

CRLREV NO.595 OF 2011

Ramanath Ho and others ... **Petitioners**

Krushna Chandra Jarika ... Opposite Parties
and another

Advocates appeared in the case through hybrid mode:

For Petitioners : P.R.Barik

For Opposite Party No.2 : Mr.P.K.Maharaj
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
20.6.2022.

CRLREV No.595 of 2011

of conviction and sentence passed by learned S.D.J.M., Karanjia in I.C.C. No.44/2006 (T.C. No.619/2007). As per judgment passed on 14th December, 2009, the trial court had convicted six persons including the present five Revision Petitioners for the offences under Sections 379/447/506 of I.P.C. and passed sentence against each as follows:-

Petitioner No.1 (Ramanath Ho) was sentenced to undergo R.I. for three months for the offence under Section 379 of I.P.C., R.I. for one month for the offence under Section 447 of I.P.C. and R.I. for four months for the offence under Section 506 (1) of I.P.C. Petitioner Nos.2 and 3 namely, Aswini Ho and Ladhula Ho were sentenced to undergo R.I. each for one year for offence under Section 379 of I.P.C., R.I. for two months for offence under Section 447 of I.P.C. and R.I. for 8 months for the offence punishable under Section 506(1) of I.P.C. Petitioner No.4-Kuni Ho was sentenced to undergo R.I. for three months for the offence under Section 379 of I.P.C., R.I. for 15 days for the offence under Section 447 of I.P.C. and R.I. for two months for offence under Section 506(1) of I.P.C. Petitioner No.5-Balenga Ho was sentenced to pay fine of Rs.150/- for the offence under Section 379 of I.P.C., Rs.50/- for the offence under Section 447 of I.P.C. and Rs.100/- of

I.P.C. for the offence punishable under Section 506 of I.P.C. in default, to suffer imprisonment for six days, two days and four days respectively.

2. The prosecution case, in brief, is that one Krushna Ch. Jarika (Opposite Party No.1) claiming to be the owner of 7.66 acres of land having five numbers of tamarind tree on it filed a complaint case alleging that on 12th April, 2006 at about 10 A.M. one Bangra Ho (since dead), Aswini Ho (Petitioner No.2) and Ladhula Ho (Petitioner No.3) climbed on the said trees and were plucking tamarind fruits from the said trees. Other persons namely, Ramanath Ho (Petitioner No.1), Kuni Ho (Petitioner No.4) and Balenga Ho (Petitioner No.5) were collecting the tamarind fruits on the ground. When Krushna Ch. Jarika objected to this, all the accused persons being armed with Bala, bow and arrows etc. threatened and asked him to leave the place, failing which he would face dire consequences. They also abused him saying “SALA, MAAGHIA” etc. Some co-villagers also objected to the act of the accused persons, but they took away six quintals of tamarind fruits worth Rs.6,000/-. The matter was attempted to be resolved amicably in the village, but since such efforts failed, Krushna Ch.

Jarika presented the complaint in the Court on 15th April, 2006, as 13th April, 2006 and 14th April, 2006 were holidays for the Court.

The accused persons took the plea of denial. In addition, accused Ladhula Ho and Ramanath Ho claimed to have been falsely implicated in the case because of prior enmity.

To prove his case, the complainant examined three witnesses including himself as P.W.2, and P.Ws.1 and 3 being occurrence witnesses. Besides, the complainant also proved seven documents including the R.O.R. of the land in question as Ext.1. The defence did not adduce any evidence, either oral or documentary.

In course of trial the witnesses including the complainant clearly deposed about the occurrence and their sworn testimonies were not discredited according to the trial court. Further, the plea of false implication in view of prior enmity was also examined in detail by the trial court only to be rejected. As regards the delay in presenting the complaint, learned trial court found that while the occurrence took on 12th April, 2006, the complainant tried to resolve the matter amicably in the village and as it could not be resolved, he approached the Court on 15th April, 2006 as the Court

was closed on 13th April, 2006 and 14th April, 2006. Thus, considering the evidence on record, the trial court found that the complainant had established his case against the accused persons under Sections 379/447/506(1)/34 of I.P.C. and convicted them there under while acquitting them of the charges under Sections 294/427/34 of I.P.C.

3. Being aggrieved, the convict-Petitioners moved the court of Session by filing appeal, which was disposed of by learned Ad hoc Addl. Sessions Judge(FTC) Baripada. The lower appellate court held that the trial court had rightly convicted the accused persons and had also passed sentence against them appropriately and, therefore, did not deem it fit to interfere.

