
(2009) 10 OHC CK 0058
In the Orissa High Court
Case No : Government Appeal No. 8 of 2001

State of Orissa

APPELLANT

Vs

Sudarsana Mallik and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2010) CLT 169 (Suppl CrI) : (2009) 44 OCR 824 : (2010) OLR 169 (Suppl CrI) : (2009) 2 OLR 1098 Supp

Hon'ble Judges : B.K. Nayak, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Addl. Government Advocate, for the Appellant; Gopal Krishna Behera, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 19.5.2000 passed by the learned District and Sessions Judge, Phulbani acquitting the accused persons of the charges under Sections 147/148/302 read with 149 of I.P.C. in S.T. No. 89 of 1998 is assailed by the State in this appeal.

2. Bereft of unnecessary details the prosecution case in short is that on 10.3.1998 at about 4.00 P.M. the Respondents called Arjuna Konhar from his house and asked him to attend a meeting at Kuinghar Grama Panchayat Office. It was alleged that while the accused persons were proceeding to the venue along with Arjuna, near Bhithirikhhol village forming an unlawful assembly being armed with lethal weapons they assaulted Arjuna by means of Kati, stones and lathis in prosecution of their common object. Consequent thereof Arjuna sustained grievous injuries all over his body and fell down on the ground. Thereafter, it was alleged, the accused persons carried injured Arjuna to the Panchayat Office at Kuinghar where the elder brother of Arjuna, Harish Chandra Konhar saw his brother being carried by the accused persons. He went near him and noticed that

the right hand of Arjuna was fractured and there were cut and bleeding injuries on other parts of his body. On being asked Arjuna told his elder brother Harish that the accused persons called him to attend the meeting at Panchayat Office but on the way to the office they assaulted him. Thereafter, Harish went and called the wife of Arjuna, who reached at the spot and gave rice and gruel to Arjuna. Arjuna was then taken to Tikabali Government Hospital in a trax. The doctor examined and declared him to be dead. Harish lodged an F.I.R. at the police station on the basis of which G. R. Case No. 46 of 1998 was registered in the court of learned J. M. F. C, G. Udayagiri. In course of investigation the Investigating Officer held inquest over the dead body, seized the blood stained Kati on production by accused-Respondent No. 6, seized stone boulders, sample earth and blood stained earth from the spot. The body was sent for postmortem examination and the wearing apparels were seized after the postmortem examination. All the seized materials were sent to State Forensic Laboratory, Bhubaneswar for examination.

3. After completion of the investigation charge sheet was submitted against 22 Respondents under Sections 147/148/302 read with 149 of I.P.C. Learned J.M.F.C., G. Udayagiri on being satisfied from the police records, took cognizance of the offences and committed the case to the Court of Sessions for trial.

4. The plea of the defence was of complete denial to the charges levelled. It was further pleaded by the defence that the informant due to previous enmity and party fraction in the village has foisted a false case. In course of examination of witnesses it was suggested to different witnesses that Arjuna in fact fell down from a tree and sustained grievous injuries.

5. To establish its case, the prosecution got nine witnesses examined. P.W. 1 was the informant and elder brother of Arjuna, P.W. 2 was the wife of Arjuna, P.W. 3 was a co-villager and was a post occurrence witnesses, P.W. 4 was the doctor who conducted the autopsy over the dead body, P.W. 5 was the police Havildar in whose presence the Investigating Officer held inquest over the dead body and also escorted the body to the hospital for postmortem. P.W. 7 was the Panchayat Secretary who was a post occurrence witnesses. P.W. 8 was the paternal uncle of the deceased and was also a post occurrence witness P.W. 9 was the investigating Officer.

