

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA NO.41 of 1995

(In the matter of application under Section 378 of the Criminal Procedure Code, 1973.).

Ashok Kumar Das *Appellant*

-versus-

Kapileswar Samal and others *Respondents*

For Appellant : *Mr. A. Pradhan , Advocate*

For Respondents : *None*

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :10.01.2023

DATE OF JUDGMENT:19.01.2023

G. Satapathy, J.

1. This is an appeal against acquittal U/S.378(4) of the Cr.P.C. of the respondent-accused persons recorded by learned J.M.F.C., Bhadrak on 25.07.1994 in 1.C.C. No.431 of 1992 (T.R. No.361 of 1993).

2. Facts in nut shell are the appellant-complainant instituted a complaint against respondent-accused persons by alleging that on

14.11.1992 at about 11A.M. the respondent-accused persons cut and removed away the paddy grown by him in his land bearing Plot No.176 of Khata No.149 in Mouza Patlasingh. On receipt of complaint, after observing the formalities, learned S.D.J.M., Bhadrak took cognizance of offence U/Ss.379/34 of IPC and the respondent-accused persons were put to trial. On conclusion of trial, learned J.M.F.C., Bhadrak on analysis of evidence on record upon hearing the parties passed the impugned order acquitting the respondents-accused persons, which is under challenge by the appellant in this appeal.

3. Mr. A. Pradhan, learned counsel for the appellant submits that this is an appeal against acquittal of accused persons in the complaint and the appellant was the complainant, whereas the respondents were the accused persons in this case, but the learned trial Court without appreciating the evidence on record in proper prospective had acquitted the respondents solely on the ground that the ownership of the land is doubtful, however, the allegation established by the appellant was to the effect that the paddy grown by the appellant had been cut down and taken away by the respondents and thereby, a clear case of 379/34 of IPC was made out against the respondents, but ignoring legal admissible evidence

and the criminality of the appellant, the learned trial Court had acquitted the accused-respondents by the impugned judgment which needs to be reversed and order of conviction of the respondents is to be passed for offence U/S. 379/34 of IPC and accordingly, the respondents be sentenced.

4. None appears on behalf of the respondents despite being duly noticed.

5. A finding of order of acquittal shall not ordinarily be disturbed merely because another view is possible and in case of acquittal, the presumption of innocence is re-enforced in favour of the accused persons, who faced the trial, but there is no quarrel over the position of law that in an appeal against acquittal, the appellate Court has ample power to re-appreciate/review evidence, however, more the power, greater is the scrutiny. The appellate Court in case of appeal against acquittal shall not embark upon re-appreciation of evidence, unless there is clear miscarriage of justice and compelling reasons for doing so by the acquittal of the accused-respondents. Aforestated principle has not been settled arbitrarily or whimsically because it cannot be denied that the trial Court has the advantage of looking at the demeanour of the witnesses and observing their actual conduct in the witness box.

6. In reverting back to appreciate the present appeal on the premises of settled law, it appears that the appellant had instituted the complaint against the respondents for offence U/Ss.379/34 of IPC. A bare perusal of the complaint would go to disclose about some civil dispute between the appellant and respondents, but the trial Court was approached for redressal of grievance of complainant in criminal side i.e. for commission of theft. The complainant-appellant in his evidence had stated that he was possessing the disputed land by the time of occurrence itself goes a long way to say that the dispute relates to possession of the disputed land. Further, P.Ws. 2 and 3 are the labourers of the complainant and they had stated in their evidence about respondent-accused cutting away paddy from the land of the complainant. On the other hand, the accused-respondents had also examined some witnesses in their defense and the defense had also exhibited some land records, which was duly appreciated by the learned trial Court, while recording the judgment of acquittal.

7. A careful perusal of the impugned judgment of acquittal of respondents as recorded by the learned J.M.F.C., Bhadrak, this Court does not find any error apparent on the face of it to find out any illegality or perversity in the judgment. Besides, One of the

important fact, which weighed in the mind of this court is that the order of acquittal of the accused persons was recorded by the learned trial Court around 29 years back and reversing such finding of acquittal after a long lapse of time, can never be said to be in the interest of justice for a matter relating to civil dispute between the parties.

8. In view of the aforesaid discussion and taking into consideration a well reasoned judgment of acquittal as recorded by the learned J.M.F.C., Bhadrak in this case, this Court does not find any rhyme and reason to interfere with the order of acquittal recorded around 29 years back to reverse the finding and convict the respondent-accused.

9. In the result, the appeal sans merit, stands dismissed, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 19th day of January, 2023/Subhasmita*