
(2025) 10 OH CK 0031

Orissa HC

Case No: Criminal Revision Petition No.1586 Of 2008

Sadasiva Naik

APPELLANT

Vs

State Of Orissa And
Others

RESPONDENT

Date of Decision: Oct. 24, 2025

Acts Referred:

- Indian Penal Code, 1860 — Section 294, 436, 506
- Code Of Criminal Procedure 1973 — Section 235(1), 397, 401

Hon'ble Judges: Manash Ranjan Pathak, J

Advocate: Anjan Kumar Biswal, Suman Pattnaik

Final Decision: Dismissed

Judgement

Manash Ranjan Pathak, J

1. Heard Shri Anjan Kumar Biswal, learned counsel for the petitioner and Smt. Suman Pattanaik, learned Additional Government Advocate for the State, Opposite Party No. 1.

2) Being aggrieved with the Judgment dated 17.09.2008 passed by learned Ad-hoc Additional Sessions Judge, F.T.C, Baripada, District-Mayurbhanj in Sessions Trial Case No. 14/1 of 2008 arising out of G.R. Case No. 946/2007, acquitting the opposite party No. 2, accused of the case of the offences under Sections 436/506 of the IPC, the petitioner who was the informant of the case, has filed this revision petition under Section 397, read with Section 401 of the Code of Criminal Procedure, praying, amongst others, to quash the said Judgment dated 17.09.2008 in the interest of justice, equity and fair play and to pass such other order or orders as the Court may deem fit and proper.

3) The petitioner contended that the Trial Court wrongly interpreted the evidence of PW.1 and PW.2, who were eye witnesses to the incident and that their evidences were not contradicted by the defence in any manner. It is also submitted by the petitioner that the evidence of PW.3 to PW.6 were not properly dealt with, stating that they were the post occurrence witnesses and that they were consistent in their version that the accused was the author of the crime. The petitioner further submitted that there was a tussle between his son and the accused on the night of the incident at 10:30 p.m. that was witnessed by PW.2 and that the house of the petitioner was burnt after two hours of the said incident and therefore, petitioner contended that it can be well presumed that it is the accused opposite party No. 2 who was the author of the crime, where the said presumption was not rebutted by the accused by adducing sufficient evidence. According to the

petitioner as the impugned judgment suffers from infirmity, he prayed to quash the impugned judgment, submitting further that the accused should have been punished being the author of the crime.

4) Prosecution's case in brief is that, on 30.08.2007 at night around 10:30 p.m. the opposite party No.2 came in front of the house of the petitioner and abused him in filthy language. During the same, petitioner's son Tarasankar requested the opposite party No. 2 to leave the place. But the opposite party No. 2 showing a "katuri"™ held by him threatened said Tarasankar, son of the petitioner, saying that he will kill him and shall set fire on their house.

5) Subsequently, in the midnight, the opposite party No. 2 came and set fire to the house of the petitioner situated by the side of the road, saying abusive language threatening the petitioner and his family.

6) With regard to the said incident the petitioner as an informant lodged an FIR at Jharpokharia Police Station, following which Jharpokharia Police Station Case No. 87/2007 corresponding to G.R. Case No. 946/2007 was registered and the investigation of the case commenced. On completion of the investigation, Charge-sheet under Sections 436/294/506 of the Indian Penal Code was submitted before the Sub-Divisional Judicial Magistrate, Baripada, against the opposite party No. 2. The learned SDJM committed the said G.R. Case to the Court of learned Sessions Judge, Mayurbhanj at Baripada, wherein it was re-registered and numbered as Sessions Trial Case No. 14/1 of 2008.

7) The Learned Sessions Judge, Mayurbhanj at Baripada transferred the case to the Court of learned Ad-hoc Additional Sessions Judge, (FTC), Baripada for its disposal in accordance with law.

8) Finding prima facie materials in the charge-sheet, the learned Trial Judge framed charge under Sections 436 and 506 IPC against the opposite party No. 2, who pleaded not guilty and claimed to be tried and accordingly, the said accused faced the trial before the Court.

