HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL No. 89 OF 1998

From the judgment dated 03.09.1996 passed by Shri Alok Kumar Dutta, Special Judge, Koraput-Jeypore in T.R. Case No. 20 of 1994.

State of Orissa ..... Appellant

Versus

Bipin Bihari Naik ..... Respondent

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

For Respondent : M/s. C.R.Mishra, G.Mishra,
D.Das, H.Mallick,
M.B.Das, S.K.Das,
D.Mohanty, advocates.

PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

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

The State in this appeal has called in question the order of acquittal passed by the learned Special Judge, Koraput, Jeypore in T.R. Case No. 20 of 1994 acquitting the respondent of the charge under section 341 of IPC and Section 3(1)(x) of SC & ST (PA) Act 1989.

2. The case of the prosecution is that the victim P.W.1 was working as an Anganabadi Worker and the respondent had developed acquaintance with her. Both had married by exchanging garlands and

they started living together as husband and wife. They had also applied for registration of their marriage. It is stated that when P.W.1 conceived a baby of two months old in her womb, the respondent married another. So the victim, P.W.1 lodged the FIR stating all these detail facts and further stating that the respondent used to assault her while insisting her for severing with marital tie forever.

It may be further stated that P.W.1 while going to his office was also threatened by the respondent. In view of all these on 24.07.1993, the parties were called by the S.D.O. Rayagada for a conciliation. It is stated that after the discussion while P.W.1 was returning the respondent with some others surrounded her and showing knife told her not to proceed further against him or else she would be killed. It is stated that she was also then told to be untouchable.

3. The FIR being received necessary case was registered and the investigation commenced. In course of the same, the victim and other witnesses were examined. The I.O. also got the victim medically examined. On completion of investigation, the charge sheet being submitted the respondent faced the trial.

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

The prosecution in order to establish its case when examined six witnesses, the defence has examined none. As already stated P.W.1, the informant is the victim and the star witness for the

prosecution. From the side of the prosecution, the written report Ext.1, seizure lists Exts. 2 and 3, and Zimanama Ext.4 have been proved. The defence without tendering any oral evidence has proved the deposition of some persons recorded in G.R. Case No.31 of 1993 and also the certified copy of the written report of P.W.1 in another criminal case.

5. The trial court on evaluation of evidence has found the prosecution to have failed to establish the charges against the respondent beyond reasonable doubt.

6. Learned counsel for the State submits that the appreciation of the case as done by the trial court is perverse and according to him the positive version of P.W.1 ought not to have been so lightly eschewed from consideration. It is his further contention that the evidence of P.W.1 when duly stands corroborated by other evidence, the acquittal recorded by the trial court is improper. Thus he submits that it is a fit case to upset the order of acquittal.

Learned counsel for the respondent argues in support of the finding rendered by the trial court in recording the order of acquittal. According to him, the evidence of P.W.1 is not acceptable being filled with infirmities and that has been rightly so done. It is also his submission that the corroboration as is said is not on material particulars and, therefore, he contends that the appeal bears no merit.

7. On such rival submission this Court is now called upon to reappraise the evidence. But before going to take up the said exercise, it is felt to apposite to take note of the settled position of law with regard

to the scope of this appeal and 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).

8. Keeping the above position of law as above in mind and the rival submission in view, let us first proceed to examine the evidence of P.W.1. It is stated by P.W.1 that she and the respondent married each

other and then lived as husband and wife. She further states that on 04.04.1993, the respondent assaulted and drove her out and since then she is staying with her parents at Karli. On 28.05.1994 the respondent married for the second time about which he had the information long before on 04.04.1993 and for that on 5th or 6th of April, 1993 she lodged the report at Tikiri Police Station. It is further stated that on that occasion she had gone for treatment to the hospital when she was treated by the lady doctor who had given an injunction. She next states that while she was attending the office, the respondent used to come there and give threats asking her to withdraw the report. So, the matter was reported to the Sub-collector, Rayagada, who had called both for settlement of the matter but that did not materialize and on the way she was again threatened. When it is stated that Suresh and Abhi had seen the respondent threatening; both are the relations of P.W.1 and the evidence of P.W.2 is that Suresh and Abhi were coming on the road and near Thakkar Bapa Ashram, the respondent with four to five others surrounded P.W.1 and seeing them when they came to the spot, they found respondent abusing P.W.1 uttering her caste “Domb” while describing himself as Bramhin and was forcing her to withdraw the case or else face dire consequences in respect of life and property. The evidence of P.W.3 is to the same effect. The relationship though is denied by P.W.1, P.W.2 admits it which rather shows the suppression on the part of P.W.1. The factum of pregnancy of P.W.1 gets belied by the evidence of lady doctor who was examined in the earlier case.

9. The trial court has gone to look to the evidence of the witnesses in G.R. Case No.31 of 1993 and then on elaborate discussion of evidence has found the evidence of the victim to be going without any corroboration on material particulars and in the absence of that the trial court has held the version of the P.W.1 as unsafe to be relied upon to base a conviction. This Court on reappraisal of the evidence as per the discussion already made finds no such justification to take a view contrary to the one taken by the trial court. Thus the order of acquittal needs no interference.

10. In the result, the appeal stands dismissed.

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D. Dash, J.

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