investigation, he examined some witnesses, visited the spot and arrested accused Ananta Naik forwarded him to Court and searched for the other two accused persons, but could not trace them. On the eve of his transfer on 8.8.1991 he gave charge of investigation of the case to S.I. Dillip Das who in turn handed over charge of the case to A.S.I. Jagannath Mishra (P.W.7) who examined some other witnesses and made over charge of investigation of the case to P.W.8. P.W.8 searched for the remaining accused persons, but could be able to apprehend accused Ajit Dey only. After going through the Case Diary, finding a prima facie case against the accused persons he submitted charge sheet against them showing accused Babula Giri as absconder. The case having been committed to the Court of Session was transferred to the Asst. Sessions Judge-cum-Chief Judicial Magistrate, Balasore who framed charge under Sections 341/323/324/379/307 read with Section 34 of I.P.C. As the accused persons did not admit the charge, they faced the trial.

4. In order to bring home the charge against the accused persons, prosecution examined 12 witnesses in all. After assessing the evidence on record, the trial Court acquitted the accused persons holding that the evidence of prosecution witnesses suffered from major contradictions; since there was previous enmity between the injured and material witnesses viz P.Ws. 1, 4 and 6, in one hand and the Respondent on the other, the possibility that the case was falsely foisted because of that could not be ruled out and that the investigation was perfunctory.

5. Being aggrieved with the said judgment and order of acquittal, the State of Orissa has preferred the present appeal as stated earlier. It transpires from the evidence of P.W.2 the injured that on the date and time of occurrence he was returning from the house of Kalicharan Sahu of Nachindiha, he saw all the three accused persons (hereinafter referred as Respondent) talking in front of the Tati gate of Respondent Ananta Naik. On seeing him, all of them entered inside the house of Respondent Ananta Naik, and no sooner did he (P.W.2) arrive near the Tati gate holding a crow bar, Respondent Ananta Naik emerged out of his house and inflicted a blow with it on his left knee joint causing fracture. As he shouted "Maa Marigaligo Daudi Asa", Respondent Babula Giri gave a slap on his nose, causing bleeding from the nostril. During that time Respondent Ajit Dey snatched away a sum of Rs. 1,027/- from his chest pocket and when he tried to prevent it, he inflicted a knife blow on the back of his head, causing bleeding injury. The Respondent Babula Giri took the crow bar from Respondent Ananta Naik and showered one blow with it on his (P.W.2) left hand and Anr. blow on his upper arm, causing fracture. Again Respondent Ajit Dey inflicted a knife blow on the left ankle joint of P.W.2 and when Kartik Patra (P.W.6) arrived at the spot all the Respondent fled away. In the meantime Rabindra Jena (P.W.1), Surendra Naik (P.W.4) and some others arrived at the spot and lifted the injured to his house,

whereafter he was removed to Baliapal dispensary by a rickshaw. In his examination-in-chief P.W.2 deposed that he could identify all the Respondent since the occurrence took place in a moonlit night. He had not state before the I.O. or while the F.I.R. was scribed that he could identify the Respondent as the occurrence took place in a moonlit night and that " at the sight of Kartika Patra (P.W.6) the Respondent fled away.

6. It transpires from the evidence of P.W.6 that hearing hullah outside, he rushed to the Tati gate of Ananta Naik and saw Respondent Babula Giri assaulted P.W.2 by a crow bar, Respondent Ajit Dey inflicted a knife blow on his head and Respondent Ananta Naik inflicted a kick on him but he had not stated so before the I.O. Similarly, it is found from the examination-in-chief of P.W.6 that when he was lifting P.W.2, all the three Respondent were seen going away; that P.Ws. 1, 4 and one Prabir Patra arrived at the spot in the meantime; that when the three Respondent were going away, P.W.1 saw them by focusing his torch light, but P.W.6 had not stated all these before the I.O. In his examination-in-chief P.W.1 stated that by the time he reached at the spot, he saw P.W.6 lifting P.W.2; that both P.Ws.2 and 6 told him that the Respondent assaulted P.W.2 and that on the focus of his torch light he could see the Respondent, when they were going away, but P.W.3 had not stated all these facts before the I.O. Similarly P.W.4 in his examination-in-chief deposed that he saw P.W.6 lifting P.W.2 and that the Respondent were going away from the spot, but he had not state so before the I.O. So, the evidence of the injured and the so-called eye witness and post-occurrence witnesses are full of contradictions.

7. It transpires from the evidence of P.W.1 that there was a case and a counter case between himself in one side and Respondent Ananta Naik and Ajit Dey, on the other. He also deposed as a witness against Ananta Naik in a criminal proceeding. Similarly P.W.2 admitted that he was a witness against the Respondent in a case where they assaulted P.Ws. 1, 6 and others. He also initiated a criminal case against the Respondent on the allegation that they assaulted his wife. On perusal of the evidence of P.W.6, it is also found that he was in disputing terms with the Respondent, prior to the occurrence. So, P.Ws. 1, 2 and 6 were in inimical terms with the Respondent. No doubt enmity is a double edged weapon, it can be said that because of previous enmity, the Respondent assaulted P.W.2 or that a false case was initiated by P.W.2 against the Respondent to feed fat his previous grudge. As stated earlier there are major contradictions in the evidence of so-called eye witness and post-occurrence witnesses. So, the possibility that the case was falsely foisted against the Petitioner can not be ruled out.

Added to all these, the cash alleged to have been snatched away from P.W.2 and the weapons of offence used have not been seized by the I.O. Had those been seized, the same would have lent some support to the prosecution case. As borne out from the evidence on record, even though there were 3 I.Os., none of them even attempted to seize either the cash or the weapons of offence. So, the

finding of the trial Court that the investigation was perfunctory can not be branded as baseless.

8. It is the established principle Of law that, in case of an appeal against acquittal, if the view taken by the trial Court is reasonably plausible, the Appellate Court should not interfere with such view, even if Anr. view is possible. In the present case, the view taken by the trial Court is a plausible one. Furthermore, the alleged occurrence took place on 24.7.1991; the Respondent faced the ordeal of trial till 18.1.1993, when the judgment was delivered. The present appeal is pending since about one and half decades. Under such circumstances, if the order of acquittal is reversed and the Respondent are convicted, it would be travesty of justice.

In the result, the Government Appeal stands dismissed. The Respondent are discharged of their bail bonds.