O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2015

(*JUNE*)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY
MONTHLY REVIEW OF CASES ON CIVIL, CRIMINAL & OTHER LAWS, 2015 (JUNE)

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2. Section 34 & 304-II

Jagtar Singh vs. State of Haryana.

R.K. AGRAWAL & ABHAY MANOHAR SAPRE, JJ.

In the Supreme Court of India

Date of Judgment – 19. 06. 2015.

Issue

Application and sentencing Section 34 & 304-II.

Relevant Extract

Harwant Singh/Harbans Singh, (PW-3)-first informant and the accused persons are related to each other. Kapoor Singh (since deceased), father of PW-3 was having three brothers, namely, Amar Singh, Gurnam Singh and Surinder Singh. The accused persons-Ajaib Singh and Jagtar Singh - the appellant herein are sons of Gurnam Singh. Amar Singh and Gurnam Singh have expired. The family of these persons owned extensive agricultural land. The forefathers of the parties had, therefore, partitioned the agricultural land verbally amongst the family members and accordingly all sharers were cultivating their respective share.

In the year 1991, the appellant-accused and his brother raised a grievance to PW-3 that the land which was allotted to them was not of good quality. PW-3, acceded to their request and exchanged his land with the accused persons. The parties accordingly executed the exchange deed on a written document before the Panchayat in relation to exchange of lands. However, the girdawari in respect of the exchanged land remained unaltered and both the parties continued to cultivate their exchanged land. PW-3 then made improvements in the land which was in his possession by investing his money and labour.

On finding that the land had been improved by PW-3, the appellant and his brother raised a demand to reverse the exchange. On noticing that this might lead to a dispute, PW-3 applied for correction of the girdawari entries in revenue records. The Tehsildar, Nilokheri on 31.07.1996, visited the spot to enable him to pass appropriate orders on adjudication of the application.

On 20.09.1996, when PW-3 went to the Court to attend the proceedings, his uncle Surinder Singh and Gurmeet Singh, son of Amar Singh also accompanied him. The Tehsildar passed the order in favour of PW-3. At about 5.15 p.m., when they were coming out of the office of the Tehsildar, the appellant and his brother came there and caught hold of PW-3 and said that the verdict of the revenue officer is wrong and, therefore, they would not allow him to enter the land in question. When Surinder Singh tried to intervene, Jagtar Singh, the appellant-accused herein caught hold of the beard of Surinder Singh and pulled him down on the ground and hit him on his head 2-3 times by hand. Due to injuries received, Surinder Singh became unconscious. PW-3 and his cousin-Gurmeet Singh then tried to catch hold of the accused persons but they managed to run away from the spot. Both of them then took Surinder Singh to the nearest hospital at Nilokheri but in midway, he died. Thereafter, PW-3 lodged an FIR bearing No.404 dated 20.09.1996 at P.S. Butana, Dist. Karnal under Section 302/341/34 IPC of the incident.

After investigation, on 07.10.1996, charge sheet against the accused persons, namely, Jagtar Singh-appellant (accused) herein and Ajaib Singh, was filed under Section 302/341/34 IPC.

Having heard learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the appellant-accused.

The High Court dealt with the case of appellant herein for holding him guilty as under: "The same is, however, not true in case of appellant Jagtar Singh. There is clear, clinching and unambiguous evidence on the record, in the statements of PW-3-Harbans Singh and PW-4 Gurmeet Singh to the effect that it was he who caught hold of Surinder Singh, deceased by latter's beard and hair, felled him upon ground and hit his head twice or thrice against ground. It was on account of that hit that Surinder Singh became unconscious on the spot.

Though appellant Jagtar Singh did make an attempt, abortive though, to raise above indicated plea (in the statement under Section 313 Cr.P.C.) but that plea does not stand proved on record. If there was an iota of truth in the above noticed plea of appellant Jagtar Singh (to the effect that matter was under discussion in the presence of certain common relations), there is no reason why he could not have named them or examined at least one or two out of them at the trial. Their testimony could be supportive of the plea raised by Jagtar Singh appellant at the trial."

