
(2009) 07 OHC CK 0065
In the Orissa High Court
Case No : G.A. No. 40 of 1997

State of Orissa

APPELLANT

Vs

Jhala Dhinda @ Prahallad and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2009) 42 OCR 563

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Advocate : A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 12.8.1996 passed by the learned Addl. Sessions Judge, Bargarh acquitting the accused persons of the charges under Sections 148/302/201/149 and Section 3 (2) (v) of S.C & S.T (P.A) Act in S.T No. 110/38 of 1993 is assailed in this appeal by the State.

2. The prosecution case, bereft of unnecessary details, is that on 12.11.1992 the informant Ram Prasad Seth-P.W. 1 went to the land of one Sukru Mali for cultivation work. While returning back to his house he heard noise (halla) by the side of the village "Dandapada". He came to the road and saw that the accused persons were bringing his brother Hara Prasad Seth while assaulting him with lathis and near the house Hara fell down and the accused persons left. After they went away Hara managed to go into his house. The informant went to him and helped him to lie on the bed. He noticed that blood was coming from his nose, marks of lathi blows were also visible on his body. Hara admitted before the informant that he had been to the house of "Kuni" and the accused persons saw him there and being enraged, they drove him out by assaulting him all the way. After some time he breathed his last. It was alleged that the accused persons were sons and relatives of Kuni Dhinda, a widow with whom the deceased had illicit relationship. P.W. 1 went to the Ward Member and narrated the incident

who advised him to settle the matter mutually to avoid any scandal in the village. He was told that the accused persons would pay him a compensation of Rs. 2,500 and also would meet the funeral expenses. Accordingly, a sum of Rs. 2,500 was paid to him and wood for funeral was arranged and in the evening the dead body was cremated. Thereafter, it is alleged, he was apprehended by the police and on being threatened by the Officer-in-Charge, Jagadapur R.S, he gave his statement and an F.I.R. was registered. On the basis of such F.I.R the Investigating Officer registered a case for the offences punishable under Sections 147/148/302/201/149 Indian Penal Code and Section 3 (2) (v) of the S.C & S.T (P.A) Act. and submitted charge sheet in GR Case No. 273 of 1992. Learned S.D.J.M., Padmapur took cognizance of the offences and committed the case to the Court of Sessions for trial.

3. In order to substantiate its case, the prosecution got seven witnesses examined and exhibited about 18 documents. Out of the said witnesses, P.W. 1 was the informant, P.W. 2 was the sister-in-law of the deceased, P.W. 3 was the seizure witness, P.W. 4 was an eyewitness who turned hostile, P.W. 5 was the Inspector, P.W. 6 was the A.S.I who made the Station Diary Entry and P.W. 7 was the Investigating Officer.

The defence got one witness examined being the Doctor who treated Hara prior to his death.

4. Learned Addl. Sessions Judge after vivid discussion of the evidence both oral and documentary came to the conclusion that there was inordinate delay in lodging the F.I.R and not explaining such delay was fatal to the prosecution case. The Sessions Court also came to the conclusion that the prosecution evidence suffered from contradictions and omissions and was not trustworthy and held that the prosecution had totally failed to prove the case beyond all reasonable doubt and acquitted the accused persons.

5. According to Learned Counsel for the State in view of the statements of P.W. 1 and P.W. 7 the Sessions Court should have convicted the Respondents. According to him, only because there was some delay in lodging the F.I.R the prosecution case should not have been disbelieved. In order to appreciate the submissions made, this Court once again meticulously went through the evidence, both oral and documentary. Admittedly, the dead body was burnt and no postmortem was conducted. Thus, it is difficult to arrive at a conclusion as to whether Hara died due to colic pain or his death was a homicidal. In his deposition D.W.1-the doctor who was examined on behalf of the defence, stated that he was requested at about 5.00 AM by one Shouki Seth to come to the house of Hara as the latter was suffering from serious pain in his stomach. He went and examined Hara and found him dead. He had clearly stated that neither there was any mark of violence on his body nor was there any bloodstain. Though he was cross-examined nothing could be elicited from his deposition to disbelieve him. P.W. 1-the informant was the brother of the deceased. He had admitted the illicit relationship existing between Hara and Kuni. In his deposition he had stated that

on being told by the Investigating Officer he had lodged the F.I.R. He had further stated that Hara died due to stomach trouble.

6. Ext.7 is the F.I.R. There are very pertinent contradictions between the statement of P.W. 1 and the facts alleged in the F.I.R. Admittedly, Hara died on the morning of 12.11.1992. The F.I.R was lodged 5 days after. The delay has not been explained. Thus no reliance can be placed on the evidence of P.W. 1. P.W. 2 was the sister-in-law of the deceased. She had also confirmed the fact that Hara had illicit relationship with Kuni. She could not throw any light with regard to the alleged occurrence. P.W. 3 was the seizure witness in whose presence some lath is and wearing clothes were seized but then none of the said weapons contained bloodstains. P.W. 4 though stated to be an eyewitness, in court he had totally denied about the incident. Except the aforesaid witness no other witness had spoken about the incident.

7. After discussing the entire evidence this Court finds that the learned Addl. Sessions Judge, Bargarh has not committed any error. The conclusions arrived at are just, proper and suffers from no infirmity. In fact this is a case where the prosecution had totally failed to establish the involvements of the accused-respondents with the alleged crime beyond all reasonable doubts. this Court is, therefore, not inclined to interfere with the order of acquittal, that too after lapse of seventeen years and dismisses the Government Appeal.

S.C. Parija, J.

8. I agree.