(2008) 12 OHC CK 0024

Orissa High Court

Case No: None

Kuber Swain and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision: Dec. 11, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323

Citation: (2009) CLT 232 (Suppl Crl) : (2009) CriLJ 1608 : (2009) 1 OLR 423 Supp

Hon'ble Judges: A.S. Naidu, J

Bench: Single Bench

Judgement

A.S. Naidu, J.

The judgment and sentence passed on 1st December, 2005 by the Addl. Sessions Judge-cum-Judge. Special Court, Bargarh in T.R. No. 98/25 of 2003 is assailed in this appeal.

2. Bereft of unnecessary details, prosecution case as would be evident from the FIR is that on 9th April, 2002 at about 8.00 p.m. the informant P. W. 1 who was a Scheduled Tribe person and his neighbour P. W. 2 were gossiping in the house of the informant situated in village Phulapali. At that juncture the appellants forming an unlawful company came to the house of the informant and out of them appellant No. 3 Ganesh Swain assaulted the informant by means of a stick. The other appellants cuffed him around. All the appellants thereafter pulled down a portion of the thatch of the house of the informant. When P. W. 2 protested against such action of the appellants, appellant No. 3 Ganesh Swain also assaulted him. Further the appellants abused, P. W. 1 in obscene language and insulted him in public. On the basis of the FIR lodged on 10-4-2002 Barpali P.S. Case No. 45 of 2002 was registered and after investigation charge-sheet was submitted against the appellants. The appellants stood charged under Sections 341, 323, 294, 427/34 of the Indian Penal Code read with Section 3(x) of the SC & ST (PA) Act and faced trial.

During trial, in order to substantive its case, prosecution got seven witnesses examined on its behalf of whom P. Ws. 1 and 2 were the injured, P. Ws. 3 and 4 were the eye-witness to the occurrence, P. W. 5 was a medical officer and P. Ws. 6 and 7 were the investigating officers. The appellants who denied the charges did not get any witness examined on their behalf.

After threadbare discussion of the evidence, more particularly the medical evidence, and finding the statements of P. Ws. 1 and 2 worthy of credence the trial Court found the charge u/s 323 to have been well established against the appellants. However the trial Court held that the prosecution had signally failed to establish the charges under Sections 341, 294, 427 as also u/s 3(x) of the SC & ST (PA) Act against the appellants. The trial Court convicted the appellants of the charge u/s 323, I.P.C. and after hearing them on the question of sentence, sentenced them to pay a fine of Rs. 600.00 each, in default to undergo simple imprisonment for three months.

3. It is pertinent to mention here that no appeal has been preferred by the informant or the State against acquittal of the appellants of the charges under Sections 341, 294 and 427/34, I.P.C. and u/s 3(x) of the SC & ST (PA) Act which has therefore attained finality.

4. In course of hearing of the appeal, Mr. Dhal, learned Counsel for the appellants, challenged the conviction of the appellants of the charge u/s 323, I.P.C. on the grounds that the trial Court misconstrued the statements of P. Ws. 1, 2, 3 and 4 which were not only highly inconsistent but also self-contradictory and the said inconsistency being not simples adversely affected the prosecution case that the said Court lost sight of the fact that P. Ws. 1 and 2 had developed their statements in Court during trial which substantially varied from their statements recorded by police u/s 161, Cr.P.C. and consequently cast great doubt on the veracity of the prosecution story; and that notwithstanding aforesaid contradictions and inconsistencies in the prosecution evidence, the trial Court acted illegally in observing that the same were minor in nature. Alternatively he submitted that if the prosecution story was believable, the trial Court ought to have extended the benefit of the Probation of Offenders Act to the appellants, particularly to appellant No. 1 Kubar Swain who was a Government servant, and a doubt arose as to his involvement in the alleged crime, and others being poorest of poor and quite young in age.

Mr. Dhal submitted that an offence u/s 323, I.P.C. cannot be equated with moral turpitude and therefore applying the provisions of Plea-Bargaining and taking a lenient view, the benefits of the Probation of Offenders Act may be extended to the appellants so that their conviction would not affect their career.

5. Learned Counsel for the State, on the other hand, submitted that the trial Court has taken the pains to discuss the evidence, both oral and documentary, in extenso. The evidence of P. Ws. 1 and 2 coupled with the injury reports and evidence of the

medical officer P. W. 6 establishes the charge u/s 323, I.P.C. against the appellants of which the trial Court has rightly convicted them. Countenancing the arguments of Mr. Dhal for extending the provisions of the Probation of Offenders Act, learned Counsel for the State submitted that considering the age and education of the appellants and the overt acts allegedly committed by them, the trial Court rightly declined to extend the provisions of the Probation of Offenders Act. But then the trial Court having been gracious enough to a lenient sentence, it is a fit case where impugned judgment may not be interfered with.

