

IN THE HIGH COURT OF ORISSA, CUTTACK.

JCRLA No. 36 Of 2014

From judgment and order dated 22.03.2014 passed by the 2nd Additional Sessions Judge, Khurda in S.T. Case No. 79/59 of 2013.

Bapi @ Dipak Mangaraj

Appellant

-Versus-

State of Odisha

Respondent

For Appellant: - Mr. Dibyashree Ray

For State of Odisha: - Mr. Soubhagya Ketan Nayak
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 29.02.2020

S. K. SAHOO, J. The appellant Bapi @ Dipak Mangaraj faced trial in the Court of learned 2nd Additional Sessions Judge, Khurda in S.T. Case No. 79/59 of 2013 for offences punishable under sections 224, 324, 332, 307, 294 and 506 of the Indian Penal Code.

The learned trial Court vide impugned judgment and order dated 22.03.2014 though acquitted the appellant of the charges under sections 324, 332, 307, 294 and 506 of the Indian Penal Code but found him guilty under section 224 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one and half years.

2. The prosecution case, in short, is that on 24.01.2013 the appellant along with fifteen other under trial prisoners were brought to the Court for their production from Sub-Jail, Khurda. At about 2.30 p.m., the informant Prasanna Kumar Martha (P.W.1) who was the Havildar in charge of production of the U.T.Ps in the Court produced four of them including the appellant and while taking them back, the appellant escaped from his custody. P.W.1 chased the appellant. While the appellant was scaling over the boundary wall of the Court, P.W.1 tried to catch hold of him but at that time the appellant picked up a broken glass bottle and tried to kill him by assaulting with the same on his chest. The broken glass hit on the right hand of P.W.1 causing injury. The appellant managed to escape from the clutches of P.W.1 with force, causing removal of his shirt buttons. The police personnel present in Court as well as the police of Khurda police station along with P.W.1 chased the

appellant but the appellant threatened them to kill showing broken glass. The appellant ran towards the Sub-Jail, Khurda by the side of Gita Bhawan but while he was jumping another wall, people caught hold of him.

P.W.1 presented the report before learned S.D.J.M., Khurda which was forwarded to Khurda police station for registration and accordingly, Khurda P.S. Case No.30 of 2013 was registered under sections 224, 307, 324, 332, 294 and 506 of the Indian Penal Code.

P.W.12 Kailash Chandra Sethi, Sub-Inspector of Police attached to Khurda police station, took up investigation of the case. During course of investigation, the I.O. seized the command certificate of the escort party, one khaki half shirt worn by P.W.1, one parrot colour old T. Shirt of the appellant having blood stain and one Ruchi spice open pouch containing chili powder. He arrested the appellant and sent him to D.H.H., Khurda for his medical examination with injury requisition and obtained the injury report. He recorded the statements of witnesses, visited the spot and prepared the spot map. He also examined the accompanying U.T.Ps. Ganesh Bernal, Mahindra Tangenia and Sankar Sasmal and recorded their statements and on 24.03.2013 on completion of investigation, P.W.12 submitted

charge sheet against the appellant under sections 224, 324, 332, 307, 294 and 506 of the Indian Penal Code.

3. After submission of charge sheet, the case was committed to the Court of Session for trial observing due committal procedure where the learned trial Court charged the appellant under sections 224, 324, 332, 307, 294 and 506 of the Indian Penal Code and since the appellant refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

4. During course of trial, in order to prove its case, the prosecution examined thirteen witnesses.

P.W.1 Prasanna Kumar Martha, Havildar of Khurda police station is the informant in the case. He stated how on 24.01.2013 the appellant escaped from his custody while returning from the chamber of S.D.J.M., Khurda and how he was caught hold of. He further stated about the seizure of command certificate given to him so also his police uniform under seizure list Ext.1.

P.W.2 Tapas Kumar Hansda who is the constable of Khurda police station also stated about the appellant escaping from custody when he was produced in Court and that they chased the appellant and caught hold of him.