Feeling further aggrieved by rejection of the appeal preferred by them, the Petitioners have approached this Court in the present Revision.

4. Heard Mr. P.R.Barik, learned counsel for the Petitioner and Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State (Opposite Patty No.2). None appeared for Opposite Party No.1.

5. Assailing the impugned judgment of conviction and sentence as confirmed by the court appellate court, Mr. Barik contends as under:

(i) Even though the allegations make out a cognizable case, the complainant did not lodge any F.I.R. immediately after the occurrence in the Police Station, which raises serious doubts as to the veracity of the allegations more so as the complaint itself was presented three days after the occurrence.

(ii) Though it is alleged that 6 quintals of tamarind fruits were removed from the trees yet, there was no seizure of such fruits.

(iii) There is clear discrepancy in the evidence of P.Ws.2 and 3 as regards the exact number of tamarind trees standing on the land in question.

(iv) The plea of false implication as raised by the accused persons namely, Ramanath Ho and Aswini Ho was not considered in the proper perspective by the courts below.

(v) Alternatively, the Petitioners should have been extended the benefit of the Probation of Offenders Act having regard to the nature of accusations and the fact that no physical harm whatsoever was caused to the

complainant and there is no acceptable evidence regarding the value of the fruits allegedly removed from the tamarind trees.

6. Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State, has contended that the trial court has taken into consideration all the points raised by the defence and having found them not acceptable in law, has rightly rejected them. That apart, the evidence on record is clear and trustworthy for which the trial court rightly arrived at the conclusion regarding guilt of the accused persons. Mr. Maharaj, further contends that the lower appellate court also did not find any justified reason to interfere with the findings of the trial court.

7. I have heard the rival contentions and have also perused the lower court case record carefully. A reading of the evidence of the complainant (P.W.2) shows that he has clearly and consistently spoken about the acts committed by the accused persons as alleged in the complaint petition. Nothing has been brought out in cross-examination so as to disbelieve the sworn testimony. There is of course a slight discrepancy between the evidence of P.Ws.2 and P.W.3 inasmuch as according to P.W.2 the number of tamarind trees was five, but according to P.W.3 the number was three. The

same is also the case with the evidence of P.Ws.1 and 3. Thus, from the evidence adduced by the complainant, it is well proved that on the date and time of occurrence the accused persons entered into the land of complainant and accused Bangra Ho, Aswini Ho and Ladhula Ho were plucking tamarind climbing on the trees while the other accused persons were collecting the tamarind on the ground. There is also clear evidence of removing the tamarind from the land. All the three witnesses have also stated that the accused persons threatened the complainant of dire consequences. Therefore, this Court finds that the trial court has rightly arrived at the finding of guilt against the accused persons.

8. Coming to the specific contentions raised by the Petitioners before this Court, as referred above, the first objection is non-lodging of F.I.R. by the complainant immediately after the occurrence. From the evidence on record, it transpires that while the occurrence took place on 12th April, 2006, the complaint was presented in the Court on 15th April, 2006. The complainant being examined as P.W.2 stated that the matter was not settled in the village, so finding no other way he filed the case in Court. The defence did not put any question to him in cross-examination as to why he did not lodge the F.I.R. and, therefore, it is not open to the

defence to raise such a plea at this belated stage. That apart, non-lodging of F.I.R. does not ipso facto lead to the conclusion that the allegations made in the complaint are false or baseless. As regards the so called delay in presenting the complaint, the trial court has dealt with it in his judgment adequately to which this Court fully concurs.

As regards the objection that the tamarind removed from the land in question was never seized, the same also does not appear to have been raised before the trial court. Nevertheless, it is trite law that non-seizure of the stolen objects cannot prove to be fatal to the case of the complainant on the face of clear oral evidence regarding commission of the alleged offence.

As regards false implication, the same as it appears, relates to only accused Ramanath Ho. As has been rightly held by the trial court the plea of false implication is a double edged weapon cutting both ways and when the alleged acts are proved the prior enmity only suggests the cause or motive for the accused persons to commit the same.

As regards, the contention that there are discrepancies and contradictions in the statements of witnesses, it is seen that the trial court, considered the same as minor in nature and in any case not significant enough to affect the evidence regarding commission of the alleged acts by the accused persons. This Court fully concurs with such view.

