
(2005) 11 OHC CK 0017
In the Orissa High Court
Case No : Government Appeal No. 8 of 1986

State of Orissa

APPELLANT

Vs

Santosh Kumar Giri and Others

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)
Penal Code, 1860 (IPC) — Section 34, 379, 427, 447, 506

Citation : (2006) CLT 533 (Suppl CrI) : (2006) 1 OLR 168 : (2006) OLR 533 (Suppl CrI)

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : A.K. Mishra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This is an appeal by the State u/s 378(1) of the Code of Criminal Procedure for setting aside the order of acquittal passed by the learned JMFC, Baripada acquitting the accused persons (respondents) from the charge under Sections 447, 427, 379, 506, 509/34, IPC in G.R. Case No.594 of 1982/ Trial Case No.43 of 1983.

2. Prosecution case, in short, is that P.W.9, husband of the informant- P.W. 10 purchased the disputed land from one Guru Charan Ray by means of a registered sale deed on 10.6.1982, took delivery of possession and started construction of a tiled-roof house thereon. On 21.6.1982 at about 9.00 A.M. while going to supervise the work of construction, P.W. 10 found that the respondents-accused persons were breaking the house under construction on the disputed land. She protested to such highhanded action of the respondents, but instead of paying any heed to her protest, respondents rebuked her in obscene and threatening language, destroyed the house and removed the building materials. P.W.10 lodged an F.I.R. before Baripada Town Police Station and basing on such F.I.R. investigation was undertaken and finally charge-sheet was submitted against the

accused-respondents for the above noted offences.

3. The respondent denied the entire prosecution allegation and claimed bona fide right of possession over the case land.

4. In order to establish the charges, the prosecution examined 11 witnesses and produced several documents, such as Amin report, trace map, copy of the judgment in G.R. case No. 594 of 1982, seizure list, original draft Khatian, certified copy of the order-sheets in T.S. No. 59 of 1983 and G.R. Case No.1233 of 1982 and these documents were marked as Exts. 1 to 15. The respondents also examined two witnesses and produced the parcha, Yadesh, mistake list, which were marked as Exts. A to C. Learned J.M.F.C, Baripada who conducted trial of the case, after considering the above noted evidence came to the conclusion that physical possession of the informant over the case land and the involvement of the respondent in the alleged occurrence was not established beyond reasonable doubt. He accordingly recorded an order of acquittal in favour of the respondents. Aggrieved with the said order, the State has filed the present appeal.

5. Mr. A.K. Mishra, learned Standing Counsel submitted that the documents and oral evidence led by the prosecution, clearly establish that the disputed land had been purchased by P.W.10 and that she was in physical possession of the land and also that the respondents-accused persons damaged the house in question and removed the building materials after abusing the informant in obscene language. According to him, learned trial Court did not assess the evidence properly and also failed to follow the settled principles of law while deciding the case.

6. In spite of the case appearing in the list, none appeared for the respondents.

7. In a case u/s 447, IPC, the burden is on the informant to prove his/her physical possession over the property and such burden becomes onerous when the accused persons claimed bona fide right of possession over the disputed property. So, the first thing to be seen in the present case, is, whether physical possession of the informant over the dispute land is established from the evidence on record. P.W.10 said that her husband P.W.9 purchased the disputed land in her name and after taking over possession they started construction of the house thereon. P.W.9 also stated that he purchased the case land from one Guru Charan Dey of Baliadiha and took possession from him. The vendor. Guru Charan Dey was not examined. P.W.1, who is a young boy of the locality, stated that he only heard about the purchase of the case land by the informant but he was unable to say the identity of the land purchased by the informant. P.W.2, who is a friend of P.W.9 and an attesting witness to the sale deed stated that after purchase, the informant P.W.10 had constructed a tiled house over the case land and that he saw the accused persons demolishing the house. Although this witness is a survey knowing person, he is not able to give the correct boundary of the disputed land. P.W.8, the Amin, who on police requisition, demarcated the

case land, stated in his evidence that Guru Charan Dey is the occupant of the case land. This witness denied any personal knowledge about the possession of P.Ws. 9 and 10 over the land in question. The boundary given by P.W.9 materially differs from the boundary described by P.Ws.2 and 3, who are both Amins. Admittedly, civil suit was pending in respect of the case land and the defence witnesses categorically stated that the case land situates adjoining Sripadaganj High School and M.E. School and was being used as play ground of the students since inception. The allegation of the prosecution is that the respondents, who are teachers and persons connected with the school pulled down the alleged structure claiming that the land in question is a playground of the school.

8. The evidences on record, therefore, reveal that although sale deed and not final records were in the name of P.W.10, dispute was going on for the case land and litigations were pending. The evidences available were also not sufficient to arrive at a conclusion that the informant and her husband had taken over physical possession of the land and had actually constructed any house thereon. Learned trial Court, therefore, rightly observed that although there were some materials to prove the constructive possession of the informant, yet her physical possession over the land was not established.

9. So far as the offence part is concerned, P.W.10 alleged that she found the accused-respondents pulling down her house on the case land and when she protested, those persons abused her in obscene language and removed the building materials. The informant is not able to describe as to which of the respondents pulling down the structure and which respondents abused her. P.W.9 in his evidence stated that on 21.6.1982 at about 9.00 A.M. when he reached the spot to supervise the construction work, he found the accused persons breaking his house and he also witnessed the accused persons abusing his wife in filthy languages. P.W.10 clearly stated that she met her husband at the police station and narrated the incident to him there. She never stated that P.W.9 came to the spot and witnessed the occurrence. So, the evidence of P.W.9 regarding the occurrence was not trustworthy. P.W.1, a fourteen-years old boy, spoke about the occurrence, but in cross-examination, he admitted that he witnessed the occurrence staying at his house, which is more than 100 ft. away from the spot. He stated that around 30 persons were there at the spot, but he does not say specifically that the respondents are the persons who pulled down the structure or abused P.W.10. This witness was at a distance of more than 100 ft. from the spot and it was not probable that he actually heard the alleged abuse meted out by the respondents to P.W.10. P.W.2 claimed that he saw the incident when he was passing by. He is admittedly a friend of P.W.9 and an attesting witness to the sale deed, yet after seeing the occurrence, he did not go near the spot and did not enquire from P.W.9 or P.W.10 about the incident. He also did not try to interfere in the same, which is an abnormal conduct and rightly the trial Court disbelieved his presence at the spot. P.W.3 was also a chance witness. This witness admitted in cross-examination that he cannot say how many persons were demolishing the house in question and whether the house was actually

there on the land in question. P.W.3 is also not a local person. P.Ws. 4 and 7, who are alleged eye-witnesses to the occurrence did not support the prosecution allegations.

10. The statement of witnesses examined by prosecution give a general picture that a crowd of 30-50 persons were available on the case land on the date of occurrence and some trouble was going on. But the prosecution witnesses have not been able to give any definite picture as to whether the respondents were involved in demolition of the house or uttering obscene abuse at P.W.10. The evidence of these witnesses is equally shaky about removal of building materials by the respondents-accused persons. When the evidence of the prosecution was shaky and was not convincing and when admittedly litigations were going on for the title and possession of the case land, learned trial Court had every justification of disbelieving the prosecution allegations and extending the benefit of doubt to the respondents.

11. On close scrutiny of the evidence on record, I am of the considered opinion that the order of acquittal recorded in favour of the respondents by trial Court is in accordance with materials available on record. I, therefore, do not find any good reason to interfere with the order of acquittal passed by the trial Court. Consequently, the appeal is found to be without any merit and is dismissed.