
(2009) 10 OHC CK 0012
In the Orissa High Court
Case No : Government Appeal No. 76 of 1998

State of Orissa

APPELLANT

Vs

Dolamani @ Mangan Mehera and Others

RESPONDENT

Date of Decision : 19-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 235
Penal Code, 1860 (IPC) — Section 148, 149, 302, 323, 325

Citation : (2010) 1 OLR 407 Supp

Hon'ble Judges : L.K. Mishra, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Addl. Government Advocate, for the Appellant; P.K. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 02.8.1996 passed by learned Addl.Sessions Judge, Bargarh acquitting the accused persons of the charges under Sections 148/323/325/302/149 of I.P.C.in S.T. No. 101/21 of 1992 is assailed by the State in this appeal.

2. Bereft of unnecessary details the short facts as spelt out from the F.I.R. lodged by one Bihari Meher (not examined as witness) is that on 17.9.1991 at about 7.00 P.M. the informant was sitting in front of the house of one Jogeswar-P.W.9 and heard his uncle Lakhpatri Meher (not examined as witness) shouting at unknown persons alleging that his son Adi had been afflicted with witchcraft in the village. While shouting he was also jumping on the road. At that juncture accused Koira Meher came with a lathi, protested and asked Lakhapatri as to why he was shouting. Consequently an altercation took place between Lakhapatri and accused Koira. While matter stood thus, other accused persons assembled there being armed with lathis and assaulted Lakhapatri. It was alleged that accused Koira also dealt blows on Lakhapatri with lathi. It was further alleged that when Dhanpatri and Jogeswar asked them as to why they were assaulting Lakhpatri,

accused Koira and other accused persons howled at them and Koira assaulted Dhanpati. Consequently he sustained injuries and was removed to Hospital. Jogeswar also sustained injuries and so also Lakhapati. On the basis of said F.I.R., Barpali P.S. Case No. 109(7) of 1991 was registered and the Officer-in-Charge took up investigation.

3. In course of investigation the Investigating Officer visited the spot, examined different witnesses as well as the injured persons and seized material objects. During continuance of the investigation injured Dhanpati succumbed to the injuries. The Investigating Officer conducted inquest and sent the dead body for postmortem. After completion of the investigation charge sheet was submitted for commission of offence punishable under Sections 148/302/323/325/149 of I.P.C. in the Court of the learned S.D.J.M., Bargarh in G.R. Case No. 590 of 1991. Learned S.D.J.M. on being satisfied from the police records, took cognizance of the offences and committed the case to the Court of Sessions for trial.

4. The plea of the accused persons was of complete denial. They took the stand that in the year 1991, on the day of Biswakarma Puja while Koira was sitting in his house, Jogeswar, Dhanpati, Rabindra, Bhakta, Gajera and Bihari came with lathis and assaulted Jaikrushna @ Koira by abusing his wife and he lodged a case, as a counter blast the present F.I.R. was lodged making false allegations in order to harass them.

5. In order to substantiate its case, prosecution got 13 witnesses examined. Out of whom P.W.1 and P.W.2 were witness to the seizure of lathi, lungi, stone piece and other materials, P.W.3 was the daughter of Dhanpati and was an eyewitness to the occurrence. P.Ws.4 and 5 were also witness to the seizure, P.W.6 was the wife of the injured Jogendra and was a witness to the incident, P.W.7 claims to have seen the incident, P.W.8 did not support the prosecution case and turned hostile, P.W.9 was the injured and son of Dhanpati, P.W.10 was Anr. son of Dhanpati and was a post occurrence witness, P.W. 11 was the doctor who conducted autopsy over the dead body, P.W.12 was the Officer-in-Charge who conducted the investigation, P.W.13 was the Asst. Professor Radiology, V.S.S. Medical College, Burla who examined X-ray reports of injured Jogeswar and Lakhapati.

Accused Chaturbhuja Meher-D.W.1 was examined as a witness to the incident on behalf of the defence.

6. Learned Addl. Sessions Judge after discussing the evidence in extenso came to the conclusion that the prosecution had failed to establish the fact that the accused persons were members of an unlawful assembly" and with a common object of committing murder of Dhanpati, caused not. He held that the prosecution has also failed to prove that either Koira or any other accused person assaulted Dhanpati. On the basis of discussion made he came to the conclusion that the accused persons were entitled to benefit of doubt and acquitted them u/s 235 of Code of Criminal Procedure

7. The said judgment is assailed in this appeal mainly on the ground that learned Addl. Sessions Judge acted erroneously in disbelieving P.Ws.4 and 6 who testified injuries and were eyewitnesses to the occurrence and he ought to have considered the evidence of P.Ws.3, 6, 7 and 9 who were also eyewitness to the occurrence. In short according to learned Addl. Government Advocate, learned Addl. Sessions Judge without properly appreciating the evidence acquitted the accused persons and it is a fit case where the order of acquittal needs to be interfered with.

