

(2009) 05 OHC CK 0050
In the Orissa High Court
Case No : Government Appeal No. 28 of 1988

State of Orissa

APPELLANT

Vs

Ramesh Chandra Swain and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 323, 324

Citation : (2009) CLT 1429 (Suppl CrI) : (2010) 1 OLR 247 Supp : (2009) OLR 1429 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J; L. Mohapatra, J

Bench : Division Bench

Advocate : Addl. Standing, for the Appellant; K. Ray and A.K. Baral, for the Respondent

Judgement

Pradip Mohanty, J.—This appeal is directed against the judgment dated 07.11.1987 passed by the learned Additional Sessions Judge, Rourkela in ST. Case No. 102/67 of 1986 acquitting the Respondents of the charge u/s 302, 147, 148, 323, 325, I.P.C.

2. The brief facts of the prosecution case are that on 5.1.1984 at about 10.30. A.M. while the informant (P.W.11), the injured (P.W.12) and the deceased were working in the power plant of the Steel Factory at Rourkela, all the Respondents arrived there being armed with iron rods, Bhujali, cycle chains, etc., and assaulted the deceased and the injured by means of the above deadly weapons. The informant and Ors. removed the injured persons to the First Aid Centre and thereafter to the I.G.H where the deceased succumbed to the injuries on the same day. The informant lodged F.I.R. and after completion of investigation charge-sheet was filed against the Respondents.

3. The plea of the Respondents is complete denial of the allegations. In order to prove its case, prosecution examined as many as 13 witnesses and proved twenty-two documents. Defence examined none but proved two documents as Exts. A & B.

4. The trial Court after appreciating the evidence acquitted the accused-Respondents of the above charges with a finding that prosecution has not been able to prove its case beyond all reasonable doubt by cogent and convincing evidence and, therefore, the accused persons are entitled to the benefit of doubt.

5. Mr. Mohapatra, learned Counsel for the State submits that the trial Court has not appreciated the evidence on record in proper perspective and has arrived at an erroneous conclusion. The evidence of ocular witnesses is very clear and cogent that the Respondents were responsible for causing the death of the deceased. They had also assaulted the injured. Though there are some minor contradictions, those have not at all affected the prosecution case. Therefore, the trial Court ought to have passed an order of conviction instead of acquitting the Respondents.

6. Mr. Panda, learned Counsel for the Respondents submits that the statement of prosecution witnesses are full of inconsistencies and there is no corroboration. Therefore, the trial Court has rightly passed an order of acquittal, which should not be interfered with.

7. Perused the LCR. In the instant case, P.Ws. 1 and 2 are the Medical Officers, who were then attached to the Ispat General Hospital, Rourkela and treated the injured persons. P.W.3 is a Ward Attendant of Ispat General Hospital in whose presence the I.O. held inquest, P.W.4, who is an electrician working under the contractor, is an ocular witness, P.Ws. 5 and 6 are police officials, P.W.7 is the Medical Officer, Government Hospital, Panposh, who conducted autopsy over the dead body of the deceased and opined that cause of death was shock and haemorrhage due to head injury and the injuries were caused by hard and blunt weapon, P.W.8 is a contract labourer, who has been examined as an eye-witness, P.W.9 is the Medical Officer, E.S.I. Dispensary Sonaparbat, who had examined the informant (P.W.11), P.W.10 is the Havildar of C.I.S.F., P.W.12 is an injured and P.W.13 is the I.O.

8. From the medical evidence it is evident that the death of the deceased was homicidal in nature. P.W.4, who is an eye witness, has stated that after hearing hullah he came out of the place of his work and found a mob, who were armed with iron rod, cycle chains and knives. He could not identify the Respondents except Respondent Nos. 1 and 7. This witness turned hostile and was cross-examined by the prosecution at length. However, in his cross-examination by the defence, he admitted that both the accused (identified) were standing at a distance of 200 yards from the mob. P.W.8, Anr. ocular witness, stated that 50 to 60 persons armed with iron rods led by B.B. Sahoo, Nanda Nayak, B.K. Chhatarjee and Gangadhar Das reached the spot and shouted to kill Pati (P.W.12) and Juber.

