
(2002) 09 OHC CK 0018
In the Orissa High Court
Case No : Government Appeal No. 32 of 1985

State of Orissa	Vs	APPELLANT
T. Surjya Dora and Another		RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323

Citation : (2003) 24 OCR 18

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Ch. P.K. Mishra, for the Appellant; Narendra Mishra, for R-I and A.R. Dash, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—This appeal has been preferred by the prosecution as against the order of acquittal of the opposite party members, recorded by the Assistant Sessions Judge, Aska in Sessions Case No. 8 of 1984 (Sessions Case No. 76 of 1984-G) arising out of G.R. Case No. 130 of 1983 of the Court of Judicial Magistrate, First Class, Aska.

2. Accused No. 1 is the husband of the informant(P.W. 2) and accused Nos. 2 and 3 are respectively her father-in-law and mother-in-law. According to prosecution, there is a dispute between the informant and the accused persons relating to non-payment of dowry, for which about four days after the marriage she had to take shelter in her parental house situated in the same village at a short distance and ten months after when she returned to the matrimonial home (on the decision of the Caste Panchayat, the occurrence took place within a period of three days. According to the F.I.R. and the evidence of P.W. 2 (the victim), on the date occurrence, i.e., on 3.6.1983 at about 3 P.M. accused persons conjointly started ill-treatment and assaulting her and in that process accused Nos. 1 and 2 dealt Lathi blows. Hearing about that quarrel her father arrived at the spot with some gentlemen with a view to intervene. Her father

raised a protest, and as a matter of retaliation accused No. 1 dealt a "Khanati" blow to her father and her father sustaining bleeding injury went to the police station, which is at distance of 4 kms. On seeing the assault on her father when P.W. 2 started crying loudly, as alleged, all the accused persons dragged her up to the well of the adjoining "Bari" belonging to the family of P.W.3 and there they pushed her into the well with a view to kill her. According to the prosecution, P. Ws. 4 and 5 came and rescued her from the said well and took her to her parental house. On the following day P.W. 2 lodged a report in Pattapur Police Station and after completion of investigation, charge-sheet was submitted. In course of investigation P.W. 2 was sent for medical examination because of the injuries sustained and the doctor (P.W.1) granted Injury Certificate, Ext. 1/1. There was seizure of Lathis and other articles connected with the case, but the same is not necessary to be reflected because of less relevancy.

3. Charge for the offence u/s 307, I.P.C. was framed for attempting to commit murder of P.W. 2 and also for the offence u/s 323, I.P.C. for causing simple hurt to her. Accused persons pleaded not guilty and claimed for trial. At the time of trial, prosecution examined eight witnesses and relied on the "documents marked Exts. I to 5 besides the three material objects. As noted above, P.W. 2 is the victim/injured and P. Ws. 3 to 6 are the eye-witnesses to the occurrence, whereas P.W.1 is the Medical Officer who granted the Injury Certificate Ext. I/1 and P. Ws. 7 and 8 are the two Investigating Officers.

4. Defense plea of the accused was that because of trifle domestic quarrel in the house P.W. 2 jumped into the well and accused No. 1 (husband) also jumped in to the well to rescue her. The rest of the allegations alleged against them by the prosecution were denied.

5. P. Ws. 2, 3 and 6 have consistently deposed in their evidence that it is the accused persons who dragged and pushed P.W. 2 into well and in the process of falling she sustained the injuries which are found and noted in Ext.III. They have denied the suggestion given by the defense that accused No. I entered into the well to rescue P.W. 2.