6. Learned Sessions Judge after discussing the evidence in extenso and analyzing pros and cons of the evidence, vis-a-vis the documents produced, arrived at a conclusion that the prosecution had totally failed to bring home the charges levelled against the accused persons so as to warrant conviction. Accordingly the accused persons were held not guilty and were acquitted u/s 235 of Code of Criminal Procedure

7. The judgment is assailed by the State mainly on the ground that learned Sessions Judge without application of mind committed grave error of law in discarding the evidence of P.W. 1 who happens to be the brother of the deceased

thereby disbelieving the dying declaration said to have been made by Arjuna soon before his death. According to learned Addl. Government Advocate the learned Sessions Judge acted illegally in disbelieving the statements of P.Ws. 2 and 3 who were the wi(sic)e and co-villager of Arjuna respectively, though their evidence remains unchallenged during trial. In short, it is stated that the conclusions arrived at by learned District and Sessions Judge suffer from vice of non consideration of vital evidence available on record. In course of hearing learned Addl. Government Advocate reiterated the grounds taken in the Memorandum of Appeal and submitted that the learned Sessions Judge has not properly appreciated the evidence and the conclusions arrived at are based on mere surmises and conjectures. It is stated that the dying declaration has been disbelieved on flimsy grounds and so also the evidence of P.Ws. 1, 2 and 3. According to learned Addl. Government Advocate the conclusions arrived at by learned Sessions Judge are untenable and it is a fit case where the order of acquittal needs interference.

8. Mr. Behera, learned Counsel for Respondents, on the other hand, submitted that learned Sessions Judge has discussed the evidence, both oral and documentary, in extenso and the conclusions arrived at

are just and proper. It is submitted that there are material contradictions in the evidence of witnesses, and that they have admitted that the death of Arjuna was caused due to fall from a tree. He further submitted that as the learned Sessions Judge has taken pains to go through the evidence and arrived at conclusions, which are in consonance with the evidence, both oral and documentary, and as such conclusion is not perverse and this Court may not interfere with the order of acquittal.

9. Heard learned Counsel for the parties at length. Being final Court of facts, this Court went through the evidence and considered the submissions made by learned Counsel for parties diligently. At the very outset it is to be noted that the prosecution has not examined a single eyewitness to the occurrence though the incident took place on the village road and thus the entire prosecution case hinges upon circumstantial evidence only. In a case where the evidence is of a circumstantial nature, the circumstances must be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. It is well settled that circumstances should be of a conclusive nature and they should exclude every hypothesis but the one proposed to be proved. In other words there must be chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities the act must have been done by the accused.

10. Keeping in mind the aforesaid settled principles of law this Court scrutinized the evidence thoroughly. It appears that P.W. 1, the brother of the deceased, has not seen the occurrence. According to him he found the accused persons carrying his brother Arjuna who was severely injured to the hospital. He approached his

brother who told him that the accused persons had assaulted him. He immediately rushed to P.W. 2 who happens to be the wife of Arjuna. According to P.W. 2, Arjuna also disclosed before her the circumstances leading to the assault. According to the prosecution the statement made by P.Ws. 1 and 2 coupled with the declaration said to have been made by Arjuna clearly establishes that the Respondents were the authors of the crime. The prosecution also relied upon the evidence of P.W. 8 who happens to be the paternal uncle of Arjuna. Apart from the aforesaid three witnesses the Panchayat Secretary of Kuinghar Grama Panchayat who was an independent witnesses was examined as P.W. 7. But then, the said witnesses did not support the prosecution case and turned hostile. Thus, as stated earlier, the entire prosecution case rests on the evidence of P.Ws. 1, 2, and 8 who happen to be close relatives of the deceased. Of course law is settled that merely because a witnesses is a close relative, his evidence should not be brushed aside. On the other hand relatives are the best witnesses inasmuch they would never intend to see that the real assailant get scot-free and an innocent person is punished for the offence.