9) To bring home the charge against the accused opposite party No.2, the prosecution examined seven witnesses, including the petitioner, i.e., informant of the case, as PW.1; his son as PW.3; his daughter-in-law as PW.5; his wife as PW.6; two alleged independent eye witnesses to the incident as PW.2 and PW.4; and the Investigating Officer of the case as PW.7. The defence cross-examined the prosecution witnesses and also examined two witnesses on its behalf, who are the co-villagers of both the informant as well as the accused.

10) On perusal of the impugned judgment dated 17.09.2008 of the learned Trial Court, it is seen that the said Court found that the alleged eye-witness PW.2 did not corroborate the statement of the informant-petitioner that the accused-opposite party No. 2 threatened the informant and his son to assault them with a "katuri"™ in his hand, stating that he shall set fire to their house saying abusive language. The learned Trial Court observed that the PW.2 in his evidence before the Court denied to the fact that he had stated to the Investigating Officer of the case that the accused was holding a "katuri"™ in his hand at the time of the occurrence and that said PW.2 in his evidence denied of stating before the Investigating Officer of the Case that he saw the accused setting fire to the house of the informant-petitioner, PW.1.

11) The learned Trial Court also observed that the alleged eyewitness PW.2 in his evidence for the first time stated before the Court about the fact of witnessing the accused opposite party No.2 with katuri in his hand and of abusing and threatening the son of the informant-petitioner and setting fire on the house of the informant-petitioner by the said accused, whereas in his cross-examination, the said PW.2 denied of stating before the Investigating Officer of the case (PW.7) about witnessing of committing the alleged offences/crime by the accused-opposite party No.2.

12) The learned Trial Court from the evidence on record further found that though PW.3, PW.5 and P.W.6 in their evidence stated that it is the accused who had set fire to their house on the night of the incident, but all those witnesses in their cross-examination deposed before the Court that they did not see the accused setting fire to their house. The Trial Court from the evidence on record found that PW.3 deposed that fire incident occurred around 12:00 a.m. at night, whereas PW.5 stated that it occurred at 01:00 a.m. at night. PW.3 admitted that he did not see the person who lit the fire to their house. PW.5, wife of PW.3 and

daughter-in-law of PW.1-petitioner stated that the fire incident occurred at 01:00 a.m. at night, when all the family members were sleeping in their house at the relevant time and that all of them woke up only on hearing hallah. PW.6, wife of PW.1-petitioner corroborated the evidence of PW.5 and stated that the fire incident occurred around 01:00 a.m. at night and that all the family members woke up only on hearing hallah. It is seen that PW.3, PW.5 and PW.6 in their cross-examination stated that they did not see who set fire to their house on the night of the incident.

13) The Trial Court found that the other alleged eye witness PW.4 stated that, hearing hallah he came out of his house, rushed to the spot and found the house of the informant damaged by fire and said PW.4 failed to speak who set fire to the house of the informant.

14) The defence denied all the accusations made against him by the prosecution and stated that, as the accused-opposite party No. 2 had already got a house under the Indira Awas Yojana scheme, it is the informant-petitioner (P.W.1) who set fire on his house to get allotment of house under the said scheme. The learned Trial Court, from the evidence adduced by the defence, rather found that the accused got a house under the said Housing Scheme and that during evidence, the informant-petitioner (PW.1) admitted the fact that he had been allotted a house under the said Housing Scheme.

15) The learned Trial Court found that though the PW.1-informant-petitioner stated that he saw the accused set fire his house on the night of the incident, but PW.3, PW.5 and PW.6 stated that all the family members were sleeping in their house at the relevant time and only on hearing hallah, all of them came out of their house.

16) Going through the evidence of the prosecution witnesses in their examination-in-chief as well as their cross-examination, the learned Trial Court found no such clear-cut evidence of the presence of the accused-opposite party No.2 at the place of occurrence during the relevant time of the said fire incident or any such unambiguous prosecution evidence witnessing the said accused of setting fire to the house of the informant-petitioner. The Trial Court also found the discrepancies amongst the evidences of the prosecution witnesses with respect to the time of setting fire to the house of the informant-petitioner by the alleged accused-opposite party No.2.

17) It is seen that, after meticulous discussion of the evidence on record including the cross-examination of both the prosecution as well as the defence, the learned Trial Court came to the finding that, the evidence on record was not sufficient to hold the accused guilty of committing the offence of criminal intimidation of giving threats of causing death or grievous hurt to the petitioner-informant and his son and to set fire to their house.

