

IN THE HIGH COURT OF ORISSA AT CUTTACK

GCRLA No. 8 of 2014

An application under Section 378(1)(3) of the Code of Criminal Procedure, 1973.

***AFR* State of Odisha Appellant**

-Versus-

Barun Bhoi & Others Respondents

Advocate(s) appeared in this case through hybrid arrangement (Virtual/Physical Mode):-

For Appellant : Mr. Sailaza Nandan Das,
Addl. Standing Counsel.

For Respondents: M/s. B.R. Behera & D. Pattnaik,
Advocates.

CORAM:

MR. JUSTICE D. DASH

MR. JUSTICE SASHIKANTA MISHRA

JUDGMENT

17th November, 2022

SASHIKANTA MISHRA, J. This appeal is filed by the State against the judgment and order of acquittal passed by the learned Sessions Judge, Nuapada on 30.09.2005 in Sessions Case No.114 of 2001, whereby the respondents-

accused persons were acquitted from the offence under Sections 302/34 of IPC.

2. The prosecution case, as per FIR lodged by one Padmini Nag before the OIC of M. Rampur Police Station on 08.12.2000, is that 18 persons (named in the FIR) including the present respondents killed her husband at about 8 p.m. on 07.12.2000 and had thrown the dead body somewhere which she could not trace out despite search with the help of some villagers. On such FIR, M. Rampur P.S. Case No. 93 of 2000 was registered and investigation was taken up. Upon completion of investigation, charge sheet was submitted against the present 7 accused persons out of 18 named in the FIR under Section 302/34 of IPC.

3. The defence took the plea of denial and false implication.

4. The prosecution, in order to prove its case, examined 12 witnesses and exhibited 13 documents. The defence, on the other hand, examined one witness and exhibited one document.

5. After scanning the evidence on record, the trial court considered the evidence of P.Ws. 4, 6, 7, 8, 9, 10, 11 and 12 as material but held that the evidence of P.Ws. 9 and 10 suffers from improbability being contrary to the natural reaction of a person under threat of death. The trial court further took note of the fact that out of 18 persons named in the FIR, P.Ws. 9 and 10 implicated only 7 accused persons including 2 persons not named therein. It was further held that the FIR exhibited in the case (Ext.8) may not have been the earliest report lodged by P.W.-10. Comparing the version of P.Ws. 9 and 10 with other witnesses, the trial court was of the view that their version cannot be accepted and accordingly, held that the prosecution failed to prove the charge against the accused persons and therefore, acquitted them.

6. Heard Mr. S.N. Das, learned Addl. Standing Counsel for the State-appellant and Mr. B.R. Behera, learned counsel for the respondents-accused persons.

7. Mr. Das assails the impugned judgment of acquittal mainly on the ground that the trial court

committed an error in disbelieving the version of two material witnesses, namely P.Ws. 9 and 10, who are eyewitnesses to the occurrence. Mr. Das argues in this context that different people react differently to different situations and therefore, only because P.Ws. 9 and 10 stated that the deceased went to the spot despite being under the threat of death is an unnatural reaction, cannot be accepted. Mr. Das further argues that there being clear evidence of prior enmity between the deceased and the accused persons as per the version of P.W.-8 coupled with the evidence of homicidal death of the deceased, learned court below should not have acquitted the accused persons.

8. Per contra, Mr. Behera appearing for the accused persons has argued that unless the trial court is satisfied with regard to the truthfulness and credibility of the so called material witnesses it would not be proper on its part to record a finding of guilt. In the instant case, the trial court found material discrepancies and inconsistencies in the version of P.Ws. 9 and 10 as also

variance with the version of other witnesses, for which it rightly disbelieved the evidence. According to Mr. Behera, therefore, no interference is warranted with the impugned judgment.

9. Before delving into the merits of the rival contentions it would be apposite to refer to the principles to be followed in an appeal against acquittal. In the case of **Muralidhar v. State of Karnataka**, reported in (2014) 5 SCC 730, the Apex Court noted the principles required to be followed by the appellate court in case of appeal against order of acquittal which was crystallized in the judgment under paragraph-12 as follows:

“(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or

based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

10. It is thus clear that interference with an order of acquittal is not to be resorted to as a matter of course but only on the touchstone of the principles enumerated hereinbefore. In other words, unless compelling reasons are shown, the appellate court would always be slow to interfere with the finding of acquittal.

