
(2014) 11 OHC CK 0002
In the Orissa High Court
Case No : Government Appeal No. 34 of 1998

State of Orissa

APPELLANT

Vs

Baidhar Singh

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 5 FLT 691

Hon'ble Judges : Mr. D. Dash, J.

Bench : Single Bench

Advocate : Mr. A.K. Mishra, Standing Counsel, for the Appellant; M/s. P.R. Barik, S.R. Das and R. Roy, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D. Dash, J.—The State in this appeal has called in question the order of acquittal passed by the learned Sub-Divisional Judicial Magistrate, Udala in 2(b) C.C. Case No.13 of 1991 (Trial Case No.536 of 1991) acquitting the respondents of the charge under section 51 of the Wild Life (Protection) Act.

2. The case of the prosecution is that on 15.03.1991 some villagers of Patsanipur, Ambikadeipur, Dengam entered into the Similipal Sanctuary for poaching wild animals. So, under the leadership of Forest Range Officer, Udala, a party comprising of other forest officials went to Jenabil forest area hill side of the sanctuary and way laid there. It was around 5.30 A.M. they saw a large number of poachers coming down the hill. So, there was a chase from all sides when those poachers rushed inside the dense forest at random. With much difficulty the respondents were only apprehended and they were found to be carrying a freshly cut left fore limb of a wild Bore by means of a bahangi resting on their shoulders. They were arrested at the spot and seizure of the materials carried by them was made along with two bows and four arrows. They were found to have killed a wild Bore from inside the sanctuary area by means of bows and arrows. Report being placed by the forest range officer, the DFO-cum-Wild Life Warden, Baripada lodged the complaint. Thus, the respondents faced the

trial.

In the trial the respondents took the plea of complete denial.

3. Prosecution in order to establish their case has examined nine witnesses including the complainant P.W.9. P.W.5 is the Forester whereas P.Ws. 4 and 7 are the Forest Range Officers. The other forest guards who are the members of the raiding party have come to dock as P.Ws. 1, 2, 3 and 8.

4. The trial court on examination of evidence and upon their evaluation has arrived at conclusion that prosecution evidence is not consistent and worthy of credence. Therefore, entertaining a doubt, the trial court refused to accept the prosecution case in fastening the guilt upon the respondents.

5. Learned counsel for the State submits that there was no reason for the trial court to discard the evidence of the official witnesses, who have no axe to grind against the respondents and when the respondents have been caught red handed at the spot inside the sanctuary area with a freshly cut limb of a wild Bore, they ought to have been convicted for the offence under section 51 of the Act. Thus, he urges that the order of acquittal needs interference.

6. Learned counsel for the respondents, on the other hand, supports the finding rendered by the court below. According to him, after a thorough discussion of evidence on record, right conclusion has been arrived at in refusing to accept the prosecution version. According to him, the evidence of prosecution witnesses being not consistent, the trial court has rightly discarded the same as in this case in view of gathering of a large number of persons, the presence of these respondents as simple travelers cannot altogether be ruled out and as also their false implication.

7. Keeping the rival submission in mind, this Court is now called upon to examine the evidence of the prosecution and evaluate the same in judging the defensibility of the finding of the court below on which the order of acquittal is based. But before taking up the said exercise, it is felt apposite to take note of the settled position of law with regard to the powers of this Court to interfere with the order of acquittal in seisin of an appeal at the behest of the State.

It has been held in case of *Basappa v. State of Karnataka*; (2014) 57 OCR 1044 that the High Court in an appeal under section 378 Cr.P.C. is entitled to reappraise the evidence and put the conclusions drawn by the trial court to test but the same is permissible only if the judgment of the trial court is perverse. Relying the case of *Gamini Bala Koteswara Rao and others v. State of Andhra Pradesh*; (2009) 10 SCC 639, it has been held that the word "perverse" in terms as understood in law has been defined to mean "against weight of evidence". In "*K. Prakashan v. P.K. Survenderan*"; (2008) 1 SCC 258, it has also been held that the Appellate Court should not reverse the acquittal merely because another view is possible on evidence. It has been clarified that if two views are reasonably possible on the very same evidence, it cannot be said that

prosecution has proved the case beyond reasonable doubt (Ref.:- T. Subramaniam v. State of Tamil Nadu; (2006) 1 SCC 401). Further, the interference by appellate Court against an order of acquittal is held to be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take (Ref.:- Bhima Singh v. State of Haryana; (2002) 10 SCC 461).

8. Keeping the above principle in mind and viewing the submission, let us now examine the evidence of prosecution witnesses. P.Ws. 1 and 2 have not in clear term stated that the respondents were among those persons coming down the hill and were nabbed P.W.8 when has stated that ten to twenty persons were returning from the reserve forest after hunting the Bore and as they appeared, they fled away, the same is not the version of P.Ws. 1 and 2. It is further stated by P.W.8 that they could restrain one person and from him seizure of incriminating materials were made and he was brought to the Forest Range Office at Udala. P.W.8 is also not stating that these respondents were among those persons coming down the hill after hunting a Bore. So, these three witnesses are silent on the score that the respondents were in the said group or among those persons who had gone to the reserve forest for poaching wild animals. P.W.7 has deposed that when they proceeded to the reserve forest, they detected two hunters and they were carrying left limb of a Bore, which is a different version than P.W.5. The evidence of P.W.3 is also in the same vain. Both P.Ws.3 and 7 are not stating that they saw a large number of persons coming down the hill inside the Similipal Reserve Forest after hunting a wild Bore and they at the sight of the forest office fled away. So, there lacks consistency in the evidence of these official witnesses right from the beginning till the end.

This being the state of affair in the evidence the view taken by the trial court in entertaining reasonable doubt as regards the complicity of these respondents in fastening the guilt upon them for offence under section 51 of the Act is not found to be unreasonable and it can also be said to have so held by improper appreciation of evidence.

9. In the result, the appeal stands dismissed.