

(2002) 01 OHC CK 0017
In the Orissa High Court
Case No : Government Appeal No. 24 of 1983

State of Orissa

APPELLANT

Vs

Purnabasi Rana and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)

Citation : (2002) 93 CLT 629 : (2002) CriLJ 4854

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; B.B. Ratho, P.K. Bhuyan, R.P. Mohapatra, R.K. Bose, Manoj Mishra and D.P. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This appeal is directed against an order passed by the learned Sub-Divisional Judicial Magistrate, Chatrapur acquitting the accused persons of the charge under Sections 147/325/323/454/380/149, IPC.

2. The brief fact of the case is that the informant of Khali Raulo purchased a thatched house in village Pratapur in a court auction sale. On 21.12.1977 while he along with his son Rabindra and Prabhakar was dismantling the house to construct a pucca house thereon, all the accused persons attacked them being armed with weapons like kati, crowbar, lathis, etc., and assaulted the complainant with lathi causing bleeding injury on his nose. Out of fear, the complainant along with his sons fled away and took shelter in the house of P.W. 4. From that house they saw that the accused persons broke open the lock of their pucca house which was adjacent to the aforesaid thatched house, and stolen away a number of articles including rice, mung, utensils, clothes, cash, a cot and bed, boxes, etc., worth Rs. 4,000/-.

On the aforesaid allegation, F.I.R. was lodged and investigation was taken up.

3. The plea of the defence was complete denial. A specific plea was taken by the

defence that the complainant never possessed the house which he was dismantling. Accused Balaram Rana with his wife, accused Sasi Rana and family members were residing in that house and the complainant with his relations forcibly drove out accused Balaram and his family members from that house by assaulting him as a result of which he sustained injuries and was medically examined. As the other accused persons protested to such high-handed action of the complainant and his relations, they have been falsely implicated in this case.

4. The prosecution examined as many as 13 witnesses and none was examined on behalf of the defence.

5. The trial court after evaluating the evidence on record came to a conclusion that the prosecution has failed to prove beyond reasonable doubt that the accused persons assaulted and voluntarily caused grievous hurt to the complainant and simple hurt to the complainant and P.Ws. 5 and 8 and that they committed house breaking or lurking house trespass and theft in the dwelling house of the complainant. That apart, it was also the finding of the trial court that there was no satisfactory evidence regarding use of force or violence by any of the accused persons as from the evidence it appears that the assembly of the accused persons at the alleged spot had no unlawful object but their purpose was only to dissuade the complainant from demolishing the house occupied by one of the accused persons. Consequently, an offence of rioting cannot be said to have been established. Resultantly, the learned trial court came to a conclusion that the prosecution has failed to bring home any of the charges to the accused persons and acquitted them of the charges levelled against them.

6. Now, this appeal has been filed at the instance of the State of several grounds. One of them is that the evidence of the Doctor has been erroneously accepted by the trial court. According to the prosecution, the opinion of the doctor that the injuries could be caused with friendly hands has no basis. Apart from that, according to the State Counsel, the trial Court should not have disbelieved the evidence of the prosecution witnesses who had seen the occurrence from the house of P.W. 1. Witnesses such as P.Ws. 1 and 8 are stated to have seen the entire occurrence from the house of P.W. 4 which is only two houses apart from the house where theft was committed. As per the State Counsel, they are all truthful witnesses and their version should not have been discarded or disbelieved by the trial Court and concluded the trial in acquittal of the accused persons.

In this regard, the learned counsel for the respondents Mr. Rath has drawn my attention to the statement of P.W. 8 who is stated to be one of the eye-witnesses. P.W. 8 namely Rabindra Raulo has stated that all the accused persons along with 200 persons armed with Katis, axes, lathis, etc., came and assaulted him and his father and they sustained injuries. Out of fear, they ran away from the spot and took shelter in the house of Kelu Raulo wherefrom they could see the accused persons breaking open the lock of their house and taking away their belongings. This witness also specifically stated that the accused persons took

away utensils, rice, paddy, black gram, green gram, buckets, chadar, wearing clothes, a cot and many other articles. During cross-examination he has stated that they sustained multiple injuries on both knees, hands and some other parts of the body and that he has been examined by the Doctor. Khali Raulo, P.W. 1, is none other than the father of Rabindra Raulo, P.W. 8. In his statement he has stated before the Court that on the date of occurrence when he along with his sons Rabindra and Pranakrushna was removing straw from the roof of the house in order to construct a pucca house, accused, Ranka, Punia Rana and Balia Rana asked as to why they were doing so. According to him, when they did not stop the work, the aforesaid persons came outside where the other accused persons joined them and started pelting stones. They were also armed with kati, crowbar, lathis, etc. One of the accused Punia Rana pelted stones at P.W. 1 which hit the tip of his nose causing bleeding injury, When the accused persons threatened to assault, the two sons of P.W. 1 went away out of fear. P.W. 1 also followed them and took shelter in the house of his neighbour. Thereafter, accused Ranka Rana broke open the lock of the house of P.W. 1 by means of a crowbar and the accused persons took away the belongings.

7. On perusal of the F.I.R. filed by P.W. 1, it transpires that when he was dismantling the roof of the house, the accused persons came in a body armed with kati, crowbar, lathis, etc., and attacked the informant and his sons and started beating him with lathi, resulting bleeding injuries on his nose. In the mean time, his sons escaped from the hands of the accused persons and went into the house of one Kalu Raulo. The F.I.R. story totally contradicts the statement of P.W. 1 given on oath before the Court. P.W. 1 says in Court that the accused persons pelted stones one of which hit his nose causing bleeding injury whereas in the F.I.R., he has stated that he was assaulted by lathi. In the F.I.R. there is nothing to indicate about the assault on the sons of P.W. 1 by the accused persons. P.W. 8 who is one of the sons of the informant has stated that all of them sustained simple injuries.

8. As it appears, there is material discrepancy in the evidence of the prosecution and this aspect has been taken note of by the trial court. In para 14 of its judgment, the learned Magistrate, while dealing with the medical report and the evidence of the Doctor has found that there were only some tenderness on P.W. 8's back of body and legs and front of the chest and the injuries might have caused by kicks and blows. Rightly, the trial court after referring to the F.I.R. has held that P.W. 8 was never assaulted by any of the accused. So far as the injury on P.W. 1 is concerned, the Doctor has found one enchymosis on the left buttock and thigh which might have been caused by some hard and blunt weapon. On the other hand, the case of P.W. 1 is that he sustained bleeding injuries on his nose. According to P.W. 1 as the accused persons assaulted with lathi on his nose causing bleeding injury. The F.I.R. confirms the medical evidence that the said injury was caused by some blunt weapon. Undisputedly, stone is not a blunt weapon but a rough object. But in his evidence, P.W. 1 has totally given a different version than that given in the F.I.R. by saying that all the accused

persons pelted stones at him and his two sons. The F.I.R. is completely silent about the pelting of stones by any one of the accused persons. There being material contradiction in the evidence of the informant himself, in my opinion, it is not necessary to scrutinise the statement of the other prosecution witnesses. As rightly held by the learned Magistrate, the prosecution has miserably failed to establish its case beyond reasonable doubt and has passed an order of acquittal. I do not find any reason to disturb the findings of the trial Court.

9. Accordingly, the Government Appeal fails and is dismissed. The order of acquittal passed by the learned S. D. J. M., Chatrapur, is confirmed.