

(2009) 06 OHC CK 0014
In the Orissa High Court
Case No : Government Appeal No. 19 of 1992

State of Orissa

APPELLANT

Vs

Haguri @ Sanatan Behera and Others

RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) CLT 1277 (Suppl Crl) : (2009) 2 OLR 503 Supp : (2009) OLR 1277 (Suppl Crl)

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Addl. Government Advocate, for the Appellant; N.C. Pati and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The judgment dated 13th March,1992 passed by learned 1st Addl. Sessions Judge, Puri, acquitting the accused persons from the charges u/s 302 read with Section 34 of the Indian Penal Code in ST. Case No. 4/62 of 1989 is assailed by the State of Orissa in this Government Appeal.

2. The incident in question took place on 2nd November,1988. Twenty one years have passed in the meanwhile. It is alleged that there was previous ill-feeling between the deceased Naba and the accused persons with regard to elopement of the daughter of one Sura Jena of village Ranisol. On the date of occurrence, i.e. on 2nd November,1988 accused Fagu and deceased Naba were discussing about the issue and Naba advised Fagu to pacify the matter. The informant Sanatan Pradhan (P.W.4) heard the matter while he was winnowing paddy under a banyan tree. It is alleged that after discussion, both Fagu and Naba proceeded towards a Tank situated nearby where Naba took bath and Fagu waited for him on the step of the tank. After taking bath both of them proceeded towards the tube well situated in the boundary of the village. On the way they had to cross a

kia bush. All of a sudden Fagu caught hold of Naba from behind. It is alleged behind the bush the accused Haguri @ Sanatan Behera and Budhia @ Budhanath Parida were hiding. On being called by Fagu they came out and Sanatan handed over a Farsa to Fagu. Fagu assaulted on the head of the deceased Naba with the said Farsa. Consequently Naba fell down and thereafter Sanatan and Budhia assaulted Naba with Farsa and Thenga respectively. It is alleged that when the informant wanted to rescue Naba, the accused persons threatened him, consequently he shouted. Hearing his shout some of the villagers assembled and accused persons, it is alleged, ran away. Thereafter, the informant removed the deceased Naba to the hospital for treatment. In the hospital the doctor declared him dead. Thereafter P.W.4 filed the F.I.R. (Ext.2).

3. After receiving F.I.R. investigation was made by O.I.C., Pipli and after completion of investigation charge sheet was submitted in G.R. Case No. 1347/1988 in the Court of learned S.D.J.M., Puri. The said case was thereafter committed to the Court of 1st Addl. Sessions Judge, Puri.

4. In order to substantiate their case, the prosecution got examined twenty one witnesses and exhibited twenty documents apart from ten M. Os.

5. The plea of the defence was one of complete denial. It is pertinent to mention here that no defence witness was examined, but then on behalf of the defence a sale deed was produced which was marked as Ext.A.

6. After discussing the evidence both oral and documentary in extenso, the Addl. Sessions Judge noticed number of discrepancies in the statement of the eye witness(P.W.4) vis-a-vis the statement of other witnesses and arrived at a conclusion that though Naba was murdered on 2nd November 1988, there was no evidence to substantiate the involvement of the accused persons. It is further observed that the evidence of P. W.4, the only eye witness, and other post occurrence witnesses were not believable. On the basis of such conclusion learned Addl. Sessions Judge acquitted the accused persons extending the benefit of doubt. The said order of acquittal, as stated earlier, is assailed in this Government Appeal.