We have also on our part perused the ocular evidence and having so perused are inclined to concur with the aforementioned view of the High Court calling no interference.

The evidence, in our opinion, does prove that it was the appellant who took the lead, caught hold of deceased by his hand, pulled him down to the ground and hit him on his head. The injury in the head resulted the deceased first becoming unconscious and later succumbed to it. The ocular evidence on this issue was properly appreciated by the trial Court and the High Court for holding the appellant guilty for committing the offence in question and hence it deserves to be upheld.

We have not been able to notice any kind of inconsistency or exaggeration in the evidence adduced by the prosecution on this material issue so as to disbelieve the evidence of eyewitnesses account and hence we concur with the finding of the High Court quoted above and reject the submission of the learned counsel for the appellant.

In the light of these facts, which are duly proved by the prosecution with the aid of their eyewitnesses, we find no good ground to differ with the finding of the High Court and accordingly hold that there was a motive to commit the offence. We accordingly hold so.

We are not impressed by the submission of the learned counsel for the appellant when he urged that since the co-accused was acquitted of the charges, hence the benefit of the same be also extended to the appellant.

As held above, the evidence on record in no uncertain terms proves that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for committing the offence in question. When the evidence directly attributes the appellant for commission of the act then we fail to appreciate as to how and on what basis we can ignore this material evidence duly proved by the eyewitnesses. Such was not the case so far as co-accused is concerned. The prosecution witnesses too did not speak against the co- accused and hence he was given the benefit of doubt. It is pertinent to mention that the State did not file any appeal against his acquittal and hence that part of the order has attained finality.

Now coming to the issue of conviction and sentence awarded under Section 304 Part II of IPC to the appellant, though arguments were advanced by the learned counsel for the appellant for its conversion under Section 323/325 of IPC or in the alternative to reduce the quantum of sentence to the extent of appellant already undergone i.e. three years, we are not inclined to accept the submission of learned counsel even on this issue.

In our considered opinion, having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death - shock and hemorrhage, the Courts below were justified in bringing the case under Section 304 part II instead of bringing the same either under Section 302 or/and Section 304 Part I. It is apart from the fact that the State has not

filed any appeal against the impugned order seeking conviction of the appellant under Section 302 or under Section 304 Part I or even for enhancement of punishment awarded to the appellant under Section 304 Part II.

In any event, we find that punishment of five years appears to be just and proper. It could have been even more because eventually the incident resulted in death of a person though the appellant did not intend to cause death of deceased. In the absence of any cross appeal by the State on the issue of quantum of sentence, we do not therefore consider it to be proper to go into the question of adequacy of sentence in this appeal filed by the accused.

In the light of foregoing discussion, we find no merit in this appeal which thus fails, and is accordingly dismissed. As a result, the conviction and sentence awarded to the appellant by the courts below is upheld.

The appellant is accordingly directed to undergo remaining period of sentence. If the appellant is on bail, his bail bonds are cancelled to enable him to surrender and undergo remaining period of sentence. A copy of the order be sent to concerned court for compliance.

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3. Section 376(2) (g)
Bhujabal Bagh @ Baghel Vs. State of Orissa.
S.K. SAHOO, J.
In the High Court of Orissa
Date of Judgment- 29.06.2015
Issue

Punishment for gang rape.

Relevant Extract

The prosecution case as per the first information report lodged by Bayaj Nanda (P.W.1) before officer-in-charge, Khariar Police Station is that on 19.11.1998 at about 11.00 a.m. while the informant was ironing dresses in his laundry, at that time his elder brother's wife Satyabati Nanda (P.W.3) rushed to him and intimated that some time ago, the victim had been gang raped by the appellants Nilu Das, Samuel Nag and the servant of Nilu Das. The victim happened to be the daughter of P.W.3 Satyabati Nanda and Sana Nanda, the elder brother of the informant. Hearing about the incident, P.W.1 rushed to the house and found the victim crying. On being asked by the informant, the victim stated that on that day at about 10.00 a.m. while she was proceeding towards Leherapali, the appellants Nilu Das, Samuel Nag and the servant of Nilu Das forcibly lifted her to the house of appellant Nilu Das and made her naked and out of the appellants, appellant Samuel Nag sat on her chest and pressed her on the ground. She further stated that the servant of appellant Nilu Das caught hold of her two legs and thereafter the appellant Nilu Das himself became naked and committed rape on her forcibly. After committing the crime, the appellants left the spot and the victim returned home crying and narrated the incident before her mother. As the condition of the victim

