
(1985) 01 OHC CK 0027
In the Orissa High Court
Case No : Government Appeal No. 42 of 1980

State of Orissa

APPELLANT

Vs

Sadhu Swain and Others

RESPONDENT

Date of Decision : 14-01-1985

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (1985) 1 OLR 164

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : R.K. Patra, for the Appellant; D.C. Mohanty, R. Biswal, B.B. Nanda and P. Kar, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Behera, J.—The State has challenged the judgment and order of acquittal recorded by the Court of trial holding the respondents not guilty of the charge of dacoity punishable under Section. 395 of the Indian Penal Code. The respondents with the other co-accused persons stood charged with having committed dacoity in the house of Kulamani Das (P. W. 1) during the night of the 26th/27th December, 1978. To bring home the charge, the prosecution had examined six witnesses of whom P. W. 1 had implicated the respondents having identified them in the Court and at an earlier test identification parade as the culprits who had committed dacoity in his house. There was no other incriminating evidence against the respondents. The trial Court did not accept the evidence of P. W. 1 and recorded an order of acquittal.

2. I have heard the learned counsel for both the sides and have perused the evidence adduced by the prosecution. Hare is one of the many cases one comes across where a case of robbery is recorded in the first information report and developed and magnified to be one of dacoity at the stage of investigation and trial by increasing the number of culprits and in the process, the gravity of the offence. In the first information report (Ext. 1) lodged by P. W. 1, it had been

stated that three to four persons had committed robbery. This story was given a go-by at the stage of investigation and later during the trial, evidence was led that five to six persons were the culprits.

3. The sole evidence on which reliance had been placed by the prosecution was that of the identifying witness (P. W.1). In order to base a conviction on the evidence of a solitary witness, such evidence must be clear and clinching, true and trustworthy and above reproach. P. W. 1 was a highly interested witness who would look for a successful termination of the trial against the respondents who, it was alleged, had committed dacoity with others in his house. None of the other inmates of the house had been able to identify any of the culprits. P. W. 1 had not testified that he had identified the culprits at the time of commission of the dacoity inside the house. He had asserted that when the culprits were running away, he could see them through the window with the help of a torchlight and was, therefore, in a position to identify the culprits. He had admitted that the culprits had not entered his room where he and his wife were sleeping with their children. He could not say from which place the culprits, whom he identified, had run away. He had neither stated in his report nor in his statement in the course of investigation that he had identified the three culprits through the window while they were running away by focussing a torchlight. On his own showing, ? he had not seen the three culprits whom he had identified in the Court prior to the incident. He had gone to the length of asserting in the Court that he had marked the special marks of identification when the culprits ran away. He had, however, admitted that he had neither mentioned about this in the first information report nor had he made a statement in this regard while he was examined by the Investigating Officer. In the circumstances in which P. W. 1. had been placed, it was highly unlikely, as had been rightly noticed by the trial Court, that he would be able to mark the special features of identification of the three unknown persons while they were running away and while he was inside a room and was peeping through a window.

4. For the foregoing reasons, I am at one with the learned trial Judge that the evidence of P. W. 1 could not safely be accepted and made the foundation of an order of conviction.

5. The appeal fails and is dismissed.