
(2009) 08 OHC CK 0079
In the Orissa High Court
Case No : G.A. No. 24 of 1997

State of Orissa

APPELLANT

Vs

Nanda Gouda and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 148, 149, 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2009) 108 CLT 569

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

Bench : Division Bench

Advocate : A.K. Acharya and D.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This Government Appeal is directed against the judgment dated 08.08.1996 passed by the Sessions Judge, Ganjam-Gajapati, Berhampur, in Sessions Case No. 36 of 1996, giving the benefit of doubt to the accused persons and acquitting them of the charges under Sections 148/302/149 Indian Penal Code and Section 3(2)(v) of S.C. and S.T. (Prevention of Atrocities) Act.

2. The case of the prosecution, in brief, is that the deceased Dilli Das was a young boy of about 22 years, belonging to Scheduled Caste community. The informant Dama Das (P.W.1) is the elder brother of the deceased. The accused persons are Goudo by caste and co-villagers of the informant. On 28.10.1995 at about 6 A.M. while the informant was asleep, the deceased went towards the canal of the village to answer the call of nature. At about 6.30 A.M., Saradi Das (P.W.5), mother of the informant informed that some persons were running about near the canal side and since the deceased had been towards the canal, she asked the informant to go towards the canal to find out what was happening. The informant accompanied by his two sisters Kumari Das (P.W.3) and Banita

Das (P.W.4) went towards the canal village and on the way, they met their uncle Bansidhar Das (P.W.2), who informed them that the residents of Talagouda Sahi of the village were chasing the deceased and Laba Goudo (P.W.13), being armed with deadly weapons like swords, katis and sticks. P.W.2 told the informant not to go to the spot, as he may be assaulted. The informant could notice that some persons were shouting and assaulting a person in the canal embankment and he and his two sisters proceeded towards the culvert and found that 10 to 12 persons were proceeding towards the field on the canal embankment and one person was lying on the canal embankment. The informant asked his sister (P.W.4) to go to the canal embankment and to find out who was lying there. P.W.4 found that the deceased was lying on the canal embankment and she raised hulla, hearing which the informant and his other sister (P.W.3) went there. The informant wanted to chase the assailants but was prohibited by his sister (P.W.3) and out of the assailants, the informant could identify the 10 accused persons, who were armed with katis and lathis. The deceased was lying on the spot and his hands and legs had been cut and there were marks "Of injuries through out his body and there was a pool of blood in the spot. Four bamboo sticks and one katua without handle and handle of a katua were also found on the spot.

3. The informant immediately proceeded to Golanthara Police Station and lodged the written report at about 7.45 A.M. before the O.I.C. of the Golanthara Police Station (P.W.15), who treated the same as an F.I.R. and registered the case and took up investigation. During investigation, P.W.15 visited the spot, examined the witnesses, held inquest over the dead body of the deceased, seized four lathis, one katua without handle and one bamboo handle of a katua found on the spot and sent the dead body for post mortem examination. P.W.15 arrested the accused persons and forwarded them to custody and while in custody accused Bhalu Goudo, Raju @ Rajib Goudo and Dandapani Goudo made statements and gave recovery of the weapons of offence. After completion of investigation, the I.O. (P.W.15) submitted charge sheet against the ten accused persons under Sections 148/302/ 149 Indian Penal Code and Section 3(2)(v) of the SC and ST (PA) Act.

4. The plea of the accused persons was one of complete denial.

5. In order to substantiate the charges against the accused persons, the prosecution examined 15 witnesses, out of which P.W.1 is the elder brother of the deceased and the informant in the case. P.W.2 is the paternal uncle, P.W.3 and P.W.4 are the sisters of P.W.1 and P.W.5 is the mother of the informant. P.W.6 is one Somanath Das, P.W.7 is one Dilli Das, P.W.8 is Landa Das, P.W.9 is Dandapani Goudo and P.W.10 is one Raghunath Das, who are co-villagers of the informant. P.W.11 is the doctor, who conducted autopsy over the dead body of the deceased. P.W.12 is the R.I of Sanala of Konisi Tahasil, who prepared the spot map, P.W.13-Laba Goudo is the sole eye witness to the occurrence. P.W.14 is a Constable who carried the dead body for post mortem examination and P.W.15 is

the Investigating Officer.

6. The doctor (P.W.11) conducted autopsy over the dead body of the deceased on 28.10.1995 and found 17 external injuries and two internal injuries on the body of the deceased and opined that injuries are homicidal in nature and sufficient to cause death in the ordinary course of nature and that the death was due to shock and haemorrhage as a result of the effect of the injuries. On examination of the weapons of offences like swords (M.O.I and II), Katis (M.O.III and VIII) and bamboo sticks (M.O.IX, X, XI and XII), P.W.11 opined that the injuries could be possibly caused by sword and the external injuries could be possible by the tip of the sword and some of the external injuries could be possible by bamboo lathis. Accordingly, Learned Sessions Judge come to find that the death of the deceased was homicidal in nature.