became serious, she was taken to Mission Hospital for treatment by her mother and the informant. At the time of lodging FIR, the victim was under treatment.

The learned trial Court vide impugned judgment and order dated 3.8.2000 held that the prosecution evidence is clinching and convincing and there is no reason to disbelieve the prosecution evidence and to place reliance on the evidence adduced by the defence. The learned trial Court further held that on overall consideration of the evidence on record, there is no doubt that on 19.11.1998 the victim was subjected to sexual assault by appellant Nilu @ Sanjaya Das against her will and consent and the other two appellants had helped the appellant Nilu to commit the offence of rape and accordingly held all the appellants guilty of the offence under section 376(2)(g) Indian Penal Code and sentenced them as noted above.

Being dissatisfied with the impugned judgment and order of conviction, the instant appeals have been filed by the convicted accused-appellants.

The first query was that whether the victim girl had been raped? The doctor replied that it cannot be said that the victim was not raped since the injury in the vagina was within 48 hours. The second query was made as to whether any sign and symptom of rape were seen on the person of the victim? The doctor replied that from the sign and symptom, it cannot be said that the victim was not raped. The third query was that as to whether the hymen of the victim was ruptured due to such rape on her? The doctor replied that the hymen of the victim

was ruptured radically at 12 O' clock and 9 O' clock position with congested fourchette which suggested that she was subjected to assault which was clarified to be sexual assault. The fourth query was that whether the victim girl had sustained injuries on her genital area? The doctor replied that except the injury on hymen, there was no other injury on the genital area. The fifth query was that whether injuries were available on the neck, chest, wrist, legs waist, and back of the victim due to violence and nail marks etc.? The doctor replied that except the injury on the neck, no other injury was found on the face, breast and abdomen. The sixth query was that whether any foreign body like blood, semen, saliva, hairs etc. were available on the private parts and other parts of the body or on the seized wearing apparels? The doctor replied that there was no sign of blood stain or semen on the wearing apparels or on the body of the victim.

The doctor has stated that she had not found any spermatozoa in the private part of the victim and injury on the hymen as well as neck can be self-inflicted. She has further stated that she found no injury on the back, buttock or thigh of the victim and the injury found on the hymen of the victim can also be possible on consented sexual intercourse.

On the overall analysis, I am of the view that there is no inherent improbabilities and infirmity in the evidence of the victim or other evidence adduced by the prosecution which lends credibility to the statement of the victim. The manner in which the appellants have acted in concert and committed the offence, the conduct of the victim after the occurrence in disclosing before her mother, the prompt

lodging of the FIR, the seizure of torn salwar of the victim coupled with the medical evidence clearly establish the offence against the appellants. The learned trial Court seems to have correctly assessed the evidence and there is no flaw in the impugned judgment and order of conviction of the appellants under sections 376(2)(g) Indian Penal Code and accordingly I have no hesitation to give stamp of approval to the same.

The learned trial Court has imposed the minimum sentence prescribed for such heinous offence. The measure of punishment in a case of rape depends upon the conduct of the accused, the state and age of sexually assaulted female and the gravity of the criminal act. The learned trial court considered all the relevant facts and circumstances bearing on the question of sentence and proceeded to impose the minimum sentence commensurate with the gravity of the offence. Though the section provided for imposition of lesser sentence than ten years for any adequate and special reasons but the learned trial court found no extenuating or mitigating circumstances available on the record to justify imposition of any sentence less than the prescribed minimum to the appellants. To show mercy in a case of heinous crime like this would be travesty of justice and the plea of leniency would be wholly misplaced.