7. In course of hearing learned Additional Government Advocate placed the F.I.R. as well as the evidence of P.Ws. 4, 5, 6 and 7. It is pertinent that P. W.4 was the only eye witness to the occurrence whereas P.Ws. 5, 6 and 7 are villagers, who arrived at the spot after the occurrence. P.W.2 is also a villager, but then he did not support the prosecution case and was turned hostile. He was cross-examined by the prosecution, but then nothing could be elicited from him to support the prosecution case. P.W.4, the only eye witness, in his evidence has clearly stated that on the date of occurrence at about 10.30 A.M. to 11.00 P.M. he was winnowing paddy under a banyan tree in the outskirt of the village and noticed accused Fagu and deceased Naba proceeding towards their respective lands and after sometime Fagu came to him and sat there whereas Naba went to inspect his own lands. After return Naba advised Fagu to pacify the dispute with regard

to elopement. Thereafter both of them proceeded to the village. It is sated that there was a Tank at a distance of 30 to 40 cubits from the banyan tree and the same was visible to P.W.4. According to him deceased Naba took bath in the Tank and Fagu waited for him. It is stated that as P.W.4 was hungry he left the place and proceeded to his house. While doing so he found Naba was proceeding to the village being followed by Fagu. Near the Tank he found that Naba held the accused Fagu by his both hands and on being called Sanatan Behera, one of the accused, and Budhanath Parida and other accused person suddenly appeared from a nearby Kia Bush and Sanatan, who was carrying two Farsas, handed over one to accused Fagu. Fagu thereafter dealt a Farsa blow on a vertex of deceased Naba. Accused Sanatan also dealt a Farsa blow to Naba and Budhanath, it is alleged, dealt a lathi blow. It is alleged that P.W.4 wanted to rescue Naba, but the accused persons threatened him and he raised nullah. Consequently Manju, Sailabala, Bidulata, Nayana, Pradip, Brajabandhu and many other children came near the spot. On seeing them, it is alleged, all the three accused persons threatened them and left the place. In his cross-examination, however, it was elicited that he had an agreement with P.W. 1 to the effect that after disposal of the criminal case, P.W.1 would return the land to him. In paragraph-20 of the deposition he had stated that he had not seen Fagu, Sanatan and Budhia assaulting Naba together at any time. In course of cross-examination many discrepancies in the statements made by P.W.4 before the I.O. and the statements made by him in Court were brought out. P.W.4 had further stated in the F.I.R. that Sanatan Behera handed over a Farsa to accused Fagu and the latter assaulted the deceased with the same. In the very next sentence he had stated that thereafter Sanatan gave Anr. Farsa blow to the deceased, but then, perusal of his evidence in Court reveals that Sanatan was carrying only one Farsa. The said discrepancy is very pertinent. P.W.4 in his evidence further stated that he saw the entire incident standing on the step of the tank, but then before the I.O., he had not stated to have seen the occurrence from the step of the tank. In h.is evidence he had stated that he saw the incident by standing near the pond whereas in the F.I.R. he had not breathed a word from which place he saw the occurrence. Paragraph-2 of his deposition reveals that he had left the spot before the incident occurred as he was feeling hungry. In short, the entire evidence of P.W.4 vis-a-vis the evidence of I.O. (P.W.21) and the narrations made in the F.I.R. (Ext.2) reveal number of material discrepancies which go to the root of the case.

8. In course of hearing learned Addl. Government Advocate, submitted that there was no reason to disbelieve P.W.4. According to him, the discrepancies, if any, are minor in nature. On the other hand, learned Counsel for the accused-Respondents, referring to the evidence of P.W.4, the F.I.R. (Ext.2) and other evidence submitted that the discrepancies are very much apparent and pertinent and it appears that the prosecution tried to improve the story from stage to stage. According to learned Counsel for the Respondents, the F.I.R. (Ext.2) is silent with regard to the place from where P.W.4, the only eye witness, saw the

occurrence. In the statement made before the Police u/s 161 of the Code of Criminal Procedure P.W.4 had not stated that he watched the incident standing on the steps of the pond. Drawing attention of this Court to Paragraph-2 of the deposition, it is submitted that even according to P.W.4 at the relevant time he felt hungry and left the spot before the alleged occurrence and on the way he noticed the assault. Thus, according to learned Counsel, the discrepancies are very much apparent. That apart, it is submitted, P.W.2 turned hostile and did not support the prosecution case. It is submitted that the Sessions Court had rightly believed the evidence of P.W.4, a single eye witness, and it is a fit case where the order of acquittal needs no interference, that too after twenty years.

