HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL No. 62 OF 1998.

From the judgment dated 31.10.1996 passed by Shri N.A.Khan, J.M.F.C., Baripada in G.R.Case No. 424 of 1995 (T.C. No. 534 of 1995).

State of Orissa ..... Appellant

Versus

Smt. Basanti Behera & others ..... Respondents

For Appellant : Mr. K.K.Nayak,
Addl. Standing Counsel.

For Respondents : M/s. S.C.Mohanty, G.K.Nayak,
advocates.

PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 15.12.2014 : Date of judgment : 24 .12.2014

The State has called in question the order of acquittal passed by the learned J.M.F.C., Baripada in G.R. Case No.424 of 1995 acquitting the respondents of the charge under sections 147/341/323/324/506/149, I.P.C.

2. The prosecution case is that on 07.06.1995 around 8 P.M. when the informant and her husband were quarrelling, the respondents came and abused the informant using obscene words. It is

stated that they dragged her for which she fell down and thereafter they assaulted causing severe pain all over her body. It is next stated that the respondents threatened her to kill. On 07.06.1995 around 8.30 A.M. information in writing having been lodged at the police station, necessary case has been registered and investigation commenced.

During investigation the informant and other witnesses were examined and finally on completion of the same, charge-sheet being submitted, the respondents faced the trial.

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

4. The informant-injured is P.W.1 and her husband has been examined as P.W.2. P.Ws. 3,4 and 5 are the co-villagers who are independent witnesses, whereas P.W.6 is the doctor who had examined P.W.1. The investigating officer has come to the dock as P.W.7. Besides the above, the prosecution has proved the injury report of P.W.1 as Ext.1.

6. The trial court on examination and evaluation of evidence coming from the lips of the prosecution witnesses has found the prosecution to have failed to establish the charges against the respondents beyond reasonable doubt and accordingly the order of acquittal having been recorded, the same has given rise to this appeal at the instance of the State.

7. Learned counsel for the State submits that the appreciation

of evidence as done by the trial court is perverse. According to him, the truthful version of P.W.1 free from any infirmity, whatsoever, being corroborated by the evidence of P.W.2 and others, the trial court ought not to have recorded the acquittal. According to him, the reasons assigned by the trial court in discarding the prosecution case are all flimsy. Therefore, he urges that it is a fit case for interference with the order of acquittal.

8. Learned counsel for the respondents, on the other hand, supports the finding of the trial court. According to him, the evidence of the prosecution witnesses have rightly been found to be inconsistent in respect of the role of these respondents and also the manner of happening of the incident. Therefore, he submits that the appeal bears no merit.

9. On such rival submission, before going to take up the exercise of reappraisal of the evidence of the prosecution witnesses in order to judge the defensibility of the finding of the trial court in ultimate recording the order of acquittal, 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).

10. It is worthwhile to state here that the L.C.R. having already been destroyed, this Court is to decide the appeal reading the judgment and accepting the evidence as noted therein.

11. Keeping the above position of law in mind and also the rival submission in view, let us first look at the evidence of P.W.1, the injured as noted. She has stated that when she was having altercation with her husband over a domestic issue, the respondents abused her using obscene words. So, her husband went to the Sarpanch. Taking

advantage of the absence of her husband-P.W.2, the respondents assaulted her for which she sustained an abrasion on her right knee and started crying. It is further stated that hearing her cry, when P.W.2 came back, everything was over. It may be stated here that the information on that day has not been lodged at the police station. On the next date also simply informing the Sarpanch, no further action was taken and the F.I.R. has been lodged on the third day of the incident. When she states that she had already reported the matter at the police station, the actual state of affair appears to be different to show that the written complaint has been lodged. Again P.W.1 states to have put her L.T.I. on a piece of writing, the F.I.R. has not been proved. She also admits that the respondents were not in good terms with the husband of P.W.2 when he states that all the respondents had come there in a drunken stage, the same is not stated by P.W.1. P.W.2 has further stated the respondents to have given kicks and fist blows and when P.Ws.3 and 4 intervened, the respondents left the place. It may be stated here that the delay in lodging the F.I.R. has remained unexplained. Evidence of other witnesses is not of much help to the case of the prosecution. The injury found on the person of the P.W.1 is just one abrasion as against the evidence of P.W.2 that she was assaulted by nine persons including the respondents by means of fists and kicks. Given a cumulative reading of the evidence on record, the trial court's view in not accepting the evidence of P.W.1 as gospel truth

and holding the complicity of the respondents is not found to be the outcome of perverse appreciation and, therefore, the order of acquittal needs no interference.

12. In the result, the appeal stands dismissed.

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D. Dash, J.

Orissa High Court, Cuttack
Dated 24th December, 2014/Himansu.