Consequently, the impugned judgment and order of conviction of the appellants for the offence under section 376 (2) (g) Indian Penal Code and the sentence of R.I. for a period of ten years and payment of fine of Rs.10,000/- each, in default of payment of fine to undergo

further R.I. for a period of one year as was imposed by the learned trial Court is hereby confirmed.

Accordingly, the appeals being devoid of merit stand dismissed. As it appears that the appellant Sanjaya Das @ Nilu and Samuel Nag are on bail granted by this Court during the pendency of the appeal. Their bail bonds stand cancelled and they are directed to surrender forthwith before the learned Trial Court within one week to serve out the remaining period of their sentence, failing which the learned trial Court shall take appropriate steps for their arrest. So far as the appellant Bhujabal Bagh @ Baghel is concerned, though he was on bail during trial but after the pronouncement of the judgment on 3.8.2000 by the learned trial Court, he was taken into custody and he was not released on bail during pendency of Jail Criminal Appeal No.43 of 2002. Thus he has already undergone the sentence imposed by the learned trial Court which is confirmed by this Court. If the appellant Bhujabal Bagh @ Baghel has not been released from jail custody in the meantime, he should be released forthwith, if his detention is not required in any other case.

Before parting, I would humbly say that rape is not the fault of the victim. It is a crime of physical and psychological violation. The after effects are the nightmare, sleeplessness, depression, agitation, irritation with sudden outburst of anger. The victim carries the traumatic experience throughout her life. Rape is an outrage that cannot be tolerated in a civilized society. Lower Court's records with a copy of this judgment be communicated to the learned trial Court forthwith for information and necessary action.

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4. Sections 366 and 376(2) (g)
Bikram Rout @ Baban Vs. State of Orissa
S.K. SAHOO, J.
In the High Court of Orissa
Date of Judgment- 22.06.2015
Issue

Jurisdiction of conviction for rape.

Relevant Extract

The factual matrix of the prosecution case, eschewing unnecessary details and describing briefly, as per the first information report (Ext.4/1) lodged by the victim (P.W.23) before officer-in-charge, Jajpur Road Police Station is that on 9.10.2002 during the evening hours at about 6.00 p.m. while the victim was returning home after finishing cooking in the house of Dr. Hari Prasad Pati, the appellant and co-accused Natia Rout @ Danei and two of their associates caught hold of the victim from her back near a mango tree situated in village Mathagadia and gagged her mouth. The victim was assaulted by fist blows and slaps and taken in a car towards some unknown destination. The victim lost her sense and when she regained her sense, she found herself lying on a hill situated near Kabatabandha and four persons were sitting by her side and consuming liquor. Before the victim could make any query, she was pressed on the ground by two persons and thereafter the appellant and all his associates committed rape on her one after another. The victim became senseless again and towards dawn when she regained sense, she found that nobody was present near her. An old man of the nearby village came near the victim and looking at her alarming condition, took her to Kabatabandha Hospital

and after ascertaining her identity there, contacted her brother-in-law who was staying at Jajpur Road. The brother-in-law of the victim took her back but thereafter she was threatened not to report the matter in the Police Station otherwise she would face dire consequence. The victim was very apprehensive in view of the previous conduct of the accused persons and accordingly could not report the matter in the Police Station even on the next day of occurrence.

The victim lodged a written report on 11.10.2002 at Jajpur Road Police Station which was scribed by co-villager Fakira Behera as per her instruction and the same was treated as FIR by P.W.25 Sanatan Sahu, Sub-Inspector of Police attached to Jajpur Road Police Station in absence of the officer-in-Charge.

