
(2014) 11 OHC CK 0009
In the Orissa High Court
Case No : Government Appeal No. 70 of 1998

State of Orissa

APPELLANT

Vs

Mukunda Majhi

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Orissa Forest Act, 1972 — Section 21 27(1)(a)
Wild Life (Protection) Act, 1972 — Section 27

Citation : (2015) 5 FLT 590

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : A.K. Mishra, Advocate for the Appellant; Pramila Mohanty, Amicus Curie, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

D. Dash, J.

1. The State in this appeal has called in question the order of acquittal passed by the learned Chief Judicial Magistrate, Nuapada in 2 (b) C.C. No. 9 of 1995 (T.R. No. 151 of 1995) acquitting the respondent of the charge under section 27(1)(a) of Orissa Forest Act and section 27 of Wild Life Protection Act. Prosecution case is that P.W. 1, the forest guard during his visit to the Pandripani Reserve Forest found the respondent to have been forcibly possessing twenty acres of land there and to have ploughed the same. So the respondent was made to face the prosecution for commission of offence under section 27(1)(a) of Orissa Forest Act and under section 27 of Wild Life Protection Act.

2. During trial the respondent took the plea of denial.

Prosecution examined two witnesses including the forest guard as P.W. 1 and another forest official as P.W. 2 The report and seizure list have been admitted in evidence and marked Exts. 1 and 2. The defence has examined none.

3. Heard the learned Standing Counsel and learned Counsel for the respondent.

The L.C.R. reported to have been destroyed as noted in the order dated 5.5.2003. Therefore, the appeal having been admitted, this Court proceeded to dispose of the same on perusal of the judgment.

4. Learned Standing Counsel submits that the Court below ought to have believed the oral evidence of P.W. 1 who is none other than the forest guard of Pandripani beat house that the land over which the respondent had ploughed was within the reserve forest area and simply because the notification in that regard was not proved, the Court below ought not to have discarded the case of the prosecution.

5. Learned Counsel for the respondent on the other hand submits that in the absence of proof of said notification showing the land where the respondent is said to have made ploughing to be within the reserve forest and has been declared as such, the Trial Court has rightly refused to accept the oral evidence. It is also his submission that the Trial Court has considered the evidence of both the prosecution witnesses and having noted the reasons that they are not reliable and their evidence to be unacceptable order of acquittal has been rightly passed.

6. On such rival submission, this Court is now called upon to go through the evidence of prosecution witnesses and also other documents which have been admitted in the evidence from their side just as noted in the judgment to test the defensibility of the said finding that the prosecution has failed to establish the charges against the respondents. But before taking up the said exercise, it is felt apposite to have a look at the settled possession of law with regard to scope of this appeal and power of this Court to interfere with an order of acquittal in seisin of an appeal against the same.

It has been held in case of *Basappa Vs. State of Karnataka*, , that the High Court in an appeal under section 378 Cr.P.C. is entitled to reappraise the evidence and put the conclusions drawn by the Trial Court to test but the same is permissible only if the judgment of the Trial Court is perverse. Relying the case of *Gamini Bala Koteswara Rao and Others Vs. State of A.P. thr. Secretary*, , it has been held that the word "perverse" in terms as understood in law has been defined to mean "against weight of evidence". In "*K. Prakashan Vs. P.K. Surenderan*", , it has also been held that the Appellate Court should not reverse the acquittal merely because another view is possible on evidence. It has been clarified that if two views are reasonably possible on the very same evidence, it cannot be said that prosecution has proved the case beyond reasonable doubt Ref. *T. Subramanian Vs. State of Tamil Nadu*, . Further, the interference by Appellate Court against an order of acquittal is held to be justified only if the view taken by the Trial Court is one which no reasonable person would in the given circumstances, take. Ref. *Bhim Singh Vs. State of Haryana*, .

7. P.W. 1, the Forest Guard is stated to have deposed that he found existence of

paddy and other crops over the said land and accordingly he seized two bundles of paddy sheaves from the respondent vide seizure list Ext-2. The place is said to have been visited for the first time by him and his evidence is to the effect that the respondent had been possessing for about 22 to 25 years. No other independent witness has been examined to support the case of the prosecution as regards the respondent being in cultivating possession of that land. P.W. 2 is another forest officer who had also enquired the matter and he has stated that during interrogation the respondent denied his possession. In such state of affairs, the prosecution evidence cannot be held to be sufficient to establish it all beyond reasonable doubt that it is respondent who was in cultivating possession of the land: No notification as is respondent who was in cultivating possession of the land. No notification as is required under section 21 of the Odisha Forest Act, 1972 to show that the said area has also not been proved in the case and P.W. 2 is not the whispered the same that the area of the reserve forest of Pandripani to corroborate even the oral evidence of P.W. 1. The prosecution thus cannot escape from being blamed for not proving the notification and cannot said across without that simply on the basis of oral evidence.

In view of all these, I do not find any such reason to take a view other than the one taken by the Trial Court and rather in view of the Trial Court is found to be just and proper being based proper appreciation of evidence.

In the result, the appeal stands dismissed.