11. Viewed in light of the above legal principles this Court is required to consider whether the prosecution evidence was such as to lead to an inescapable conclusion regarding guilt of the accused persons but the trial court wrongly acquitted them overlooking/ignoring such evidence.

12. Prosecution has placed much emphasis on the version of P.Ws. 9 and 10, who are son and wife

respectively of the deceased. According to P.W.-9, the deceased was sleeping in his house after taking his dinner when his uncle, Basista Nag (P.W.-8) came to his house and informed that the accused persons had threatened to cut him into pieces and after hearing this, his father came out from the house and went towards Basti of their village followed by his mother, himself and his sister. He claims to have seen all the seven accused persons armed with lathis near a Banyan tree and when his father arrived, accused Barun Bhoi gave a lathi blow below his knee, due to which he fell down. Accused, Madhaba Bhoi assaulted with a lathi on his chest. Accused Rameswara Sahoo stabbed with a Barcha (spear) on the neck and accused Bhaskar Sahoo also assaulted on the chest. The I.O., (P.W.-12) being cross-examined admitted that P.W.-9 had not stated before him that his uncle Basista had informed him about the plan of the accused persons to kill him when he was sleeping in his house nor did he state anything about assault by accused Madhaba, Rameswara

and Bhaskar. The other part of his testimony is also found to be improvement over his earlier version.

13. Same is the case with evidence of P.W.-10, wife of the deceased, who also deposed more or less in a similar fashion as P.W.-9. Significantly, the I.O. (P.W.-12) admitted in his cross-examination that except for Barun Bhoi, P.W.-10 had not implicated any other accused persons as taking part in the assault. Significantly, P.W.-8, Basista Nag, who P.W. 9 and 10 claim had informed the deceased about the plan of the accused persons to kill him, himself does not say so. He gave a completely different version of the occurrence for which he was declared hostile by the prosecution. Thus, the very basis of the version of P.Ws. 9 and 10 that P.W.-8 came to their house at night and informed the deceased about the proposed assault on him by the accused persons is pushed into thick cloud of doubt. Even otherwise, on the face of the threat of the accused persons being conveyed, it would only be natural to suppose that a person would make an attempt to save himself instead of doing any act

as would expose him to such danger. If the version of P.Ws. 9 and 10 is accepted, it would imply that the deceased after being informed by P.W.-8 about the plan of the accused persons to kill him, left his house and went towards the accused persons as if he was oblivious to the danger or entirely unconcerned about it. The trial court appears to have very rightly considered the above as an improbable/unnatural reaction to disbelieve the prosecution evidence.

14. It is also seen that the informant (P.W.-10) stated in her evidence that she had named only seven persons in the FIR, whereas the FIR marked Ext.-8, finds mention of the names of as many as 18 persons. P.W.-8 on the other hand stated that when he returned to the village in the morning after witnessing 'Dandanacha' at Karlamunda, P.Ws.-7 and 10 informed him that the deceased was missing and requested to search for him and thereafter he along with P.Ws.10 and 6 went to the Karlamunda outpost for lodging a missing report. At that stage P.Ws. 6 and 7 disclosed before police that the dead body of the

deceased was lying on the threshing floor of D.W.-1 of their village. The above story does not find place at all in the FIR marked Ext.-8 and also suggests the likelihood of another report being lodged. The trial court therefore, rightly held that Ext.-8 might not be the earliest report lodged by P.W.-10. D.W.-1 is the person on whose threshing floor the dead body was recovered. He did not say anything about the occurrence, save and except that the deceased along with some strangers were consuming liquor on the night of occurrence around a fire and that he cautioned them that the straws might catch fire and told them to leave. The trial court has also taken into account the version of D.W.-1 to further disbelieve the evidence of P.Ws.9 and 10 and this Court finds nothing wrong in such finding.

15. On a conspectus of the analysis of evidence made hereinbefore, this Court finds that the State has not been able to cite any compelling reason to persuade this Court to take a different view than what was taken by the trial court to acquit the accused persons from the charge. The

grounds urged by the State are such as can only suggest a different view being taken in the matter, which is not enough to overturn the acquittal as not so permissible in view of the principles of law stated hereinbefore.

16. In the result, this Court finds no merit in the appeal, which is therefore, dismissed. The accused-respondents be discharged of their bail bonds.

D. Dash, J.

I agree.

(Sashikanta Mishra)
Judge

(D. Dash)
Judge

Orissa High Court, Cuttack,
The 17th November, 2022/ A.K. Rana, P.A.