As it appears that the victim was a widow. The victim has stated that prior to the occurrence, the appellant had taken her to Cuttack and Puri and snapped photos with her, of course she has stated that the same was done forcefully. The defence has proved the photographs of the appellant and the victim as Exhibits A, B, C and D. The victim admits in her evidence that in the photograph Ext.A, she had posed in the lap of the appellant and in Ext.C, her photograph with the appellant was taken while taking bath at Puri sea beach. She has further stated that both of them returned back to their village from Puri on the same day. She further admits that the appellant was not married when she was taken to Puri. Though the victim has denied the specific defence suggestion that she had love affairs with the appellant prior to the occurrence and moved together to different places including Puri but the evidence of the victim coupled with the admitted photographs

proved by the defence and the manner in which the photographs were taken clearly indicates that the victim and the appellant were very close to each other and there was love relationship between them.

The learned trial Court has accepted the testimony of the victim in spite of several infirmities in her evidence. There can be no iota of doubt that on the basis of sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based inasmuch as the evidence of the prosecutrix is more reliable than that of an injured witness. It is also the settled principle of law that corroboration as a condition precedent for judicial reliance on the testimony of the prosecutrix is not the requirement of law but a guidance of prudence under the given circumstances. In the circumstances of the present case, in my humble opinion, the impugned judgment indicates an impropriety of approach of the trial Court to the whole issue. The forceful kidnapping of the victim and assault on her by slaps and fist blows inside the car as well as her evidence that she was made complete naked while she was gang raped on the hill and that she was struggling all through lying on the ground by moving her limps during the commission of rape is falsified by the medical evidence. The medical evidence in the scenario gains utmost significance as the doctor has categorically stated that after examining the victim, he had found no injury on her private part or on any other portion of the body. The first government doctor who examined her at Kabatabandha PHC on 10.10.2002 has not stated that the victim disclosed anything before him regarding the alleged

kidnapping or commission of rape. The delay in lodging FIR, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. I am of the view that the testimony of the victim does not inspire confidence and it is not of such quality upon which reliance can be placed. The circumstantial evidences also do not lend support to the statement of the victim. Accordingly, I am of the view that the learned trial Court has erroneously convicted the appellant for the alleged offences.

In the ultimate analysis, I am of the opinion that the prosecution has miserably failed to establish the charges under sections 366 and 376(2)(g) of Indian Penal Code against the appellant. Accordingly, the impugned judgment and order of conviction is set aside and the appellant is acquitted of the charges under sections 366 and 376(2)(g) of Indian Penal Code. As it appears, the appellant was directed to be released on bail by this Court vide order dated 23.12.2008. It is not clear as to whether the appellant had been released from jail custody or not. If not released, he should be set at liberty forthwith if his detention is not required in any other case. If he has been released by the learned trial court by virtue of the order of this Court on furnishing bonds then he is discharged from liability of his bail bond. The personal bond and the surety bond, if any, stand cancelled. The JCRLA is allowed.

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5. Sections 294/323/324/34
Section 438 of Cr.P.C.
Samrat Panda and another vs. State of Odisha.
DR. D.P. Choudhury ,J.
In the High Court of Odisha
Date of Judgment: 10.06.2015
Issue

Grant of anticipatory bail in case of Bailable Offences.

Relevant Extract

The case of the prosecution in short is that on 26.6.2014 at about 6.00 P.M., petitioners called the informant to village Danda and took him to the back side of the house. There they abused in obscene language after which the elder brother of informant reached there. It is alleged inter alia that the petitioners also assaulted the informant by lathi. Petitioner no.1 put a knife on the neck of the informant and petitioner no.2 bite the back of the informant causing bleeding injury on his person. Hearing his cry, witnesses came to his rescue. Thereafter F.I.R. was lodged, investigation went ahead. Case under aforesaid sections is registered against the petitioners. Petitioners apprehend arrest in view of the F.I.R. lodged against them.

Learned Addl. Standing Counsel for the State submitted that as the offences are bailable in nature, the provisions under section 438 Cr.P.C. do not apply to the case of the petitioners. Therefore, he submitted to reject the prayer for grant of anticipatory bail.

Learned counsel for the petitioners further submitted that the offence under section 324 I.P.C. is non-bailable in nature in view of the amendment of Cr.P.C. in 2005 for which necessary order may be passed to grant pre-arrest bail to the petitioners.

