

ORISSA HIGH COURT CUTTACK

GOVERNMENT APPEAL NO. 50 OF 1988

From the judgment dated 01.09.1988 passed by Sri D. Rout, Sub-Divisional Judicial Magistrate, Aandapur in G.R. Case No.121 of 1987/Trial Case No.282 of 1987.

State of Orissa	Appellant
	Versus	
Suresh Chandra Padhi	Respondent

For appellant : Addl. Standing Counsel

For respondent : M/s B.Panda, D.Panda and
G.Mahapatra

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 20.09.2006

PRADIP MOHANTY, J. In this Government Appeal, the appellant challenges the judgment and order dated 01.09.1986 passed by the Sub-Divisional Judicial Magistrate, Anandapur in G.R. Case No.121 of 1987/Trial Case No.282 of 1987 acquitting the accused-respondent of the charge under Section 332, IPC.

2. The case of the prosecution is that the informant was a lecturer in Physics attached to Anandapur College. On 14.05.1987 he was conducting examination as Invigilator in Room no.20 of the college along with other Invigilators. Accused was a candidate appearing in the examination. At about 12.30 p.m. he was found indulging in mal practice

and the informant seized the incriminating material from him. Later, the accused was again found using another incriminating material. Hence, the informant asked the accused to hand it over to him. At this, the accused-respondent became furious and gave the informant a push holding his throat. He then pressed the head of the informant against the table causing swelling injury. After this, the accused came back to his seat and holding the foot of a desk attempted to assault the informant on his head. The other lecturers of the College interfered and rescued the informant. Thereafter, the informant reported the matter to the Principal, who forwarded the report to the police station for necessary action. After routine investigation, final form was submitted under Section 332 IPC against the accused.

3. The plea of the defence was complete denial of the allegation. It was further pleaded that the informant had previous grudge against the accused-respondent, as the latter being the Secretary had brought allegation against the informant.

4. In order to prove its case, the prosecution examined as many as seven witnesses and relied on two documents in evidence. Defence examined none in support of its plea.

5. The learned Magistrate, who tried the case, by his judgment dated 01.09.1988 acquitted the accused-respondent of the above charge giving him the benefit of doubt. As against the said judgment, the appellant has preferred this appeal.

6. Mr. Mohanty, learned Additional Standing Counsel submits that P.Ws.3, 4 and 5 have truly corroborated the evidence of the informant (P.W.1) to the effect that accused caused hurt to him. He further submits that finding of the trial court that the accused-respondent sustained some injury during the occurrence, which has not been explained is misconceived. He further submits that the fact that the I.O. sent the accused-respondent for medical examination is not a ground for acquittal.

7. Mr. Rajesh Panda, learned counsel appearing for the accused-respondent submits that the judgment and order of acquittal is legal and there is no material before this Court to interfere with the above

judgment and take a different view. He further submits that since Anandapur college is a private college, the informant, who was working in that college, was not a public servant. The prosecution has not led any evidence to show that the lecturers of Anandapur college were public servants coming under the purview of Section 21 of the IPC. He lastly submits that there was delay of about five hours in lodging the FIR, which has not been explained.

8. In order to bring home the charge under section 332 IPC, the onus lies on the prosecution to prove that the accused voluntarily caused hurt to a public servant in due discharge of his duties as such public servant. Perusal of the statement of witnesses and the exhibits shows that there is no material that the informant was a public servant and the accused voluntarily caused hurt while he was discharging his duties as such public servant. Nothing has been produced by the prosecution to show that P.W.1, the informant, was in charge of invigilation in the room in question. No chart or notification has been produced by the prosecution in the above regard. P.W.2, the Demonstrator of Chemistry of the said College, who was present in the hall in question, did not corroborate the statement of P.W.1. P.W.3, the Demonstrator of Physics, in his evidence has stated that at the relevant time he was present in the nearby room, i.e., room no.18. After hearing hullah, he came to the spot and saw Lecturers Basant Behera and Sunil Singh separating the accused from P.W.1. He specifically stated that after the occurrence, he had seen bandage on the hand and head of the accused. P.W.4 is the Lecturer of Political Science who intervened and separated the accused. According to him, he heard hullah and immediately intervened by coming to room no.20 from the adjacent room. P.W.5, another Lecturer has stated to the same effect as P.W.4. He has specifically stated that he along with P.Ws.1 and 2 was doing invigilation work in the room in question. As per his statement, P.W.2 was present at the time of occurrence, whereas according to P.W.2, he was out of the examination hall at the time of occurrence. Both P.W.3 and the I.O. (P.W.7) admitted that there was injury on the person of the accused. P.W.7 specifically stated that the accused was

sent for medical examination. But the injuries on the person of the accused have remained unexplained. This shows that the prosecution has suppressed the material facts. Moreover, though the college and the police station situate in the same town, there was delay of almost five hours in lodging the FIR, which has not been explained.

9. Since there were material contradictions in the prosecution evidence and the prosecution has not been able to give satisfactory explanation regarding the injuries on the person of the accused as well as the delay in lodging the F.I.R., it is a fit case for acquittal and the trial court has rightly recorded such a finding. Therefore, this Court sees no reason to interfere with the impugned judgment.

10. In view of the above, the Government Appeal has no merit and is accordingly dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
September 20, 2006 / ***Samal***