9. On the above discussion, it is clear that the Petitioners have not made out any case for interference with the impugned order of conviction. However, as regards the sentence, it is submitted by Mr. Barik that the offence took place nearly 13 years back and all the accused persons are now of advanced age. Accused- Ramanath Ho is aged more than 70 years. Accused Kuni Ho and Balenga Ho are women. There are also no criminal antecedents of the Petitioners. Therefore, sending them to prison or asking them to pay fine at this belated stage would be too harsh. Mr. Barik, therefore, submits that the benefit of P.O. Act should be extended to them.

10. Mr. P.K.Maharaj, learned Addl. Standing Counsel, however contends that looking at the nature of offences, the trial court has passed appropriate sentence, which needs no interference.

11. Considering the submissions as above and taking into consideration the fact that the offence took place nearly 13 years back and no physical harm whatsoever was caused to the complainant coupled with the fact that there are no criminal antecedents against the names of the Petitioners, this Court is of the considered view that ends of justice would be best served if the Petitioners are released as per the provisions of Section 4 of the P.O. Act instead of serving the sentence or paying the fine as imposed.

12. Before parting with the case, this Court deems it proper to observe that while the judgment of conviction and sentence passed by the trial court is a well reasoned and well discussed one touching all relevant questions of fact and law, the same cannot, however, be said with regard to the judgment passed by the appellate Court. A reading of the appellate Court judgment would reveal that the same contains 17 paragraphs out of which, as many as 15 paragraphs are devoted to mere reproduction of the case of the complainant, the pleas raised before the trial court, the points framed for determination by the trial court and the findings rendered by the trial court thereon. The remaining two paragraphs,

i.e. Paragraphs-16 and 17 apparently contain the appellate court's own findings, which are re-produced herein below:-

“16. On perusing the impugned judgment in question, I find the learned lower Court discussing the evidence of the prosecution witnesses, one by one, through the thorough discussion of the said total prosecution evidence. I find the learned lower court further, taking help of the reported decision of the Hon'ble Court, in Mansoor Saha and others V. State of Orissa as reported in (1008) 44 O.C.R. at Page 871, of the Division Bench decision and of the Apex Court in the case of Bharuwada Bhogini Bhai Hirji Bhai V. State of Gujrat, as reported in A.I.R. 1983 (S.C.) at Page 753; further discussion on the provisions under Section 425 of I.P.C. to consider about the alleged offence in question, in the hands of the accused-appellants, to be covered under the said section, as being an offence of mischief only, in their hands.

17. On carefully going through the above detailed discussion of the learned lower Court in the impugned judgment in question, I find him coming to the right conclusion to convict the accused-appellants there under and to separately sentence them for the said respective offences, as committed in their hands. On considering the above circumstances, the whole, I do not deem it fit to interfere in the findings of the learned lower Court; as against which, the accused-appellants have come up in the present appeal, without any strong footing in their favour. The same being the circumstances, the Criminal Appeal stands dismissed accordingly.”

13. A copy of the memorandum of appeal filed by the convict-appellants as available in the lower court case record reveals that several grounds were raised therein, but as would be evident from a

bare reading of the afore quoted paragraphs of the appellate court judgment, not a single ground has been discussed or considered. The trial court judgment has been confirmed mechanically without application of judicial mind. It would be profitable at this stage to refer to Section 387 of the Cr.P.C. which reads as under:

“387.Judgments of subordinate Appellate Court.- *The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate.*

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.”

Chapter XXVII of the Code deals with Judgment and Section 354 relates to the language and contents of judgment and inter alia, reads as follows:-

“354. Language and contents of judgment.- (1) *Except as otherwise expressly provided by this Code, every judgment referred to in Section 353,-*

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision; (emphasis supplied)

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) If it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

XXX XXX XXX XXX XXX”

Thus, the statute requires the Appellate Court to indicate the points for determination, the decision thereon and the reasons for the decision. Though this Court has also found the trial court to have rightly convicted the Petitioners, yet the appellate Court while returning a similar finding has not adduced proper reasons for the same. Moreover, it is not forthcoming as to what were the points raised before it and how they were dealt with. It is incumbent upon the appellate Court to strictly adhere to the statutory requirement of indicating the points for determination, its decision on such points and the reasons for the same.

14. For the foregoing reasons, therefore, this Court while confirming the order of conviction passed by the trial court, modifies the sentence to the extent that the Petitioners shall be released as per the provisions of Section 4 of the P.O. Act instead

of serving the sentence or paying fine as imposed. The Petitioners are directed to appear before the Trial court on 20th July, 2022 for the above purpose, failing which the trial court shall pass necessary orders requiring them to serve the sentence and to pay fine as imposed by it.

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(*Sashikanta Mishra*)
Judge

Ashok Kumar Behera





