
(2007) 07 OHC CK 0006
In the Orissa High Court
Case No : Government Appeal No. 9 of 1993

State of Orissa

APPELLANT

Vs

Banchanidhi Sahu and Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2007) CLT 1225 (Suppl CrI)

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : S.N. Mohapatra, G.P. Mohanty, P.C. Das, J.S. Mishra and N.C. Nayak,
for the Respondent

Final Decision : Dismissed

Judgement

1. Heard further argument. Peruse the note of submission of the Appellant and the Government Appeal is dismissed for the following reasons.
2. Accused-Respondents faced the trial in the Court of Sessions Judge, Balasore in Sessions Trial No. 59 of 1990. Accused-Banchhanidhi Sahu was charged u/s 302 Indian Penal Code whereas accused Banchhanidhi Sahu together with other 7 accused persons were charged under Sections 148 and 302/149 Indian Penal Code on the allegation that on 17.11.1989 at about 8 A.M., the accused persons having the common object and being armed with weapons like lathis and handle sticks assaulted Chandramani Rout (hereinafter referred to as the "deceased") and when his sons, Suresh, Jogesh, Subash went for his rescue they were also assaulted by them. As it appears from record, no charge was framed for the assault on the sons of the deceased and there is no challenge to that aspect either at the time of trial or pursuing the Government Appeal.
3. In view of the lathi blow caused by in front of house of the accused-Banchhanidhi, the deceased said to be fallen down and thereafter accused Subash and other accused persons assaulted the deceased. The deceased was

taken to the Aradi Medical Aid Centre. P.W. 4, Dr. Gokulananda Mohanty treated him there but at about 4 P.M., the deceased succumbed to the injuries. Dr. Gokulananda Mohanty also proved the injury certificate of the deceased, Ext. 2 to 5, medical report of Suresh Chandra Rout(P.W.1), marked Ext. 3, Jogesh (P.W.3) marked Ext. 4 and Subash (P.W.2), marked Ext. 5.

4. In course of cross-examination, he also proved the injury certificate, Ext. A of the accused - Judhistir, son of one Dayanidhi, Ext.B, the certificate relating to Suryamani Sahu, one of the members of the unlawful assembly, who is an indoor patient from 14.11.1989 to 19.11.1989.

5. Accused persons took the plea of denial of accusation of assault and murder of the deceased and P. Ws.1, 2, and 3 have however advanced the defence plea that the deceased, his sons and the supporters including P. Ws. 8 and 10 were aggressors and the accused persons tried to escape from the spot and the deceased and P. Ws.1,2 and 3 sustained injury due to fall in the process of chasing them. Accused persons, on the basis of the FIR, G.R. Case No. 1185 of 1989 was registered and that was tried as a counter case simultaneously with S.T. No. 59 of 1990.

6. To substantiate the charge, prosecution examined as many as 12 witnesses and relied series of documents, marked Ext. 1 to 12 and some of lathis as the M. Os. I series besides the wearing apparels M. Os. II to IV. Accused persons did not adduce any oral evidence but relied on documentary evidence Exts. A and B and the FIR in the counter case, Ext.C.

7. It was the admitted version of the prosecution as well as the accused that there was inimical relationship between both the parties and as many as eight criminal and civil cases were pending between them relating to several disputes. The eyewitness P.Ws.8 and 10 were also one way or other party to the said litigations. Learned Sessions Judge on evaluating the evidence on record found that the injuries and the eyewitness are not truthful witnesses in view of contradictions in the manner of assault between the evidence in Court and statement u/s 161 Code of Criminal Procedure. They were found to be highly interested witnesses because of severe enmity with the accused persons. The evidence of eye-witnesses goes contradictory to the medical evidence of P. Ws. 4 and 7 regarding the injury on the deceased and possibility of the injury on the blow given from the front of the deceased and above all non-explaining the injuries on the accused persons. Prosecution was found guilty of suppression of fact. Because of the aforesaid circumstances, which appears to be reasonable the Trial Court granted benefit of doubt and acquitted the accused persons from the charge.

8. Learned Counsel for the State urges before us that since the evidence of P. Ws. 1, 2, 3, 8 and 10 are consistent with each other on the manner of assault on the deceased and other injured persons, therefore the order of acquittal is not acceptable. He, however, is unable to discard any of the aforesaid reasoning on

the basis of which the Trial Court passed the order of acquittal. Consistency of the interested eye witness runs contrary to medical evidence of disinterested witnesses. Interference with order of acquittal is permissible only where findings recorded by the Trial Court suffers from perversity or illegality. We do not find existence of any such circumstances so as to disturb the order of acquittal.

9. Accordingly as noted above, we dismiss the Government Appeal.

Govt.appeal dismissed.