HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL No. 67 OF 1998

From the judgment dated 19.01.1998 passed by Shri S.K.Mohanty, Asst. Sessions Judge, Kamakhyanagar in S.T. Case No. 76-D of 1996/03 of 1997 .

State of Orissa ..... Appellant

Versus

Bharat Behera & others ..... Respondents

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

For Respondents : M/s. Prasanna Ku. Mishra,
S.B.Mishra, advocates.

PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 17.12.2014 : Date of judgment : 24.12.2014

The State in this appeal has called in question the order of acquittal passed by the learned Asst. Sessions Judge, Kamakhyanagar in S.T. Case No. 76-D/3 of 1996/1997 acquitting the respondents of the charge under section 341/325/307 of IPC.

2. The case of the prosecution is that on 28.11.1994 at about 7.30 p.m. the informant P.W.1 and his father P.W.2 were at a distance of about half a kilometer from their village, Sogar. On their way back

from Dhenkanal, it is stated near a culvert, the respondents were lying on wait having blocked the road by tying a rope across the road. So when the motor cycle of the informant reached that place the rope was pulled resulting fall of these P.Ws. 1 and 2 and with the help of the head light of the motor cycle they identified the respondents namely Bharat Behera and Subash Behera. It is the further case of the prosecution that after the fall, the respondents assaulted P.W.2 by means of lathi causing injuries on his head and when P.W.1 snatched away the lathi from respondent Subash, respondent Bharat assaulted him. They all damaged the light of the vehicle and also took away a sum of Rs.5750/- from the pocket of P.W.1. Co-villagers Baburam Behera and Nirmal Sahu arrived at the spot in a car and seeing the light of the car, the respondents fled away. The injured persons were taken to District Head quarters Hospital, Dhenkanal and treated. Seeing their health condition to be serious, they were shifted to S.C.B. Medical College and Hospital for better treatment. P.W.1, therefore, lodged written report at Tumursinga P.S. So necessary case has been registered and the investigation commenced. In course of investigation, the injured persons as well as other witnesses were examined, incriminating materials were seized under proper seizure list, the injured persons were medically examined and lastly the charge-sheet being submitted against the respondents, they faced the trial.

3. The plea of the respondents is that of denial. It is further stated

that the case has been foisted against them only on account of subsisting land dispute. Specific defence has also be taken as it appears from the evidence of D.W.1 and 2 that the injured persons sustained injuries since their motor cycle met with an accident with the buffalos of the village standing on the road.

4. The respondent took the plea of denial and false implication in the case.

The prosecution in order to establish its case examined ten witnesses. As already stated P.W.1 is the son of P.W.7 and both are injured and the eye witnesses have been examined as P.W.5. P.Ws. 9 and 10 are the doctors. The Investigating Officer is P.W.6, besides the above from the side of the prosecution FIR has been proved as Ext.1. Opinion of the doctors are Exts. 6 and 7 and so also the report Exts. 4/2 and 5/2, the bed head ticket as Exts. 8 and 9 that the defence has examined two witnesses.

5. The trial court on examination of the evidence and upon analysis has arrived at a conclusion that the prosecution has not been able to establish its case as laid by leading, clear, cogent and acceptable evidence. According to him, the evidence of P.Ws. 1 and 2 do not inspire confidence and they are not truthful witnesses. It is further held that the independent witness P.W.5 do not provide corroboration on material particulars to the evidence of P.Ws.1 and 2. According to the trial court, the delay in lodging the FIR has not been duly explained and

that the earlier one was suppressed for which the trial court has drawn adverse interference. With the above oral evidence as well as the circumstances emanating therefrom, the trial court has rendered the finding that there has been failure on the part of the prosecution to establish the charges against the respondents beyond reasonable doubt.

6. Learned counsel for the State submits that the appreciation of evidence of the trial court is perverse. According to him, without any justification and for some flimsy reasons, the evidence of P.Ws. 1 and 2 which have also been duly corroborated by other witnesses have been discarded. It is his submission that in the facts and circumstances of this case, the trial court ought to have found the complicity of the respondent in the said incident. Thus, he urges that it is a fit case for interference with the order of acquittal.