No doubt provisions under section 438 Cr.P.C. apply to the non-bailable offences. On the otherhand the person being accused of non-bailable offence, can move the anticipatory bail. The offences under sections 294/323 I.P.C. are undoubtedly bailable in nature. So far as the offence under section 324 I.P.C. is concerned, it is bailable in nature. By virtue of amendment of Cr.P.C. in 2005, it became non-bailable in nature. But the notification for amendment has not been given effect to as submitted by learned Additional Standing Counsel for the State. In this regard this Court in the case of Janmejaya Sahu and others v. State of Orissa, reported in (2015) 60 OCR 577 discussed all the relevant notifications and finally His Lordship has been pleased to observe that the nature of offence under section 324 I.P.C. being unamended due to notification in this regard having not come into force so far, continued as bailable offence in the text book.

Since all the offences including the offence under sections 324/34 I.P.C. as alleged against the petitioners are bailable in nature, the petition under section 438 Cr.P.C. is not maintainable. Therefore, I am not inclined to release the petitioners on anticipatory bail. Accordingly the ABLAPL is dismissed as not maintainable.

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6. Article 226 of the Constitution,
Orissa Prevention of Land Encroachment Act, 1972
Institute of Rural Development, Bari and others Vs. State of Orissa and others.
DR. A.K. RATH, J.
In the High Court of Orissa.
Date of Judgment - 22.6.2015
Issue

Right of encroachers and jurisdiction to initiate proceedings under Orissa Prevention of Land Encroachment Act, 1972.

Relevant Extract

The short facts of the case of the petitioners are that the petitioner no.1 is a social organization of Bari Block consisting of some ex-Army Personnel, Freedom Fighters and Social Workers as well as Educationist of the locality. The same has been formed with the sole intention of undertaking various developmental works in different spheres of life. Petitioner nos. 2 to 10 are the members of the said organization. During pre-Independence era, an area of Ac.0.82 decimals appertaining to sabak khata no.667, sabak plot no.1185 under Bari Tahasil was donated free of cost to the State Government by the ancestors of petitioners 5 to 10. Thereafter, a mound was built up for providing shelter to the flood affected persons of Rampa and Bari as well as the surrounding areas. Since then, the place is known as Bari Mound. In the year 1928, the State Administration handed over the plot to the Collector, Cuttack. Pursuant to the order no.3710 dated 14.4.1977 of the A.D.M., Cuttack, the S.D.O., Jajpur on 27.5.1977 transferred the land to Rampa G.P.O., vide Annexure-1, with certain terms and conditions. A Junior Basic School is functioning over the said plot. A portion of the same is also

earmarked for bus stand. A weekly market is functioning twice in a week in the said area. There are 40 to 50 daily shops around the market. The further case of the petitioners is that in the year 1981, Rampa G.P. proposed to auction the hat. Since there was a public agitation, the hat could not be put to auction. While the matter stood thus, the Tahasildar, Bari-opposite party no.3 issued notice of eviction to the petitioner nos.11 to 21 and others, vide Annexure-2 series. With the aforesaid factual scenario, the present writ application has been filed.

Admittedly, the land belongs to the Government. No person has right to encroach upon the Government land. The land in question was transferred to Rampa G.P.O. by the A.D.M., Cuttack pursuant to the order of the Collector, Cuttack. A weekly hat is also functioning over the land in question twice in a week to cater the needs of the locality. Against the unauthorized encroachment made by the encroachers, the opposite party no.3 has rightly initiated the proceedings under the O.P.L.E. Act and issued notice of eviction. As would be evident from paragraph-9 of the counter affidavit, due to unauthorized encroachment of 34 encroachers, who have put their cabins and constructed permanent structures, the common people do not find place to sit over the plot to sell their agricultural produces, as a result of which, small vendors sit on the road side for which road is blocked and creates traffic problem. The submission of the learned counsel for the petitioners that the terms and conditions of the deed of transfer have been violated, is of no avail. The same is between the concerned G.P. and the State Government. In the event the terms and conditions of the deed of transfer is violated, the Government may take appropriate

action against the G.P.. So far as the contention of the learned counsel for the petitioners that the small traders will face a lot of difficulty if they are evicted from the land in question, this Court is of the view that the encroachers have no right to put cabin or make permanent structure over the Government land. Because of the action of the small group of persons, a large section of the society suffers.