9. P.W.12 has stated in his deposition that Pratap dealt blows by means of iron rod as a result of which he sustained bleeding injuries on his head. Thereafter Ramesh Swain dealt a blow by means of iron rod which struck his right cheek.

Accused Sahadev and Rabi Sahu also assaulted him by means of iron rod. He has further stated that the deceased was present near him at the time of assault on him, but he denied his knowledge about the assault on the deceased. P.W.11 is the informant, according to whom the accused persons being armed with iron rod, bhujali, cycle chain, etc., assaulted both the injured and the deceased. But, according to P.W.12, accused Pratap Swain was the first assailant by means of iron rod and accused Ramesh Swain was the second assailant by means of iron rod. P.W.11 further stated that while P.W.12 was being assaulted, the deceased started running away from the spot but was chased by the mob and was assaulted by means of iron rod. He himself was also assaulted by accused Kalakar by means of cycle chain. P.W.13 is the I.O., who after completion of investigation filed charge-sheet against the eight Respondents. The statement of the four eye witnesses to the occurrence examined by the prosecution does not specifically show as to who were the assailants of the deceased. But P.W.11, the injured eye witness, stated that Pratap Swain gave a blow to P.W.12 by means of iron rod and Ramesh thereafter gave a blow. As a result, P.W.12 fell down on the ground. Sahadev and Rabi also assaulted P.W.12 by means of iron rod. This part of the evidence has been corroborated by P.W.8, who implicated Ramesh, Pratap and Sahadev as the assailants of P.W.12. P.W.1 is the doctor, who treated P.W.12. He stated that the patient was admitted to I.G.H. with the following injuries.

(i) Lacerated wound 2" x 1/2 x 1/2" right occipital region.

(ii) Lacerated wound 1/2" x 1/2" on the right tibia.

(iii) Abrasions 3" x 1/2" x" x 1" x 1/2" on the right arm 1/2" x 1/2" on right lateral part of right eye.

He opined that all the injuries were simple in nature.

10. P.W.11 is the informant, who deposed that the deceased was running away out of fear. He was chased by the accused persons but accused-Pratap Swain and Ramesh Swain assaulted Prakash Pati (P.W.12) by means of iron rod and due to assault Prakash Pati (P.W.12) sustained bleeding injuries. When the assault was going on, he shouted that he was being assaulted by means of a cycle chain by accused-Kalakar Sahoo. He shifted injured Prakash Pati (P.W.12) and the deceased to the Hospital and thereafter lodged the F.I.R. Then he went to the dispensary for treatment. P.W.9 is the doctor, who examined the informant (P.W.11) and found two bruises. According to him, the injuries were simple in nature and might have been caused by cycle chain or similar objects. Regarding assault on the deceased, there is no specific evidence. None of P.Ws.4, 8, 11 and 12 has specifically implicated the accused-Respondents as the assailants of the deceased. Moreover, the statement of P.Ws.8 and 11 is not consistent with each other on this score.

11. It is the settled principle of law that the trial Court has the advantage of looking at the witnesses, assess the evidentiary value of the statements made by them and come to a conclusion. Therefore, in respect of an appeal against

acquittal, the appellate Court should be slow in interfering with the order.

12. Keeping in mind the above principle of law, this Court is required to see as to how far the prosecution has been able to establish its case. In view of the evidence narrated above, it is very difficult to say as to who assaulted the deceased. Therefore, the trial Court has rightly acquitted the accused-Respondents of the charge u/s 302, I.P.C., which needs no interference. But, so far as accused-Respondents-Ramesh Swain and Pratap Swain are concerned, the evidence is very clear and cogent that they had assaulted P.W.12 by means of iron rods. Therefore, this Court convicts the above two accused Respondents under Sections 324, I.P.C. This Court also convicts accused-Kalakar u/s 324, I.P.C. for assaulting P.W.11. Since the occurrence is of the year of 1988, taking a lenient view, this Court sentence all the aforesaid Respondents, namely, Ramesh, Pratap and Kalakar, to pay fine of Rs.1, 000/- each in default to undergo R.I. for 15 days.

13. The Government Appeal is partly allowed to the extent indicated above.

L. Mohapatra, J.

14. I agree.