Learned counsel for the respondents on the other hand supports of the finding of the trial court. According to him, there has been thread bare of analysis of evidence by the trial court and thus the conclusion arrived at is based on just and proper appreciation of evidence. Therefore, he urges that the appeal bears no merit.

7. On the above rival submission, this Court is now called upon to scan the prosecution evidence in order to judge the defensibility of the finding of the trial court as aforestated. But before taking up that exercise, it is felt apposite to take note of the scope of this appeal and

power of this Court to interfere with an order of acquittal in seisin of an appeal against the same.

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).

8. Keeping the aforesaid position of law in mind and also the rival submission, let's first examine the evidence of P.Ws. 1 and 2 who

being the injured are the star witnesses of the prosecution.

P.W. 1 has sated that he found a rope being put across the road, when he arrived at the spot and when one some pulled the same, he fell down from his motor-cycle. He has stated that with the help of the light of the motor-cycle, he could identify the respondent Bharat and Subas, being there at that point of time. He further stated that respondent Bharat and Subash attacked his father when five others were standing behind them. He could identify the respondent Basant, Sita, Sarat and Ganesh and accused Ramesh. It is further stated that respondent Subash and Bharat assaulted his father by a lathi and having gone near his father, when he attempted to snatch away lathi from respondent Subash, respondent Bharat dealt a lathi blow of his head and gave further blows on his left hand causing fractures. P.W.2, father of P.W. 1 has stated that when they arrived at the spot on the motor-cycle rope was tied across the road. He is stating that respondent Subash and Bharat pulled the rope and they fell down. This is different from the version of P.W. 1 as regards initial role of respondents Subash and Bharat assaulted by means of lathi causing injury on his head and right hand and when P.W. 1 intervened and snatched away lathi from respondent Subash, respondent Bharat assaulted by lathi. This is also in variance with the version of P.W. 1. During cross-examination, P.W. 1 has stated to have mentioned in the F.I.R. as regards the rope to have been tied across the road and five persons standing behind the

respondent Subash and Bharat, while they were assaulting his father. He has further stated that at that time he identified those persons with the help of the light of his motor-cycle. P.W. 2 has not stated in his earlier statement before police that he found the respondent Bharat and Subash standing with the rope tied across the road and that they assaulted him by lathi and when P.W. 1 intervened and snatched away then from the respondent Subash, respondent Bharat dealt one lathi blow to his head and further blow on his hand. Thus, the evidence of P.W. 1 and 2 are in variance with regard to material particulars mainly as regards the role of respondent Bharat and Subash and also others. P.W. 3 has stated that P.W. 1 and 2 have not disclosed before him as regards the presence of respondents and other than respondent Subash and Bharat. That is also the evidence of P.W. 5.

Besides the above, when such an incident is said to have taken place on 28.11.1994 evening, the F.I.R. has been lodged on the next day afternoon which goes without any explanation. Moreover, when P.W. 1 has stated to have orally reported the fact at police station, the F.I.R. Ext. 1 marked in the case is found to be a hand written one. This appears significance in view of the evidence led by the defence that the parties were having prior enmity. The F.I.R. has been lodged by P.W. 1 who has stated that the same was given to the police, when he met him at the Dhenkanal hospital and it had been scribed by his brother Dillip who has not come to the dock. In such state of affair, the

prosecution has been rightly blamed to have suppressed the original F.I.R. The tendency of P.W. 1 as it appears from the evidence of P.W. 2 remains in roping in persons without any justification by simply saying about their presence, when both P.W. 1 and 2 have stated that one Raghu Mahalik had seen the incident, who has not been examined by the prosecution. The trial court has therefore rightly drawn the adverse interference for the same.

It is further seen that the trial court has gone for elaborate discussion of the evidence in arriving at conclusion as regards failure on the part of the prosecution to prove its case beyond reasonable doubt. For the aforesaid discussion and the reasons, this Court finds the appreciation of evidence to be just and proper. In the absence of any compelling reasons, this Court declines to interfere with order of acquittal.

9. In the result, the appeal stands dismissed.

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D. Dash, J.

Orissa High Court, Cuttack
Date 24th December 2014/Sukanta.