

Abhinash Chandra Das Vs. Adhir Chandra Laskar

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Court : Guwahati

Decided On : Mar-10-2003

Judge : Ranjan Gogoi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 378(4)

Appeal No. : Criminal Appeal No. 148 of 1995

Appellant : Abhinash Chandra Das

Respondent : Adhir Chandra Laskar

Advocate for Def. : A.C. Laskar and D.K. Das, Advs.

Advocate for Pet/Ap. : A.C. Das, G.P. Bhowmik,

Disposition : Appeal dismissed

Judgement :

Ranjan Gogoi, J.

1. This appeal with special leave under Section 378(4) of the Code of Criminal Procedure has been filed against a judgment and order of acquittal dated 22.6.1995 passed by the learned Sessions Judge, Nagaon in Criminal Appeal No. 5(N)95. By the aforementioned judgment and order, the learned Sessions Judge has set aside the conviction recorded against the present opposite party under

Section 352 of the Indian Penal Code as well as the sentence imposed. Aggrieved, this appeal has been filed.

2. A perusal of the judgment and order of the learned Sessions Judge under appeal would go to show that the prosecution in support of its case had examined three witnesses including the complainant himself. Whereas the complainant has been examined as PW 1, his nephew has been examined as PW 2 and the son of the complainant as PW 3. There was a previous dispute between the complainant and the opposite party with regard to boundaries of the land in question for which reason, the learned trial Court thought it proper to acquit the accused of the offences under Sections 447/506 of the Indian Penal Code. However, insofar as the offence under Section 352 of the Indian Penal Code is concerned, the learned trial Court on the evidence and materials on record thought it proper to convict and sentence the accused as aforesaid which finding has been interfered with by the learned sessions Judge in appeal.

3. The powers of the appellate Court to interfere with an acquittal recorded either by the trial Court or by the appellate Court operates within the well defined limits. Though in appreciating the correctness of the view taken by the Court below, the powers of the appellate Court hearing an appeal against an order of acquittal would be the same as in cases of an appeal against an order of conviction, the appellate Court would not interfere with the acquittal if a possible view has been taken. Unless and until the findings recorded to sustain the acquittal order are perverse being wholly opposed to the weight of the materials on record, the interference of the appellate Court would not be called for.

4. Applying the above parameters of law to the facts of the present case, what is noticeable is that the learned Sessions Judge found all the three witnesses examined by the prosecution to be relatives of each other and, therefore, to be the interested witnesses. However, no finding was reached on the said basis and the learned Sessions Judge further proceeded to take into account the fact that though several independent witnesses were cited in the complaint filed, none had been examined save and except the three witnesses in question. In such a situation, the learned appellate Court thought it proper to scrutinise the evidence of

the prosecution witnesses with an extra amount of care and caution, PW 2, though a nephew of the complainant, was treated by the learned trial Court to be an independent witness and on that basis, reliance was placed on the testimony of PW 2 in convicting the accused. The learned Sessions Judge took into account the aforesaid fact in determining the correctness of the appreciation of the evidence by the learned trial Court. That apart, there was a 10 (ten) days delay in filing the complaint. No. FIR was lodged in respect of the incident. The delay was sought to be explained by examining the Sarkari Gaonburah in support of the fact that a village Bichar was called by the Gaonburah which led to the delay in lodging the complaint. The Sarkari Gaonburah examined as DW 1 denied that there was any such Bichar held and, therefore, exposed the falsity of the version given by the complainant. However, the said Sarkari Gaonburah was disbelieved by the learned trial Court on the ground that he was a friend of the accused. The learned Sessions Judge found the reasons for disbelieving the Sarkari Gaonburah and in preference accepting the version of the prosecution witnesses to be unjustified. Having regard to the facts of the case, the view taken by the learned Court below cannot be said to be an unreasonable view warranting interference by this Court in exercise of power under Section 378 of the Code of Criminal Procedure.

5. For the aforesaid reasons, this appeal against is without any merit. It is dismissed. No costs.

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