9. The prosecution as it appears, has mainly relied upon the evidence of a single eye witness to establish the allegation. All other witnesses are post occurrence witnesses, who had not seen the assault and arrived after the occurrence. Law is well settled that when the case against an accused is based on the evidence of a single eye witness to a crime, and there is no independent corroborative evidence to support it, such evidence, if believable, is sufficient to sustain conviction. In other words, if the evidence of a single eye witness is found to be true, reliable trustworthy, above any suspicion and do not suffer from any infirmity, the same can be the basis to sustain conviction. In the touch stone of the aforesaid settled principle of law, this Court examined the evidence, both oral and documentary, meticulously.

10. After going through the F.I.R. lodged by P.W.4 and the statement made by P.W.4 in Court, this Court is convinced that the statement of P.W.4 that he had seen the incident, standing near the Pond can not be accepted and appears to be an afterthought. Further, there is also no evidence to reveal that P.W.4 witnessed the occurrence from the banyan tree, inasmuch as according to him, he felt hungry and left the spot. P.W.2 had stated in his evidence that there was "Kia Bush" on either side of the road near the spot. Further perusal of the F.I.R. (Ext.2) reveals that Sanatan handed over a Farsa to Fagu, who dealt a blow with the same. In the F.I.R. it is stated that Sanatan had also dealt a Farsa blow to the deceased which indicates that there were two Farsas. No Farsa was however seized, as would be evident from the seizure list. That apart, from the evidence of P.W.4, it appears that he was involved in a theft case. There were also materials to reveal that there was an understanding between himself and P.W.1 that after disposal of the Criminal Case P.W.1 would return the land, which he had sold. This fact is admitted by P.W.4 himself. The sale deed filed by the defence was marked as Ext.A. Thus, it appears that P.W.4 was interested in the case of the prosecution. The evidence of such witnesses are to be examined with great care and caution as they have always the tendency to exaggerate the facts. The evidence had to pass the test of close and severe scrutiny before acceptance. In the absence of corroboration of all material particulars, it would be extremely hazardous to convict the accused persons only on the basis of testimony of highly interested, inimical and partisan witness. The evidence of P.W.4, the single eye witness, do not satisfy the aforesaid acid test. The evidence

is full of discrepancies on material facts. The location from which P.W.4 witnessed the occurrence also varies from stage to stage. That apart, he has admitted that he has not seen the accused persons assaulting the deceased together. It is not a case of man to man assault, nor it is the case where there is allegation that the accused persons assaulted one after the other. To add to it, the weapon of alleged assault, i.e. the Farsa was not seized.

The entire evidence vis-a-vis Ext.A as well as the evidence of the I.O., this Court finds that P.W.4 is not a very reliable witness. The learned Addl. Sessions Judge had rightly arrived at a conclusion that on the basis of sole testimony of P.W.4, no conviction can be passed. Apart from P.W.4, the prosecution relied upon the evidence of P.Ws. 2,5,7,8,18 and 19. Out of them P.W.2 was turned hostile and had not supported the prosecution case. All other witnesses were post occurrence witnesses. They had not seen the occurrence at all and arrived at the spot after hearing hullah. All these witnesses are also relations of the deceased. Non-mention of material facts more particularly the place from where P.W.4 witnessed the occurrence in the F.I.R. definitely throws a cloud of suspicion on the truthfulness of the statements later made.

After going through the entire judgment, this Court finds that the Addl. Sessions Judge has discussed the evidence in extenso and the conclusions arrived at are based on cogent evidence and settled position of law which cad for no interference, that too after lapse of twenty years. This Court is, therefore, not inclined to interfere with the order of acquittat. Accordingly, the Government Appeal stands dismissed.

B.N. Mahapatra, J.

11. I agree.