Judging the case from any angle, this Court is of the considered opinion that the writ application, sans any merit, deserves dismissal. No costs.

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Orissa Industrial Infrastructure Development Corporation Act, 1980

7. Section 2(h) (i),14,15 &31 of OIIDCO Act
Kalia Hati & Others vs State of Odisha & Others
P.K.MOHANTY, J, DR. A.K. RATH & BISWAJIT MOHANTY, JJ.
In the High Court of Orissa.
Date of Judgment -30.06.2015
Issue

Conflicting opinion on the scheme of Orissa Industrial Infrastructure Development Corporation Act, 1980 in land acquisition.

Relevant Extract

This Full Bench has been constituted on the basis of a reference made by a Division Bench of this Court by order dated 05.05.2015 to answer the following question:

"Whether in the background of the entire Scheme of OIIDCO Act, 1980 would it be proper to say that as per the said Act, IDCO can

cause acquisition of land only for the purpose of establishing industrial estate/industrial area and for no other purpose?"

The above reference has been made in view of the conflicting views expressed on the aforesaid issue by the two Division Benches of this Court in Rajkumar Gunawant & another v. State of Orissa & others, 2012 (Sup-II) OLR 349 and Sachalabala Sethy & others v. Chief Secretary & Chief Development Commission, Odisha & others, 2014 (II) ILR -CUT- 64.

In Rajkumar Gunawant (supra) a Division Bench of this Court held that on a reading of the objects and reasons of the preamble of the Orissa Industrial Infrastructure Development Corporation Act, 1980 (hereinafter referred to as "the Act 1980") and definitions of "Industrial Area" and "Industrial Estate" as defined in Sections 2(h) and 2(i) and provision of Sections 14, 15 and 31 of the said Act, the Corporation has to acquire land for any "industrial area" to form "industrial estate". Thus the Industrial Development Corporation of Orissa (hereinafter referred to as "the IDCO") can only cause acquisition of land for an "industrial area" in which an "industrial estate" can be established. In Sachalabala Sethy (supra) a coordinate Bench of this Court without referring to Rajkumar Gunawant came to hold that sub- section (i) of Section 14 of

"the Act 1980" is independent and in no manner limited by the illustrations contained in sub-section (ii) of Section 14.

The basic approach to the interpretation of a statute has been succinctly put in the case of Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa, AIR 1987 SC 1454. Paragraph-9 of the judgment is quoted hereunder: ".....A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute ? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed.

The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation."

All provisions of a statute have to be read harmoniously and any interpretation has to be ex viseribus actus. In Punjab Beverages Pvt. Ltd. v. Suresh Chand, AIR 1978 SC 995, the Supreme Court quoted with approval the immortal words of Lord Coke that "it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expressed the meaning of the makers'.

In the backdrop of the aforesaid well settled principles with regard to the statutory interpretation, the provisions of "the Act 1980" quoted supra may be examined.

Section 14(i) of "the Act 1980" deals with functions of the Corporation. It provides that the functions of the Corporation shall be generally to promote and assist in the rapid and orderly establishment, growth and development of industries, trade and commerce in the

State. Section 14(ii) starts with "in particular, and without prejudice to the generality of Clause (i)". Thereafter it provides various particular purposes for which acquisition can be made.

In Shiv Kirpal Singh v. Shri V. V. Giri, AIR 1970 SC 2097, the Supreme Court relying on the decision of the Privy Council in the case of King Emperor v. Sibnath Banerji, AIR 1945 PC 156 held that when the expression "without prejudice to the generality of the provisions" is used anything contained in the provisions following the said expression is not intended to cut down the generality of the meaning of the preceding provision.