7. The informant (P.W.1) stated in his evidence that his mother (P.W.5) woke him from sleep and told him that the deceased Dilli Das has been assaulted and he along with his two sisters (P. Ws.3. and 4) proceeded to the canal embankment and found the deceased lying in an injured condition and was alive. Asking his sisters to give water to the injured, he proceeded to Golanthara Chhak to bring an auto-rickshaw for taking the injured to the hospital, but by the time he returned to the spot, the deceased had succumbed to the injuries. The informant (P.W.1) asked the Gramarakhi of the village to report the matter to the police and after arrival of the police at the spot at about 10 to 11 A.M., he gave his L.T.I. on a blank paper. He denied to have seen anybody at the spot and did not support the case of the prosecution and was declared hostile and crossexamined by the prosecution but nothing substantial could be elicited.

8. P.W.2, who is the paternal uncle of the informant, also turned hostile and did not support the prosecution case. He denied to have seen anybody on the road while returning to the village after answering the call of nature. P. Ws. 3 and 4, who are the sisters of the deceased, have also turned hostile and did not support the prosecution case at all. P.W.4 is stated to have gone to the canal embankment where the deceased was lying in an injured condition and administered water to the deceased but in vain and that the, deceased succumbed to the injuries. She has corroborated the statement of the informant to the effect that he (P.W.1) had gone to bring auto-rickshaw and by the time he returned, the deceased had succumbed to the injuries and that Madhu Das, the Gramarakhi of the village was asked to report the matter to the police. P.W.4 has categorically denied to have seen anybody assaulting the deceased or running away from the spot. P.W.5 who is the mother of the deceased has also turned hostile and has not supported the prosecution case. She denied to have seen anybody at the spot except the deceased. P. Ws.6 and 7 who are witnesses to the seizure of the weapons of offence found at the spot, have denied the seizure of any such weapons in their presence. P.W.6 has stated that he put his signature in the seizure list and P.W.7 has stated that his signature was forcibly taken on the seizure list. Hence the brothers, sisters, mother and uncle of the deceased

did not support the case of the prosecution.

9. P.W.10 is the scribe of the F.I.R. (Ext.6) and he has stated to have scribed the same as per the version of the informant (P.W.1). But the informant (P.W.1) has himself denied the contents of the F.I.R. (Ext. 6) stating that his L.T.I. was taken on a blank paper after arrival of the police at the spot.

10. In absence of any other evidence, the prosecution relied on the seizure of weapons of offence on the alleged information furnished by the 3 accused persons while in custody, to the I.O. (P.W.15) in the presence of witness (P.W.9). Laba Goudo (P.W.13) claims to be an eye witness to the occurrence and P.W.9 is his elder brother. Both these witnesses (P. Ws.9 and 13) along with their villagers have been implicated in G.R. Case No. 221 of 1995. P.W.13 has also been implicated in G.R. Case No. 964 of 1995 along with some others. The deceased Dilli Das and some others have been implicated in G.R. Case No. 965 of 1994. Accordingly the defence had suggested P. Ws.9 and 13 that they along with their father and the deceased have been creating disturbances in the village and they were terrorizing the people.

11. P.W.13 had stated that on 28.10.1995 at about 6 A.M., he and the deceased went to the tank to attend call of nature and they were sitting on the ridge of the tank and brushing their teeth and at that time the accused persons came there being armed with katis and thengas and chased them and he and the deceased fled away in two different directions. According to P.W.13 he saw the accused persons surrounding the deceased and assaulting him and while running away, he saw Bansidhar Das (P.W.2) and asked him to report to the villagers that the accused persons were chasing him and the deceased in order to assault them. P.W.13 had further stated that the accused Enka Goudo dealt blows by means of kati, accused Bhalu Goudo dealt blows by means of a kati, accused Nanda Goudo dealt blows by means of a katua, accused Krushna Goudo dealt blows by means of a thenga and seeing that, he ran away in order to save his life.

12. In his cross examination, P.W.13 stated that in the night of 26.10.1995 he quarreled with Binod Goudo of Goudo Sahi of his village and assaulted him and Golanthara P.S. Case No. 125 of 1995 (G.R. Case No. 964 of 1995) had been registered against him and the police had been to the village in the night of 26.10.1995 and searched for him but could not apprehend him and that since 16.10.1995 he had gone to village Khadasingi and was residing in the house of his elder sister till his arrest about 20 to 22 days after the alleged occurrence. The certified copy of the charge sheet in G.R. Case No. 964 of 1995 (Ext. B) relating to Golanthara P.S. Case No. 125 of 1995 reveals that the accused Laba Goudo (P.W.13) was arrested on 28.11.1995 at 4 A.M. and was forwarded to custody on the same day. There is no evidence on record to show that P.W.13 had fled away from the village in the night of 26.10.1995, after assaulting Binod Goudo and that he returned back to the village in the night of 27.10.1995 and that he was present in the village in the morning of 28.10.1995 and that he had witnessed the occurrence and had again fled away from the village. The I.O.

