HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL No. 03 OF 1998

From the judgment dated 30.03.1996 passed by Shri M.R.Behera, Sessions Judge, Phulbani in S.T. Case No. 23 of 1995.

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State of Orissa ..... Appellant

Versus.

Belarsen Dalachatra & another. ..... Respondents

For Appellant: : Mr.A.K.Mishra, Standing Counsel.

For Respondent : M/s. D.P.Dhal, A.K.Acharya, D.K.Das, D.K.Panda, advocates.

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 27 .10.2014 : Date of judgment: 30.10.2014

The State has called in question the order of acquittal passed by the learned Sessions Judge, Phulbani in S.T. No.23 of 1995 acquitting the respondents of the charge under section 3 (1) (x) of S.C. & S.T. (P.A.) Act, 1989 read with section 34, I.P.C.

2. The prosecution case is that on 12.08.1993 around 10 A.M. one Trinath Konhar (P.W.4) and his wife Tunuri Konhar (P.W.5) were in their house. At that time the respondents came and called Trinath. It is alleged that the respondents then intentionally insulted

and humiliated Trinath by hurling abuses at him stating him to be a witch involved in disturbing the peace in the village by use of black magic through witchcraft. It is further alleged that the respondent Ladu @ Laxman Dalachatra caught hold of Trinath Konhar whereafter the respondent Belarsen assaulted him by means of a lathi on his head resulting his fall on the ground when Khage and Tunuri (P.Ws.1 and 2) came to rescue Trinath, the respondents left the place. It is also stated that Trinath is a member of Scheduled Tribe being Kandha by caste and the respondents are neither members of the Scheduled Caste nor Scheduled Tribe. Trinath having received the injuries was taken to hospital for treatment and he having later on lodged information at the police station, necessary case was registered and investigation commenced. On completion of investigation, charge sheet having been submitted, the respondents faced trial for the above offences.

3. During trial the respondents took the plea of denial and they also claimed their caste as Kandha-Gouda.

4. The prosecution in order to establish its case when examined six witnesses, the defence has examined none.

From the side of the prosecution, more importantly, the F.I.R. as well as the medical report have been admitted in evidence and marked as Exts.2 and 1 respectively.

5. The trial court upon evaluation of evidence adduced by the prosecution has arrived at a conclusion that the prosecution has not

been able to bring home the charge against the respondents beyond reasonable doubt.

The trial court has not accepted the version of P.Ws.4 and 5, i.e., the injured and his wife in the absence of any corroboration from the evidence and P.Ws.1 and 2, who were cited and examined as the eye-witnesses to the occurrence having arrived at the right time. The court below has also noticed the variance of the evidence of P.W.4 with F.I.R. version and his evidence as well as the evidence of his wife have been held to be unreliable.

6. Learned counsel for the State submits that the appreciation of evidence as done by the trial court is not proper and as such without any justifiable reason the trial court has discarded the evidence of P.Ws.4 and 5 when there remains no such material to hold them to be unreliable witnesses and even without insisting corroboration, their evidence ought to have been accepted. According to him, although P.Ws.1 and 2 have not supported the case of the prosecution, the same should not have been taken as a ground for not accepting the version of P.W.4 particularly taking into account the rural area from which the P.Ws.4 and 5 hail from and also when no such basic infirmity is found therein. So, he urges that the appreciation of evidence being perverse, the finding of the trial court having been based upon it, is liable to be interfered with in this appeal and consequently the ultimate order of acquittal.

7. Learned counsel for the respondents, on the other hand, supports the finding of the trial court. According to him, the trial court has very rightly refused to accept the uncorroborated version of the P.Ws.4 and 5 when their versions have been found to be filled with infirmities.

8. In view of the rival submission, before going to take up the exercise in the matter to appreciate the evidence to judge the sustainability of the finding rendered by the trial court against the prosecution that it has failed to prove the charges against the respondents, it is felt to apposite to take note of the settled position of law with regard to power of this Court to interfere with the order of acquittal.

It has been held in case of ***Basappa Vrs. State of Karnataka***; (2014) 57 OCR 1044 that the High Court in an appeal under section 378 Cr.P.C. is entitled to reappraise the evidence and put the conclusions drawn by the trial court to test but the same is permissible only if the judgment of the trial court is perverse. Relying the case of ***Gamini Bala Koteswara Rao and others – Vrs. State of Andhra Pradesh***; (2009) 10 SCC 639, it has been held that the word "perverse" in terms as understood in law has been defined to mean 'against weight of evidence'. In '***K. Prakashan Vrs. P.K. Survenderan***; (2008) 1 SCC 258, it has also been held that the Appellate Court should not reverse the acquittal merely because another view is possible on evidence. It has been clarified that if two views are reasonably possible

on the very same evidence, it cannot be said that prosecution has proved the case beyond reasonable doubt (Ref.:- ***T. Subramaniam Vrs. State of Tamil Nadu***; (2006) 1 SCC 401). Further, the interference by appellate Court against an order of acquittal is held to be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take (Ref.:- ***Bhima Singh Vrs. State of Haryana;*** (2002) 10 SCC 461).

9. Keeping the submission as aforesaid in mind and the settled position of law, let us first come of the evidence of P.W.4, the injured. He has stated that on the relevant date and time, when he with his wife were sitting on the front varandah of the house, the respondents came and abused them in filthy languages assassinating the character of P.W.4 by portraying and painting him as a witch involved in practising witch-craft and pressing that art known to him to serve the mischievous purpose of harassing the villagers. It is further stated that the respondent-Ladu caught hold of him with the other respondent, dealt a lathi blow on him resulting his fall on the ground and leading to loss of his sense. He has proved the F.I.R.(Ext.1) wherein the background of the incident is found to have been stated in a completely different manner that when at the relevant time P.W.4 and his wife were inside his house, the respondents standing near village square called him and thereafter the respondent Ladu when restrained him, the other respondent dealt a lathi blow on his head. Next from the evidence of P.W.5 it is seen that she is not stating as to where he with

her husband were there at the relevant time. Her statement is that no sooner did the respondents come; they abused him and then respondent-Ladu when caught hold of P.W.4, the other respondent dealt a lathi blow on his head. That apart the seat of the injuries said to have been sustained by the P.W.4 also greatly differ in the version of P.W.4 the injured himself and P.W.5 the wife of P.W.4. Their evidence is found to be differing on material particulars which are irreconcilable. No such evidence is available on record to show that these respondents had uttered anything touching the caste of the respondents and downgrading the same with any intent and thereby insulted and humiliated them. It is also not there in the evidence that it was so done in public place within the public view.

For the aforesaid discussion of evidence and the reasons as stated, no such infirmity is noticed in the finding of the trial court not holding the prosecution to have failed to bring home the charge against the respondents beyond reasonable doubt. Thus the ultimate result of acquittal of the respondents is found to be in order and not liable to be interfered with.

10. In the result, the appeal stands dismissed.

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D. Dash, J.

Orissa High Court, Cuttack
The 30th October,2014/Himansu