P.W.3 Sabiruddin Khan who is the another constable of Khurda police station stated that while he was performing his duty at the chamber of S.D.J.M., Khurda, the escort party produced the U.T.Ps. and while he was present in that chamber, he heard shouting of the Havildar that the appellant had escaped.

P.W.4 Biranchi Naik who is the ACSI attached to Khurda Court stated that on 24.01.2013 he heard that the appellant has escaped from the custody of P.W.1 by pushing him.

P.W.5 Sisir Kumar Mohanty who is the constable attached to CSI office, Khurda stated that he heard the appellant escaped from the custody of P.W.1 and assaulted P.W.1 with a broken glass bottle.

P.W.6 Ganesh Ch. Ghadei who is also the constable attached to CSI office, Khurda stated that on 24.01.2013 while he had been to put up the records, he came to know that the appellant escaped from custody and subsequently he came to know that the appellant had been caught and that P.W.1 had sustained injury.

P.W.7 Prataprudra Dalabehera did not support the prosecution case for which he was declared hostile.

P.W.8 Raj Kumar Sahu was the Jailer attached to Sub-Jail, Khurda who stated that on 25.01.2013 at 8.00 a.m. police verified the Hazat register and I.C. warrant regarding taking of the appellant to the Court of S.D.J.M., Khurda on 24.01.2013.

P.W.9 Arun Chandra Tripathy who is the Reserve S.I. attached to Khurda police station stated that on 24.01.2013 at 2.40 p.m., they got information that one U.T.P. had escaped from the custody of escorting party. He further stated how the appellant was caught hold of at a later stage.

P.W.10 Sangram Keshari Swain was the constable attached to police headquarters and he stated that they got information about the appellant escaping from the custody of escort party. He also stated how the appellant was caught hold of at a later stage.

P.W.11 Sudarsan Behera was the constable attached to Reserve Office, Khurda who stated that he along with four staff had brought sixteen U.T.Ps. from Sub-jail, Khurda to local Court and while they were returning after producing the U.T.Ps. before the Magistrate, Khurda, the appellant who was being brought by the Havildar escaped.

P.W.12 Kailash Chandra Sethi was the Sub-Inspector of police attached to Khurda police station, who not only registered the F.I.R. in absence of the Inspector in charge but also conducted investigation of the case and submitted charge sheet.

P.W.13 Dr. Utpal Kumar Nandi attached to D.H.H., Khurda examined P.W.1 on police requisition on 24.01.2013 and noticed injuries on his person and proved the medical examination report vide Ext.9.

5. The defence plea of the appellant was one of denial and it is pleaded that since he complained against the police and jail authority for his ill-treatment while in custody and for not providing proper food, a false case has been foisted.

6. The learned trial Court after assessing the evidence on record though acquitted the appellant of the charges under sections 324, 332, 307, 294 and 506 of the Indian Penal Code but found the appellant guilty under section 224 of the Indian Penal Code.

7. Mr. Dibyashree Roy, the learned counsel for the appellant contended that when the appellant has been acquitted of the major offences, on the self-same evidence, the learned trial Court should not have convicted him under section 224 of

the Indian Penal Code. It is further submitted that the witnesses who supported the prosecution case are official witnesses and they are interested witnesses and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Soubhagya Ketan Nayak, learned Additional Government Advocate on the other hand contended that the learned trial Court while acquitting the appellant of the other charges has thoroughly discussed why the accusation against the appellant under those charges are not acceptable, however, since the learned trial Court found sufficient evidence that the appellant was in lawful custody and escaped from such custody and thereafter, he was caught near the Sub-jail, Khurda and accordingly the F.I.R. was presented, therefore, the ingredients of the offence under section 224 of the Indian Penal Code is clearly made out. He further submitted that since the appellant was in police custody at the time of occurrence, therefore, the police officials are the best witnesses to narrate the incident and the version of such witnesses cannot be discarded on that score. It is further contended that even though an independent witness who is an Advocate was examined as P.W.7 but he did not support the prosecution case for which he was declared hostile by the prosecution.

