
(2008) 02 OHC CK 0049
In the Orissa High Court

Sundar Nanda and Prabin Kumar Karti APPELLANT
Vs
State of Orissa and Others RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 224, 34, 379

Citation : (2008) 1 OLR 547

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—The two revisions having been arisen from a common judgment and the Advocates in both the revisions being same, the same are disposed of by this common judgment.

2. Succinctly stated, the prosecution case is that on 2.8.1990 at about 4 P.M. while P.Ws. 2 and 5, two constables of Tusura Police Station were escorting the accused persons under one handcuff to a Court in Bolangir, in a bus after the name of Sibani, on the way, when the bus halted at Deogaon Bus Stand, they fled away with the handcuff. P.Ws. 2 and 5 chased to apprehend them, but failed. So, both of them lodged a written report before the O.I.C. of Tusura Police Station. As the allegation contained in the report, which was treated as F.I.R. revealed a cognizable case under Sections 224/34 of I.P.C., the O.I.C. registered Tusura P.S. Case No. 72 of 1990 and directed the S.I. of Police, P.W. 9 to investigate into the case. Accordingly P.W. 9 investigated into it and in course of investigation, examined the witnesses, seized the key of the handcuff, prepared seizure list in respect thereof and after completion of investigation, finding a prima facie case against the accused persons, submitted charge sheet against them under Sections 379/224/34 of I.P.C. However, the accused persons were charged under Sections 224/34 only and on denial of the charge, faced the trial before the J.M.F.C, Bolangir.

3. In order to establish its case, prosecution examined 9 witnesses, of whom all but P.Ws. 2, 5, 7 and 9 turned hostile to the prosecution. P.Ws. 2 and 5 are the two constables who were said to have been escorting the accused persons, P.W. 7 is said to be an independent witnesses to the fleeing away of the accused persons and P.W. 9 is the I.O.

4. Holding the evidence of P.Ws. 2, 5 and 7 to be unimpeachable, the trial Court convicted the accused persons of the offence under Sections 224/34 of I.P.C. and sentenced each of them to undergo R.I. for one year.

5. Being aggrieved with the said judgment and order of conviction, the accused persons preferred one appeal each bearing Nos. 60/68 of 1995 and 72/69 of 1995 before the Addl. District and Sessions Judge, Bolangir who heard both the appeals analogously and passed a common judgment, dismissing the appeals and upholding the order of Conviction and sentence passed by the trial Court.

6. Being dissatisfied with the said judgment, the accused persons filed one revision each before this Court. The revision preferred by accused Sundar Nanda was numbered as Crl. Revision No. 502 of 1996 and the revision preferred by the co-accused was numbered as Crl. Revision No. 503 of 1996 both of which are heard together as stated earlier. Learned Counsel appearing for the acceseed persons (hereinafter referred as petitioners) submits that the trial Court committed gross illegality in convicting the petitioners for the offence under Sections 224/34 of I.P.C. and the appellate Court without going deep into the matter, also equally committed error in upholding the judgment and order of conviction and sentence as passed by the trial Court. Per contra learned Addl. Govt. Advocate supported the judgment of the Trial Court as well as the appellate Court.

7. Even though P.W. 9, the I.O. in his evidence before the Trial Court stated that he seized the command certificate and prepared seizure list in respect thereof, it has not been proved. So, the very genesis of the prosecution case that P.Ws. 2 and 5 being duly commanded were escorting the petitioners to a Court at Bolangir creates a doubt. The evidence on record is silent with regard to the place where P.Ws. 2 and 5 and the petitioners boarded the bus

8. Similarly their evidence is silent with regard to the Court to which the petitioners were being escorted. The handcuff with which the petitioners were said to have been locked has not been recovered. The evidence of P.Ws. 2, 5 and 7, that while both petitioners were handcuffed with one handcuff, they could manage to escape from the bus stop and they (the constables) chased but could not apprehend them appears to be improbable. Had the handcuff been seized and proved it would have lent some support to the prosecution case, but the same has not been seized. The evidence of P.W. 9 is conspicuously silent as to whether he tried to seize the handcuff. So, the finding of the trial Court that the evidence of P.Ws. 2 & 5 being cogent and consistent in nature and having been corroborated by P.W. 7, an independent witness, establish the guilt of the

petitioners cannot stand to judicial scrutiny.

9. The appellate Court without delving deep into the matter, upheld the judgment and order of conviction and sentence of the trial Court. No doubt the scope of revision is limited. But if the judgment of the trial Court as well as the appellate Court are allowed to stand there would be flagrant miscarriage of justice. Moreover, the occurrence took place on 2.8.1990. In the meantime 18 years have been elapsed.

10. The revisions are pending before this Court since 1996. The sword of Damascus of undergoing imprisonment hanged over the heads of petitioners for more than 12 years.

11. Taking into consideration, the overall facts and circumstances of the case, the revisions are allowed and the judgment of the appellate Court confirming the judgment and order of conviction and sentence as passed by the trial Court and the judgment of the trial Court itself are hereby set aside

12. The petitioners are discharged of their bail bonds.