11. According to P.W. 2 (the wife of Arjuna) on receiving information from P.W. 1, came and gave rice to Arjun and thereafter it is stated that Arjuna was taken to hospital in a Trax. It is pertinent to mention here that admittedly the accused persons arranged the Trax to carry Arjuna to Tikabali Government Hospital. In course of hearing, it appears that Pratap Mallik was one of the accused and he being a juvenile his case was tried by the Juvenile Justice Court. In the said case also the aforesaid witnesses had given their evidence. In cross-examination P.W. 1 the informant had stated before the Juvenile Justice Court that he found his brother in a dying condition being carried by the accused persons in a "jhula" near Koinjhar Grama Panchayat Office. He has specifically stated that he has not stated before the Juvenile Justice Court that on being asked his brother told that the accused persons had assaulted him on the way. Thus, the statement made in course of hearing before learned Sessions Judge appears to be an after thought, more so because the said fact was not disclosed earlier before the Juvenile Justice Court. That apart, after the assault even according to the prosecution, Arjuna was carried to Koinjhar Grama Panchayat Office. Admittedly the Naib Sarpanch and other Government employees were present in the Grama Panchayat Office. None of them have been examined as witness in this case. On the other hand the Secretary of Grama Panchayat who was examined as P.W. 7 did not support the prosecution case at all. Another relevant aspect which needs to be mentioned is that P.W. 1 on being asked stated that he could not say whether his younger brother Arjuna fell down from a tree and sustained injuries and died out of the same. The said statement rather supports the defence plea that in fact Arjuna fell down from a tree and sustained grievous injuries. The Doctor-P.W. 4 in his deposition has also stated that the injuries found on the person of Arjuna were possible by fall from a tree on a stony substance.

12. So far as the evidence of P.W. 2-the wife of Arjuna is concerned, it appears that she had admitted in her evidence that the accused persons and P.W. 1 took

her husband in a Traxto Tikabali Government Hospital. In cross-examination she had also admitted that in course of hearing of G.R. Case No. 46 of 1998 before the Juvenile Justice Court in connection with one accused, she had stated that some persons assaulted her husband and she did not know about the case. The aforesaid statement made by her which was marked as Ext.B has been confronted to her during trial of the Sessions Case and she stated to have not made such deposition before the Juvenile Justice Court. An overall reading of the evidence of P.W. 2 which is full of contradictions, gives an impression that she was not a witness whose statement can be trusted. The contradictions in her evidence also strike at the root of the prosecution case. The evidence of P.W. 3 also does not inspire any confidence. A number of contradictions were found in the depositions given by him before the Juvenile Justice Court as well as before the Sessions Court. The evidence of P.W. 8 also does not help the prosecution case much. In cross-examination the said witness has admitted that he has not seen the assault on Arjuna by the accused persons. There are also lot of discrepancies between the evidence given by him before the Juvenile Justice Court as well as before the Sessions Court.

13. After threadbare discussion of the evidence of all witnesses this Court in agreement with the findings arrived at by the learned Sessions Judge, Phulbani comes to a conclusion that the prosecution has totally failed to establish its case against the accused persons beyond all reasonable doubts. The dying declaration on being tested carefully like any other evidence appears to be unbelievable. Learned Sessions Judge has discussed the evidence threadbare and has rightly come to the conclusion that the defence plea, on being more or less admitted, appears to be more believable. It is well settled that the appellate court should be slow in reversing an order of acquittal and unless there are good and strong grounds the order of acquittal should not be interfered with. (See Bahal Singh v. State of Haryana reported in AIR 1994 SC 606). It is also well settled that only when the appellate court after going through the evidence arrives at a conclusion that the view taken by the trial court in acquitting the accused persons is extremely perverse and shocking to the common sense, it can interfere with such order. In view of the aforesaid clear position of law, this Court on being satisfied that the learned Sessions Judge has properly discussed the evidence and the findings do not suffer from any infirmity, declines to interfere with the order of acquittal, that too after lapse of 11 years of the incident.

The Government Appeal is accordingly dismissed.

B.K. Nayak, J.

14. I agree.