8. It appears from the evidence of P.W.1 that while he and the appellant were returning from the chambers of learned S.D.J.M., Khurda, the appellant escaped from his custody. He shouted for help and chased the appellant who ran away from the Court premises by scaling over the boundary wall of the Court and he took one bottle lying there, broke it and brandished it at P.W.1 and threatened him to kill. When P.W.1 tried to catch hold of the appellant, he dealt a blow with the broken bottle on his right hand causing injury and fled away. P.W.1 chased him with others and the appellant went towards Sub-Jail, khurda and stood over the wall of the jail and also brandished the broken bottle threatening them. P.W.1 further stated that the appellant sustained injuries on his knee while jumping over the Court wall and ultimately the public along with police staff and Court staff caught hold of him.

In the cross-examination, P.W.1 has stated that due to injury on his hand, his wearing uniform was stained with blood. He further stated that prior to the incident, he had escorted the appellant to the Court on many occasions and the appellant was returning to jail in normal way. He further stated that when the appellant escaped, no other staffs were with him and they were ahead of him.

Therefore, nothing has been elicited in the cross-examination to discard the evidence of P.W.1.

It further appears that the evidence of P.W.1 gets corroboration from the evidence of other witnesses and there are ample materials available on record to show that while the appellant was produced in Court and was in lawful custody of P.W.1, he escaped from such custody and ultimately he was chased and caught hold of.

Section 224 of the Indian Penal Code deals with resistance or obstruction by a person to his lawful apprehension. This section deals with two kinds of offences, the first one is intentional resistance or illegal obstruction by a person to his lawful apprehension for any offence with which he is charged and the second one is escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted.

Therefore, a person who is legally arrested for committing an offence must submit to be tried and dealt with according to law. If he gains his liberty in an illegal method before he is delivered by due course of law, he commits the offence of escape. Where a person, having been legally arrested, tried to escape from the lawful custody, the ingredients of the

offence would be squarely applicable. An escape takes place when the prisoner is able to remove himself or herself from the lawful control of an authorized custodian. An individual can be found guilty of escape even in the event that his or her initial arrest was wrongful, since an unlawful arrest must properly be argued in Court. The theory is that in order for the process of justice to operate in an orderly manner, a prisoner must not be given the privilege of determining whether or not he or she should be confined. Once an arrest has taken place, a prisoner cannot leave of his own volition. An escape is the deliverance of a person who is lawfully imprisoned or in lawful custody before such a person is entitled to such deliverance by law.

In the case in hand, the statements of the witnesses are consistent that the appellant who was in lawful custody at the relevant point of time and that he tried to run away from the Court premises by scaling over the boundary wall of the Court. The evidence further reveals that the appellant was chased by public including some of the prosecution witnesses and ultimately he was caught hold of and immediately the matter was reported by P.W.1 to the learned S.D.J.M., Khurda who in turn forwarded the report to the Inspector in charge of Khurda police station and accordingly, the case was registered. Nothing

has been brought out by the defence in the evidence of the witnesses to disbelieve the charge under section 224 of the Indian Penal Code.

In view of the foregoing discussions, I am of the humble view that the learned trial Court was justified in convicting the appellant under section 224 of the Indian Penal Code. Merely because the appellant was acquitted of other offences for the reasons assigned by the learned trial Court, the same cannot be a ground to acquit the appellant also of the charge under section 224 of the Indian Penal Code.

So far as the sentence part is concerned, the appellant has been sentenced to undergo rigorous imprisonment for one and half years. Since the appellant has been acquitted of the higher offences and the punishment prescribed under section 224 of the Indian Penal Code extends to two years, or with fine, or with both, in view of the period elapsed since the date of occurrence, I am of the humble view that the sentence should be reduced from one and half years to three months for the ends of justice.

9. Accordingly, while maintaining the conviction of the appellant under section 224 of the Indian Penal Code, the

sentence of rigorous imprisonment for one and half years is reduced to rigorous imprisonment for three months.

With the aforesaid modification of sentence, the jail criminal appeal stands dismissed.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 29th February 2020/Pravakar/Sisir