
(1973) CriLJ 362

Orissa High Court

Case No: None

Ajib Jally

APPELLANT

Vs

Chandramani Dalal and
Others

RESPONDENT

Date of Decision: June 19, 1972

Acts Referred:

- Penal Code, 1860 (IPC) - Section 143, 144, 379, 439

Citation: (1973) CriLJ 362

Hon'ble Judges: S. Acharya, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S. Acharya, J.

This revision is directed against the order of the appellate court acquitting the opposite parties of the offences under Sections 143 and 379 I.P.C. of which they were convicted by the trial Court.

2. The prosecution case, in brief, is that the accused persons formed an unlawful assembly and cut and removed branches of trees and bamboos from the two topes belonging to the complainant. On these allegations the six opposite parties in this revision along with 13 others were tried for offences under Sections 144 and 379 I.P.C. in G.R. Case No. 1334 of 1967 on a charge sheet submitted by the police. The trial court convicted the six opposite parties of the offences under Sections 143 and 379 I.P.C. and acquitted the 13 other accused persons. The appellate court acquitted all the opposite parties of both the above offences on the finding that the prosecution could not bring home the charges against the opposite parties beyond reasonable doubt.

3. The accused persons completely denied the prosecution allegation. They alleged that this false case was foisted against them due to previous enmity.

4. Mr. Kanungo, the learned Counsel for the petitioner, challenged the order of acquittal mainly on the ground of improper appreciation of the evidence on record. In this connection he contended that the court below completely misdirected itself in taking certain unimportant and irrelevant factors into consideration without taking into consideration certain significant features appearing in the evidence on record, and the reasonings on which they were convicted by the trial court.

5. Their Lordships of the Supreme Court in [K. Chinnaaswamy Reddy Vs. State of Andhra Pradesh](#), have laid down the principles and indicated certain types of cases on which High Courts can justifiably interfere with orders of acquittal as follows:

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be. Where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and....

The view expressed as above has been reiterated in a subsequent decision reported in *Fakir Chand v. Komal Prasad* 1964 SCD 417.

6. On hearing Mr. Kanungo and on going through the impugned judgment I do not find any such exceptional ground on which I can justifiably interfere with the order of acquittal recorded in this case. The Court below finds that there is no satisfactory evidence that the complainant was in possession of the Somanath Deb tope. On an appreciation of the evidence on record it has also arrived at the finding that the prosecution has not been able to establish beyond reasonable doubt that the opposite parties herein actually cut

and removed branches of trees and bamboos from the two topes in question. It could not be shown that in arriving at the aforesaid findings the court below overlooked any material evidence, which when considered would substantially turn and/or vary the Court's findings on the aforesaid factual aspects of the matter.

7. Apart from the above, the court below also finds that the unusual delay of 16 days in reporting the incident to the authorities concerned casts a cloud of doubt on the truth of the prosecution case. It has also taken into consideration the fact that almost all the prosecution witnesses were highly interested with the complainant. Admittedly, there was enmity and party faction between P.W. 1 and his witnesses on one side and the opposite Parties on the other.

8. Mr. Kanungo challenged the impugned judgment mainly on the around of improper appreciation of the evidence on record, and on non-acceptance of the reasons on which the trial court convicted the opposite parties. As stated above, Mr. Kanungo could not successfully show that the court below overlooked any material evidence or significant features appearing in the evidence on record. No other ground of the nature or kind indicated in the aforesaid decision, or even similar to the same, could be shown justifying interference in revision with the impugned order of acquittal. The impugned judgment is not assailed on any ground of error on a point of law. Accordingly, as no exceptional ground, as indicated by their Lordships of the Supreme Court, could be made out in this case, I cannot justifiably interfere in" this revision with the order of acquittal passed by the Court below.

9. There is, therefore, no merit in this revision which is accordingly dismissed.