
(2009) 01 OHC CK 0006
In the Orissa High Court
Case No : Government Appeal No. 16 of 1996

State of Orissa

APPELLANT

Vs

Hareram Hans and Others

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 114, 148, 149, 302, 324

Citation : (2009) CLT 493 (Suppl CrI)

Hon'ble Judges : S. Panda, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : G.S. Pani, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard argument and the judgment is as follows:

2. The Respondents faced the trial in Sessions Case No. 25 of 1990 in the Court of Sessions Judge, Kalahandi-Nuapada at Bhawanipatna. Amongst them, Respondent No. 6-Maya Dei was charged under Sections 302/114, Indian Penal Code on the allegation that she collected and handed over the axe to accused Respondent Hareram Hans and abated the offence of Hareram Hans dealing axe blow and committing order of deceased Avhiram. The rest five Respondents were charged for the offence under Sections 148/302/324/149, Indian Penal Code on the allegation that they committed riots and with the unlawful object inflicted injuries and committed murder of deceased Angada, deceased Avhiram and deceased Tejuram. The post-mortem reports with respect to the aforesaid three deceased persons are respectively, Exts.1, 2 and 3, as per the deposition of P.W. 1, Dr. Jagat Krushna Samantary, who conducted autopsy on the dead bodies.

2. According to the case of the prosecution, Dumardulli is the disputed property and on the date of occurrence, i.e. on 16.02.1990 when accused persons ploughed the same the deceased party went and protested. In retaliation, the

accused party attacked and assaulted them. Three persons (above named three deceased) died at the spot. Birat Hans one of the sons of deceased Avhiram sustained injuries on his left leg because of the axe blow but he did not survive to figure as witness in the Trial Court. Accused persons took the plea of denial of their involvement in the occurrence.

3. To substantiate the charge, prosecution relied on evidence of P. Ws. 1 to 9 and Exts. 1 to 25, besides material objects marked M. Os. I to v. Amongst them, P. Ws. 2, 6 and 7 are relied on as eyewitnesses to the occurrence and P. Ws. 8 and 9 are the Investigating Officers. M. Os. I and II were the two tangias (axes) and M. Os. III and IV are two spades and M.O. v. is the iron rod, which were seized in course of investigation. Though accused persons did not examine any witness but they relied on documents marked as Exts. A to H showing interestedness of some of the witnesses, injury certificate of Respondent-Makran Hans and the certified copy of Khatian.

4. Though the judgment recorded by the Trial Court has not been prepared systematically, inasmuch as, he has not considered the issues on priority basis in conformity with law but some total of the findings recorded by the Trial Court is to the effect that it is proved from Exts 1, 2 and 3 and evidence of P.W. 1 that three deceased persons suffered homicidal death. He found P. Ws. 2, 6 and 7 are not only interested witnesses for the prosecution but also their evidence suffer from contradictions on material particulars relating to assault and therefore their evidence is not reliable. He recorded the finding that seizure of M. Os. I to IV was not in accordance with the provision of Section 27 of the Evidence Act and the statement u/s 161 Code of Criminal Procedure. of injured Birat (since dead), i.e., Ext. 18 cannot be regarded as dying declaration. He also recorded that though there was some lacuna in the F.I.R. relating to investigation at the initial stage by the A.S.I. but such defect by the investigating agency does not go against the prosecution or in favour of the accused persons. Taking a total view of the entire evidence on record, Learned Sessions Judge held that the charge has to fail because of the aforesaid lacuna in the prosecution case and evidence led by the prosecution. Accordingly, he granted acquittal to all the Respondents.

5. Learned Standing Counsel puts a laborious effort and places the entire evidence on record, vis-a-vis, the reasons assigned and the findings recorded by the Trial Court. His contention is that the interestedness of P. Ws. 2 and 6 does not disentitle them to be competent witness when they witnessed the occurrence. Learned Counsel for the Respondents, on the other hand, argues that the number of injuries found on each of the deceased vis-a-vis the statement of these two witnesses by themselves produce a contradictions and, apart from that, the statement which was made in the Court about the manner of assault on the deceased was not stated by them either in the statement u/s 161, Code of Criminal Procedure. or u/s 164 Code of Criminal Procedure. and therefore the findings of the Trial Court is to be approved. So far as P.W. 7 is concerned, he also contradicted himself by omitting to state before the

Investigating Officer in course of investigation that he had seen the accused persons being armed standing on the spot of occurrence, when the deceased persons were lying dead. Thus, on a fresh appreciation of the evidence on record, we are unable to agree with Learned Standing Counsel that the evidences of P. Ws. 2, 6 and 7 are credible enough 86 as to prove the homicide against the Respondents. The ultimate inference drawn by the Trial Court on their unreliability is found to be not suffering from illegality or perversity. Such a view also does not appear to be unreasonable. Under such circumstance, we do not interfere with the factual findings of the Trial Court. It is needless to say that the other evidences on record are next to nothing so as to prove the charge against the Respondents.

6. Under such circumstance, there is no merit in the Government Appeal and the same is 6. accordingly dismissed.