6. In course of hearing it appears that the appellants have already deposited the fine. Thus the appeal has virtually become infructuous. Mr. Dhal submitted that if the conviction is maintained, the appellants will be subjected to unsurmountable hardship, inasmuch as appellant No. 1 will lose his job, and as Such this Court may consider whether the coriviction was justified or not or whether the same amounts to moral turpitude.

7. After hearing learned Counsel for the parties, this Court in order to appreciate the arguments advanced by Mr. Dhal scanned through the evidence, both oral and. documentary. Perusal of the evidence of P. Ws. 1 and 2 reveals that there was in fact variations in the statements made by the said witnesses before police u/s 161, Cr.P.C. and that made in Court. It also gives an impression that there was an attempt to develop the story from stage to stage. Though the observation of the trial Court was that always there was a likelihood of some contradictions and inconsistencies in the oral evidence of witnesses, yet as has been held in the case of Satyabadi Kar and Anr. v. Harmohan Misra reported in 1976 (1) CriLR 285, the same are bound to adversely affect the prosecution case and the Court should be very careful while dealing with such evidence.

8. A scrutiny of the evidence of P. Ws. 1 and 2 coupled with that of P. Ws. 3 as also P. Ws. 6 and 7 being the investigating officers, and last but not the least the injury reports Exts. 2 and 3 vis-a-vis the evidence of the treating physician P. W. 5 reveals that the evidence in the case is not so staggeringly inconsistent as to disbelieve the prosecution case in toto. No doubt there are some discrepancies in the evidence of the witnesses, but then the same were minor in nature not adversely affecting the prosecution case.

9. The next question that needs consideration is as to whether a conviction u/s 323,I. P. C. would amount to moral turpitude so as to affect the service career of a Government servant. The Supreme Court in the case of Pawan Kumar Vs. State of Haryana and another, , wherein it was held that where a Government servant is convicted of a simple and petty offence, that culminates in jeopardizing his future service career. In the said case, however, the Supreme Court observed that the Legislature was required to make provision so that a person''s career is not affected merely because he was involved in a petty offence.

10. The term ''moral turpitude'' has not been defined in any law of our country, but it is an expression emerging from judicial pronouncements and is meant to put a check and balance on the society so as to protect the society from persons who hold posts of responsibility and yet involve themselves in incidents which per se affects their integrity.

11. The Black''s Law Dictionary, 8th Edn. defines moral turpitude, as.:

Conduct, i.e. contrary to justice, honesty or morality. In the area of legal ethics, offences involving moral turpitude - such as fraud or breach of trust - traditionally make a person unfit to practise law - also termed moral depravity.

According to the said dictionary, ''moral turpitude'' means, in general, shameful wickedness - so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined in an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.

12. For better appreciation and to make it more explicit, it would be worthwhile to refer to the decision of the case of Pullman''s Palace Car Co. v. Central Transport Co. 65 Fed 158, wherein it was observed:

A term not clearly defined - what constitute moral turpitude or what will be held such is not entirely clear. A contract to promote public wrong, short of crimes may or may not involved it. If parties intend such wrong, as where they conspire against the public interest by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When no wrong is contemplated, but is unintentionally committed through error of judgment, it is otherwise.

13. The Allahabad High Court dealing with such aspect in the case of Mangali Vs. Chhakki Lal and Others, , evolved a principle to test whether an act involves moral turpitude or not. The threefold tests to be applied for judging the involvement of moral turpitude were enumerated as follows:

(1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general;

(2) Whether the motive which led to the act was a base one; and

(3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

14. Mr. Dhal tried to convince this Court that the accusation levelled against the appellants including appellant No. 1 who is a Government servant does not satisfy the aforesaid tests and as such the charge of which they have been convicted should not be considered as ''moral turpitude''. According to him, the overt acts at best may

construe as sporadic ones and cannot be nomenclatured as ''moral turpitude''. But then this Court remains unconvinced. A conviction of the charge u/s 323, I.P.C. is for committing offence u/s 320.I. P. C. and cannot be interpreted not to be moral turpitude. It differs from case to case. In the case at hand however after perusing the evidence of the prosecution witnesses and considering the fact that appellant No. 1 is a Government servant and the others being young-men and that there was no previous conviction against them and further as there appears to be no pre-meditation, this Court feels that ends of justice will be better served if the provisions of the Probation of Offenders Act is extended to the appellants and their conviction may not be considered as ''moral turpitude''.

15. This Court therefore disposes of the CRLA affirming the conviction of the appellants of the charge u/s 323, I.P.C., but then extending the benefit of the Probation of Offenders Act directs that instead of the sentence passed against them by the trial Court, they shall execute a bond after due admonition for maintaining good behaviour for a period of one year, for which they shall appear before the trial Court within a fortnight hence.