18) From the evidence on record, the Trial Court also found that the prosecution failed to establish its case against the accused-opposite party No. 2 beyond all reasonable doubt. Accordingly, by the impugned Judgment dated 17.09.2008, the learned Trial Court held that the accused of the case, opposite party No. 2 herein is not guilty under Sections 436/506 of IPC and acquitted him under Section 235 (1) of the CrPC, setting him at liberty forthwith, discharging him from all such acquisitions.

19) Law is well settled that the High Court does not have the authority to convert a finding of acquittal by trial court into one of conviction, while exercising its revisional power. It is also not the case of the petitioner, since the State (prosecution) did not prefer an appeal, he had filed this revision petition.

20) Honâ€™ble Supreme Court in catena of cases have held that the limitation of reversal order of acquittal while exercising its revisional power by High Court under Section 401 CrPC is permissible only where intrinsic or probative value of evidence has not been dealt with in its proper perspective and has either been not considered or has been brushed aside on surmises and conjectures or when vital and crucial evidence is ignored, then only the High Court in exercising its revisional power can interfere with such order of acquittal or discharge and only on those circumstances there should not be any hesitation on the part of the High Court in exercising its power of revision under Section 401 CrPC for interference with such acquittal or discharge.

21) In the case of Kaptan Singh vs. State, reported in (1997) 6 SCC 185 as well as in the case of Vimal vs. Khumar, reported in (1998) 7 SCC 223, their Lordships in the Honâ€™ble Supreme Court have held that, such revisional power should not be exercised by the High Court under Section 401, CrPC unless there exists a manifest illegality in the judgment or order of acquittal or there is a grave miscarriage of justice.

22) As has been laid down by the Honâ€™ble the Supreme Court in catena of cases, it is seen that the petitioner in the case in hand has failed to place before the Court that it is an exceptional case where there is some glaring defects in the impugned Judgment of the Trial Court or that there is a manifest error on a point of law committed by the Trial Court while deciding the case by it and consequently, there has been a flagrant miscarriage of justice. From the submission of the petitioner, it is seen that he failed to establish that it is an exceptional case for exercising the power of revision by this Court to set aside the impugned finding of acquittal.

23) It is also not the case of the petitioner that the Trial Court has wrongly shut out evidence, which the prosecution wished to produce, or where the Trial Court has wrongly held evidence to be inadmissible, or where the Trial Court overlooked the material evidence, or where the acquittal of the accused- opposite party No. 2 is based on compounding of the offence that is invalid under the law. These exceptional circumstances being not present in the case in hand, this Court is of the opinion that there cannot be any justification to interfere with the impugned Judgment of acquittal.

24) Moreover, in the present case, the petitioner-informant has failed to place anything before the Court pertaining to existence of any such manifest illegality in the impugned Judgment of the Trial Court dated 17.09.2008 acquitting the accused-opposite party No.2 or that there was a grave miscarriage of justice in the said judgment of acquittal. Further, the petitioner-informant also failed to place before the Court that the learned trial Judge failed to consider any such evidence on record adduced by the prosecution witnesses that were not dealt with by the Trial Court in its proper perspective or has not been considered by it and further that those have been brushed aside on surmises and conjectures by the said Court.

25) For the reasons stated above, the impugned Judgment dated 17.09.2008 passed by the learned Ad-hoc Additional Sessions Judge (F.T.C.), Baripada, District-Mayurbhanj, acquitting the accused Ajit @ Bablu Mohakud, opposite party No. 2 in Sessions Trial Case No.14/1 of 2008 arising out of Jharpokharia Police Station Case No. 87/2007 corresponding to G.R. Case No. 946/2007, does not call for any interference.

26) Accordingly, this Criminal Revision petition, being devoid of merit, stands dismissed.

27) Registry shall forward a copy of this judgment to the court of the learned Sessions Judge, Mayurbhanj at Baripada for necessary use and to keep it on the record in Sessions Trial Case No.14/1 of 2008 that was disposed of by the learned Ad-hoc Addl. Sessions Judge (F.T.C.), Baripada on 17.09.2008.