On the other hand, P. Ws. 4 and 5, the two trustworthy witnesses of the prosecution, stated that after hearing the "Hulla" when they arrived at the well they saw accused No. I holding P.W. No. 2 inside the well and resting against the bamboo set to the bailing contrivance and they went and gave aid and assistance by putting ladder and tying rope for rescue of P.W. 2. Prosecution did not examine the father or any of the family members from her paternal house as witness in the trial nor did the police officers state if the father of P.W. 2 had lodged a report relating to any assault on him and what happened to such report. Similarly, no medical requisition or injury certificate is available regarding presence of any injury on the body of the father of P.W. 2. Posted with such evidence on record, the trial court did not find evidence of P. Ws.2, 3 and 6 to be true and trustworthy to record an order of conviction for the offence under Sections 307 and 323, I.P.C. Accordingly, granting benefit of doubt the trial Court

acquitted all the accused persons.

6. Mr. Mishra, learned Addl. Govt. Advocate, argues that even if the evidence of P. Ws. 4 and 5 indicates about presence of the accused No. 1 inside the well, that otherwise indicates that P.W. 2 was inside the well and when P. Ws. 4 and 5 did not witness the occurrence as to how P.W. 2 went into the well, therefore, their evidence should not have been of any consequence relating to the allegation of pushing P.W. 2 to the well by the accused persons, and in that respect the evidence of P. Ws. 2, 3 and 6 being the victim and eye-witnesses to the occurrence, should have been accepted. This Court does not find any merit in that argument in as much as P. Ws. 4 and 5 arrived at the spot of occurrence soon after P.W.12 was inside the well and they were parties to the rescue. Therefore, even if they have not seen how P.W. 2 entered into the well that is to say whether by voluntarily jumping or due to push given by the accused persons, yet they had seen accused No. 1 being inside the well rescuing P.W. 2 from drowning. That evidence of P. Ws. 4 and 5 is not challenged by the prosecution. On the other hand, that evidence of P. Ws. 4 and 5 has been accepted by the prosecution, and when that acceptable evidence runs contrary to the evidence of P. Ws. 2, 3 and 6 relating to the manner in which the incident occurred, the trial court was justified in relying on the evidence of P. Ws. 4 and 5 to 3, disbelieve P. Ws. 2, 3 and 6 relating to the allegation of pushing P.W. 2 into the well in as much as P. Ws. 2, 3 and 6 have stated in their evidence that the accused No. 1 was not at all inside the well for the rescue of P.W. 2. That circumstance indicates that P. Ws. 2, 3 and 6 are not speaking the whole truth before the Court about the manner in which P.W. 2 was rescued. Admittedly, P.W. 2 has a matrimonial dispute with the accused person, for which she is staying in her parent's house. Thus, it cannot be imagined that she would be fair to her husband and the parents-in-law. Though reason of hostility of P. Ws. 3 and 6, so far as the accused persons are concerned, is not brought on record, but their evidence being contrary to the evidence of P. Ws.4 and 5 about the manner of rescue, therefore, their evidence also does not create confidence to warrant a conviction against the accused persons.

7. Be that as it may, prosecution has completely remained silent about the occurrence preceding P.W. 2 jumping into the well or pushed in to the well. The father or any other family members from the family of P.W. 2 has not been examined in that connection. If there would have been any such occurrence of assault on P.W. 2 followed by assault on her father, then P. Ws. 4 and 5, who were admittedly at the nearby spot by the time of occurrence, would have witnessed the same. In that respect the prosecution is completely silent. Therefore, that circumstance cannot be ignored or eliminated while considering the allegations against the accused persons relating to pushing of P.W. 2 into the well. Apart from that, evidence of P.W.1 and the injury certificate Ext.III clearly indicate that the injury sustained by P.W. 2 is because of rubbing against the wall of the well during her fall into the well. P.W.1 did not find any other injury on her body. When P.W. 2 stated that she was assaulted by Lathis and was injured,

P.W.1 could have found such injuries at the time of her examination. That circumstance also tells a lot against the veracity and credibility of P.W. 2. Thus, for the aforesaid reasons this Court finds that the trial court is not unreasonable in his approach in recording an order of acquittal. Accordingly this Court does not interfere with the order of acquittal, and the Government Appeal stands dismissed.