(P.W.15) had stated that he had examined P.W.13 on 28.11.1995 and he had not mentioned anything about the occurrence which took place in the morning of 28.10.1995.

13. Coming to the recovery of the weapons of offence, the I.O (P.W.15) stated that from the spot he seized one iron katua without handle (M.O.II), bamboo handle of khanda-kati, four lathis stained with blood (M. Os. IX, X, XI and XII), blood stained earth and sample earth and the wearing apparels of the deceased. P.W. 15 further stated that on 30.10.1995 he conducted raid in the houses of the accused persons and arrested them. P.W.15 further stated that he recorded the statement of Bhalu Goudo, Raju @ Rajib Goudo and Dandapani Goudo u/s 27 of the Evidence Act, as per Exts. 13, 14 and 15. As per the statement of the accused Bhalu Goudo, the khandakati (M. Os. I and II) were seized from the house of the Abhi Goudo in village Sinala. As per the statement of accused Raju @ Rajib Goudo the katua (M.O.III) was seized from the house of a relation of accused Rajib Goudo in village Sinala, who has not been named in the seizure list (Ext.4). As per the statement of accused Dandapani Gouda one lathi (M.O.IV) was seized under the seizure list (Ext. 5) from the house of a relation of the accused in village Singhabadi, but the said relation of the accused has not been named. Learned Sessions Judge has found it strange that the house owners from whom the seizures were effected have not been asked to sign in the seizure list. It is in the evidence that such weapons like khanda-katis, katua and lathis are commonly available in the houses of cultivators in the village. Moreover none of the residents of village Sinala in which the seizures were effected have been cited as witnesses to such seizure and instead P.W.9 who is a resident of village Jugudi has been cited as a witness. Learned Sessions Judge has found that Kaibalya Goudo, father of P. Ws. 9 and 13 has been cited as another witness in the statements alleged to have been made by the aforesaid three accused persons leading to discovery of weapons of offence as well as to the seizure list, but said Kaibalya Goudo has not been examined by the prosecution.

14. On an analysis of the materials on record, Learned Sessions Judge came to hold that the statements of the three accused persons recorded by the police u/s 27 of the Evidence Act cannot be said to be voluntary and the seizure of weapons of offence under seizure list (Exts. 3, 4 and 5) cannot be said to have been made on the basis of such alleged informations given by the accused persons to the I.O. while in police custody. Accordingly, Learned Sessions Judge on the basis of the evidence on record found that the testimony of the sole eye witness to the occurrence (P.W.13) is unreliable and the seizure of the alleged weapons of offence cannot be held to be incriminating against any of the accused persons. Learned Sessions Judge accordingly came to find that there was no cogent, convincing and credible evidence that the accused persons were the authors of crime and while extending the benefit of doubt to the accused persons, Learned Sessions Judge proceeded to hold that the accused persons are not guilty of the charges levelled against them and accordingly acquitted them of the said charges.

15. On a perusal of the evidence on record, it is seen that all the witnesses, especially the close relatives of the deceased like mother, brother, sisters and uncle have turned hostile and have not supported the case of the prosecution. The evidence of the so called eye witness (P.W.13) is not believable in view of the inherent contradictions brought out by the defence in the cross examination, which casts a serious doubt with regard to his presence at the place of occurrence in the morning of 28.10.1995. Further the alleged statement recorded by the I.O. (P.W.15) u/s 27 of the Evidence Act, leading to discovery of the alleged weapons of offence also cannot be relied upon, in view of the fact that the persons from whose houses the said weapons are stated to have been recovered are neither witnesses to seizure of such weapons or have been examined as witnesses, in support of such seizure. On a perusal of the evidence of P.W.13, it is seen that he had categorically stated that apprehending assault from the accused persons he had ran in another direction while the deceased ran in the other direction. From the spot map, it is seen that the Kumbhar tank, marked "A", where the deceased and P.W.13 were alleged to be sitting before the attack by the accused persons, is at a considerable distance from the spot of occurrence and if the version of P.W.13 is to be accepted, then it was not possible for him to have seen the occurrence when he himself was running away in the opposite direction. Further, when P.W.13 admitted to have fled in the opposite direction apprehending assault, it is strange that he has been able to give a vivid description with detailed particulars as to who all assaulted the deceased and with what weapons. All this makes the evidence of P.W.13 wholly untrustworthy.

16. Considering the evidence as discussed above and keeping in view the findings of the Learned Sessions Judge and the basis on which the same has been arrived at, no apparent error or any illegality can be said to have been committed by the learned Sessions Judge in passing the order of acquittal so as to warrant any interference by this Court.

The Government Appeal is devoid of merit and the accordingly dismissed.