
(1990) 05 OHC CK 0003
In the Orissa High Court
Case No : Government Appeal No. 34 of 1986

State of Orissa

APPELLANT

Vs

Rajkishore Rout and Others

RESPONDENT

Date of Decision : 15-05-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157

Citation : (1991) 1 OLR 289

Hon'ble Judges : L. Rath, J;A.K. Padhi, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; B. Panda, D. Panda and S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath and A.K. Padhi, JJ.—The respondents who stood trial Under Sections 147, 148, 302, 323, 302/34, 302/149 and 323/149, I. P. C. having been acquitted of the charges, this appeal has been preferred by the State. The prosecution case against the respondents was that on 22-9-1984 at about 9 a. m. while the deceased, one Kulamani Paital, was going on the village road he was physically lifted by the respondents 1i, 3, 4 and 6 and taken to the front of the house of the respondent Promod where he was assaulted with various weapons such as Thengas, Tentas, spade and crowbar etc. causing injuries all over his body. The respondent No. 1 Rajkishore poured something on the face of the deceased which resulted in burning injuries. The occurrence was witnessed by P. W. 2, his son who had come to the village. He ran back to inform P. W 1, the brother of the deceased and P. W. 5, the mother of the deceased who came to the spot along with P. W. 2, and the wife of the deceased Jhali Dei as also his daughter though they have not been examined as witnesses. When P. Ws. 1 and 5 intervened they were also assaulted by the respondents. The deceased who was rolling on the ground with agonising pain was carried to the embankment of the river luna by the respondents while he was unconscious and was left there. P.

Ws. 1, 2 and 5 along with some other members of the family came there and administered him some water. The deceased regained his sense and was taken to Marsaghai P. H. C. where the Doctor examined and advised him to be removed to the S. C. B. Medical College & Hospital, but while arrangements were being made for the purpose, he succumbed to the injuries. The motive for the crime was given out as that of the deceased having been the cause of death of one Antaryami Rout, the paternal uncle of the respondent No 3 and he having been acquitted u/s 302, I. P. C. in the trial that ensued on account of that death.

2. The defence plea was one of denial with the further stand that the respondents and their relations were witnesses against the deceased in the earlier murder case and for such reason they had been falsely involved in the case. The prosecution case was sought to be established on the eye-witnesses evidence of P. Ws. 1, 2, 3, 5 and 9.

3. The learned Sessions judge analysing the evidence disbelieved the prosecution case since (i) he found the plain paper F.I. R. to be of doubtful origin it having not been proved as to who had scribed it. It was his view that if the F. I. R. would have been written in the Marsaghai P.H.C. in the presence of P. Ws. 11 and 12 i. e. the I. O. and the A. S. E. who assisted the investigation, they could have easily stated as to who wrote the F. I. R. but it was not so. P. W. 11 gave inconsistent versions regarding scribing of the F. I. R. and P. W. 12 denied to have written the same. Such inability on the part of the prosecution to establish the authorship of the F. I. R. made it a doubtful document and as such the "allegations made therein were also doubtful; (ii) the fact that P. W. 1 did not tell anything of the incident to P. W. 10, Dr. Biswai at the earliest opportunity was unnatural and made the case of the prosecution doubtful and there was strong basis to hold that the respondents were implicated in the case at a later point of time; (iii) there was inordinate and unexplained delay in the examination of material witnesses who were even available at the P. H.C. and absolutely no explanation having been offered by the prosecution for such delay for which there was basis to hold that the witnesses, were not witnesses of truth; (iv) that the incident as narrated must, have been a very big event in the small village like the village of occurrence and it was rather strange that P. W. 2 did not tell anything regarding the incident to anybody else which* is against natural course of human conduct; (v) the entire investigation was wholly doubtful since it -was "admitted by P. W. 11 that he did not forward the statements of the witnesses to the Court before 15-10-1984 which shows that the statement of the witness had not been in "existence till then as otherwise the same would have been forwarded to the Court u/s 167, Cr P. C. The delayed arrest of the respondents and forwarding to the Court on 15-10-1984 also spoke volumes against the bonafides of the prosecution.

4. Since on such fact the learned Sessions judge disbelieved the prosecution case and we after having been taken through the evidence do not find any justifiable reasons to depart from the conclusions reached by him there does not appear to

be any cogent reason to interfere with the verdict, it is not necessary for us to refer in detail to the evidence except as we have indicated above since We agree with the analysis of the evidence as was made by the learned Sessions Judge, the authority for which approach is available in State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, . In view of that this appeal has no merit and is dismissed.