

(2009) 09 OHC CK 0008
In the Orissa High Court
Case No : Government Appeal No. 38 of 1998

State of Orissa

APPELLANT

Vs

Nari Singh

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(1)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) CLT 365 (Suppl CrI) : (2010) 1 OLR 338 Supp : (2010) OLR 365 (Suppl CrI)

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

Bench : Division Bench

Advocate : Addl. Standing, for the Appellant; B.A. Prusty, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The judgment dated 6th July, 1996 passed by learned Addl.Sessions Judge, Jajpur acquitting the accused from the charge u/s 302 read with 34 of the Indian Penal Code in S.T. No. 521/1 of 1995 is assailed by the State of Orissa in this Government Appeal.

2. On the basis of an F.I.R. lodged by Puma Chandra Mallik (P.W.1), G.R. Case No. 694/1995 was registered in the Court of learned S.D.J.M., Jajpur. In the F.I.R., it was alleged that the Respondent Nari Singh and his son Babaji Singh assaulted Maguni (deceased) by means of a farsa, consequently he sustained grievous injuries and succumbed to the same.

3. It is pertinent to mention here that accused Nari faced trial whereas his son Babaji absconded and has not faced trial, consequently the trial was split up.

4. To establish their case against accused Nari, the prosecution got examined fourteen witnesses and exhibited several documents.

On the behalf of the defence no witness was examined.

5. Learned Addl.Sessions Judge after vivid discussion of the evidence come to the conclusion that the prosecution had not come with clean hands and lot of discrepancies are apparent in the evidence of different eye witnesses. It was also held that there was variation with regard to the overt acts alleged to have been committed by the accused person. After considering all the facts and circumstances, learned Addl.Sessions Judge held that the prosecution had failed to bring home the charge against the accused Nari and acquitted him u/s 235 (1) of Code of Criminal Procedure

6. The main contention of learned Counsel for the State is that the observation made in this appeal may adversely affect the outcome of the trial which will commence against Babaji.

7. After going thorough the judgment and after hearing Mr. Prusty, learned Counsel for the Respondent, this Court finds that learned Sessions Judge has not committed any infirmity or illegality. He has discussed the evidence in extenso and the conclusions arrived at are just and proper. After going through the judgment and other materials, this Court is also satisfied that the prosecution has failed to substantiate its case against the accused beyond all reasonable doubts and the view taken by learned Sessions Judge suffers no apparent error. That apart the incident took place fourteen years back and the order of acquittal was passed thirteen years back. There is no justifiable reason to interfere with the order of acquittal after so many years.

8. In the aforesaid scenario, this Court has no hesitation to confirm the conclusions arrived at by learned Addl. Sessions Judge and dismiss the appeal. We, however, make it clear that the observations and the findings arrived at in this judgment shall not be treated as a binding precedent in the trial against accused Babaji and the said case shall be decided on its own merit and on the strength of evidence produced.

S.C. Parija, J.

9. I agree.