8. All these submissions are strongly repudiated by learned Counsel appearing for Respondents. According to him learned Addl. Sessions Judge has discussed the evidence both oral and documentary in extenso and arrived at a conclusion that the prosecution had totally failed to establish any of the facts alleged in the F.I.R. According to learned Counsel for Respondents, material witnesses were not examined by the prosecution. That apart independent witnesses, did not support the prosecution case and learned Addl. Sessions Judge has rightly come to the conclusion that the accused persons are entitled to an acquittal order under benefit of doubt.

9. Heard learned Counsel for the parties at length. Perused the evidence meticulously. After going through the evidence of the doctor-P.W. 11 coupled with the postmortem report this Court is satisfied that the death of Dhanpati was a homicidal one. The only question thus needs to be determined is as to who was the author of the alleged crime. This is a peculiar case where the prosecution did not examine the informant. No explanation has been given as to why the person who set the investigation into motion was kept out of the witness box. Similarly Lakhapati was a witness to the entire incident as would be evident from the F.I.R. but then he was also not examined as a witness by the prosecution. P.W.9 was the son of Dhanpati (deceased). He had sustained injuries but then perusal of his evidence in Court reveals that he had developed a new story and deposed facts which were not reflected in the F.I.R. In his deposition P.W.12 the Investigating Officer had also stated that P.W.9 had not stated the facts narrated before the Court in course of recording of his statement u/s 161 Code of Criminal Procedure Thus learned Addl. Sessions Judge has rightly disbelieved the said witness. The so-called eyewitnesses have also not supported the prosecution case to the fullest extent. There is lot of discrepancies in the statement of each of eyewitness which throws a cloud of suspicion with regard to genuineness of the prosecution case. The contradictions appearing in the evidence are telltale and affects the pith and substance of the case.

10. After analyzing the entire evidence meticulously this Court finds that though the Medical Officer who conducted postmortem examination opined that the death was homicidal but found only two injuries on the head. He had also opined that such injuries can be caused if a person falls on a piece of stone or on hard substance. A cumulative reading of the entire evidence reveals that a stone was lying on the spot and was containing bloodstain. Suggestion of defence to

different witnesses that Dhanapati being an old person might have fallen on the stone piece and might have sustained injuries, cannot be ruled out. That apart in the case at hand neither the informant has been examined nor the most important witness Lakhapati has been examined. The witnesses have departed from what they have stated before the police and there are lots of contradictions between the statement made by them in Court and the facts stated in the F.I.R. and statements recorded u/s 161 Code of Criminal Procedure. The statement of P.Ws. 3, 6, 7 and 9 reveal that they have developed the story from stage to stage. The weapon of offence said to have been seized have not been properly identified. The seizure witness did not support the prosecution case. Added to it the main witness Jogeswar had totally departed from the statement made by him u/s 161 Code of Criminal Procedure thus he cannot be relied upon.

11. In view of the discussions made above, after going through the evidence both oral and documentary this Court is satisfied that the prosecution had totally failed to substantiate its case against the accused persons and learned Addl. Sessions Judge has rightly acquitted the accused persons on benefit of doubt. In course of hearing learned Addl. Government Advocate could not point out any error apparent on the face of the judgment. This Court also finds that the conclusions arrived at by learned Addl. Sessions Judge are based on materials available on record and the same are just and proper. Law is well settled that the appellate Court should be slow in reversing an order of acquittal and unless there are good and strong grounds the order of acquittal should not be interfered with. (See Bahal Singh v. State of Haryana reported in AIR 1994 SC 606). It is also well settled that only when the appellate Court, after going through the evidence arrives at a conclusion that the view taken by the trial Court in acquitting the accused persons is extremely perverse and shocking to the commonsense, it can interfere with such order. After scrutinizing the evidence this Court finds that the view taken by learned Addl. Sessions Judge needs no interference. In view of the aforesaid clear position of law and on being satisfied that learned Addl. Sessions Judge has properly discussed the evidence and the findings do not suffer from any infirmity, this Court declines to interfere with the order of acquittal, that too after lapse of 13 years and dismisses the Government Appeal.

L.K. Mishra, J.

12. I agree.