From the aforesaid, the conclusion is irresistible that sub- Section (i) of Section 14 of "the Act 1980" is independent and is couched in broad terms. The same cannot be in any manner whittled down by the language of sub-section (ii) of Section 14 of "the Act 1980".

Thus, the observation made in Rajkumar Gunawant (supra) that the IDCO can only cause acquisition of land for an "Industrial Area" in which an "Industrial Estate" can be established is per incuriam. The functions and general powers of the Corporation as enumerated in Sections 14 and 15of "the Act 1980" cannot be cabined, cribbed or confined by the language used in Section 14(ii) of "the Act 1980". The reference is answered accordingly. The Registry is directed to place the matter before the assigned Bench.

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8. Section.3 (a-1) *O.P.L.E. Act 1972*
Article 226 of Constitution of India
Sailendri Nayak and others Vs. State of Orissa and others.
DR. A.K. RATH, J.
In the High Court of Orissa.
Date of Judgment- 23.06.2015
Issue

Legality and propriety of the order of settlement of Land as per O.P.L.E .Act 1972.

Relevant Extract

Bereft of unnecessary details, the short facts of the case of the petitioners is that opposite party no.3 styling himself as a landless person approached the opposite party no.2 for settlement of Ac.1.00 decimal of land appertaining to khata no.158, plot no.12/688 of mouza Kumunia in his favour. Accordingly, an Encroachment Case No.1/98/95-96 was initiated against him by the Tahasildar, Anandpur, opposite party no.2. After receipt of report from the Revenue Inspector, the opposite party no.2 settled the land in favour of opposite party no.3permanently on raiyati status on 9.10.1996. Challenging, inter alia, the order of settlement dated 9.10.1996 passed by the opposite party no.2, the petitioners, who are villagers, filed appeal before the Sub-Collector, Anandapur, which was registered as Encroachment Appeal No.12/97. By order dated 30.4.1998, the Sub-Collector, Anandpur allowed the appeal, set aside the order of settlement of land in favour of opposite party no.3 and remitted the matter back to the opposite party no.2 for de novo enquiry. Thereafter, the opposite party no.3 filed revision, being Encroachment Revision No.5/1998, before the Additional District

Magistrate, Keonjhar, opposite party no.1 assailing the order passed by the Sub-Collector, Anandpur. By order dated 7.6.1999, opposite party no.1 allowed the revision. With the aforesaid factual scenario, the petitioners have prayed to quash the order of settlement of land dated 9.10.1996 passed by the Thasildar, Anandpur, opposite party no.2.

Landless person is defined in Section 3(a-1) of the O.P.L.E. Act, 1972. The same is quoted hereunder:-

"[(a-1)"Landless person" means a person, the total extent of whose land excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf;]"

The standard acre is defined in Section 2 of the Orissa Land Reforms Act, 1960, which reads as follows:-

"2-Defination - xxx xxx xxx

(30) 'standard acre" means the unit of measurement of land equivalent to one acre of Class I land, one and one-half acres of Class II land, three acres of Class III land or four and one-half acres of Class IV land."

Explanation – For the purposes of conversion, one acre shall be equal to 0.4047 hectare .

Before settlement, embarking upon an enquiry for settlement of land in favour of a person a duty is cast upon the Tahsildar to find out

as to whether the total extent of land of a person excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and the total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify therein. Further the Tahasildar has to follow the procedure as envisaged under the O.P.L.E. Act and Rules framed thereunder. All these aspects have been brushed aside by the opposite party no. 2. The opposite party no.1 in a mechanical manner affirmed the order of the Tahasildar-opposite party no.2.

In view of the same, the order of settlement of land dated 9.10.1996 passed by the opposite party no.2 in O.P.L.E. Act and affirmed by the opposite party no.1 in Encroachment Revision No. 5 of 1998 are hereby quashed. The matter is remitted back to the Tahasildar, Anandpur, opposite party no.2 for de novo enquiry. The opposite party no.2 is directed to conclude the proceedings within six months. The writ application is allowed.

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