

**Pradeep Giri and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/530943](http://sooperkanoon.com/530943)

**Court :** Orissa

**Decided On :** Dec-03-1993

**Reported in :** 1994(I)OLR118

**Judge :** A.K. Padhi, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154 and 154(1)

**Appeal No. :** Criminal Revision No. 501 of 1992

**Appellant :** Pradeep Giri and ors.

**Respondent :** State

**Advocate for Def. :** Addl. Standing Counsel

**Advocate for Pet/Ap. :** Sarat Ch. Sahoo and S.K. Nayak

**Disposition :** Revision allowed

**Judgement :**

**A.K. Padhi, J.**

1. Challenging their conviction under 324/34, IPC petitioners have filed this criminal revision.

2. The prosecution case, in brief, is that on 3-9-198S at about 5 pm. informant PW 2, PW 5 and others were collecting signatures from the villagers to obtain loan from them. There was a congregation of many of the villagers at the place of occurrence where a meeting was going on. At that point of time petitioner Pradeep Giri came to the place and abused the members of the meeting in obscene language and left the place. Thereafter he went away from the place and came back along with the other accused persons. There was altercation between the parties and Pradeep stabbed PW 2 on his shoulder and Gourang Giri who suffered a cut injury on the left hand finger. Both the injuries were minor in nature. Thereafter they also assaulted others with lathis. The accused persons were charged Under Section 341/34, 324, 294/34, IPC. The learned trial Court acquitted all the accused persons of the offence Under Section 341, IPC but convicted them under Secs 324, 294/34, IPC and sentenced each of them to undergo R.I, for three months on each count with further direction that the sentences would run concurrently. Appellate Court while confirming the conviction of the petitioners Under Section 324/34, IPC acquitted all the petitioners of the charge Under Section 294/34, IPC as according to him the words uttered by the petitioners were not considered to be obscene by the appellate Court. Challenging the conviction Under Section 324/34, IPC and sentencing the petitioners to undergo R.I. for three months, the petitioners have filed this revision.

3. In order to prove its case prosecution has examined as many as eight witnesses, out of whom PWs 1, 2 and 4 are the injured witnesses, PWs 3, 5 and 6 are the eye-witnesses to the occurrence, PW 7 is the doctor and PW 8 is the Investigating Officer who conducted the investigation. PW 2 is the informant in this case.

4. The plea of defence is that of total denial and three witnesses have been examined on behalf of the petitioner. The specific plea as stated by the defence is that PWs 1 to 5 asked the accused persons to leave the Gochar land which was in their possession and since they refused to comply with the request a false case has been foisted against them.

5. Challenging the conviction of the petitioners learned counsel for the petitioners submits that the occurrence took place on 3-9-1986 at about 5 p. m. and immediately after the occurrence, as is disclosed by the prosecution witnesses, they had informed regarding the offence which is a cognizable one to the Officer-in-charge but the Officer-in-charge did not record the F.I.R. and directed the witnesses to go to the hospital for their treatment. After the witnesses (injured) were examined by the doctor they again returned to the police station but the Officer-in-charge did not record the F.I.R. and instead, directed them to come on the next day. F.I.R. was lodged at 9. 30 a. m. on 4-9-1986. Therefore, the prosecution case as laid on the F.I.R is suspicious in nature and, therefore, the petitioners are entitled to be acquitted.

After discussing the evidence it is found :

The positive statements of PWs 3 and 4 lead to the conclusion that they had gone to the police station in the same evening and the Officer-in-charge without recording the F.I.R. had directed them to get themselves examined by the doctor. The doctor reports that PWs 1,2 and 4 had simple minor injuries and none of the injuries was grievous or was on any vital part of the body. Even after being examined injured persons had come to the P.S. Even the Officer-in-charge present did not record the F.I.R. and asked them to come on the next day. Since the Officer-in-charge did not record the F.I.R. though the witnesses had narrated the incident before him and had come to the P.S. for the second time after being examined by the doctor, suspicion arises in the mind regarding the truth of the prosecution version. The very fact that the witnesses stated that they had narrated the incident before the officer present in the P.S. on the date of occurrence, but he had asked them to come on the next day morning indicates that the investigating agency has tried to suppress the truth of the incident. In *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.*, reported in AIR 1992 SC 604 their Lordships have opined that :

'.....if any information disclosing a cognizable offence is laid before an Officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance

thereof in the prescribed form, that is to say, to register a case on the basis of such information.'

In *Balgopal Panda and Ors. v. State*, reported in 70 (1990) CLT 1, their Lordships by considering the fact that one written report was given to the Investigating Officer which was returned and subsequently another written report was treated as F.I.R. their Lordships have observed:

'In consideration of the aforesaid facts and evidence, we do not hesitate to hold that the true first report submitted by PW 1 was suppressed by the prosecution. Had it been treated as F.I.R. and produced during trial, the story narrated in it would have been unfavourable to the prosecution.'

In *Sevi and another (2) Koodakkal Karian and Ors. v. State of Tamil Nadu and Anr.*, reported in 1991 Cri LJ 736, it has been observed that if the original F.I.R. is suppressed inference can be drawn that the prosecution case is suspicious.

6. In the case at hand, though the police officer was informed regarding a cognizable offence, he directed the injured persons to be first treated by the doctor though admittedly the injuries were not grievous in nature. Even after their treatment in the hospital when they returned to the police station, again they were directed to come on the next day and without recording the F.I.R. as required under Section 154(1) of the Code though a cognizable offence was disclosed by the witnesses. In that view of the matter, suspicion arises in the mind regarding the prosecution version. Had the Officer-in-charge recorded the version of the witnesses which was first stated before him that might have been unfavourable to the prosecution. So a written report was accepted on the next day. From all these circumstances suspicion arises in the mind as to whether the prosecution case as stated is true. In such circumstances, the petitioners are entitled to benefit of doubt. In that view of the matter, I acquit all the petitioners on benefit of doubt.

7. In the result, the Criminal Revision is allowed.