

**(2014) 03 OHC CK 0002**

**In the Orissa High Court**

**Case No : Criminal Appeal No. 271 of 1991**

Ambika Prasad Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

**Date of Decision : 20-03-2014**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 307, 341

**Citation :** (2015) 119 CLT 292 : (2015) 2 Crimes 202 : (2015) 1 ILR 120 :  
(2015) 1 OLR 263

**Hon'ble Judges :** B.P. Ray, J

**Bench :** Single Bench

**Advocate :** S.K. Mund, P.P. Das and J.K. Panda, Advocates for the Appellant

## **Judgement**

B.P. Ray, J.—This appeal has been filed challenging the Judgment & Order Dated 10.10.1991 passed by the Learned Sessions Judge, Bolangir in Sessions Case No. 16 of 1991 convicting the Appellants under Section 307, IPC & sentencing each of them to undergo R.I. for four years. The prosecution case is that the informant - Manoj Kumar Swain had opened a grocery shop in Bolangir Town & the Appellants also owned a grocery shop. The parties had business transaction. A dispute arose over payment of dues. On 30.10.1990 morning in between 6.30 A.M. to 7.00 A.M., when the informant- Manoj Kumar Swain was proceeding to his grocery shop, near Mahadev Temple of Tulasinagar, the Appellants, who are brothers, suddenly appeared armed with a Gupti & a piece of iron rod & obstructed the informant. Appellant,. Ambika Prasad Mohanty dealt him blows by the Gupti. The other Appellant, Subrata Kumar Mohanty assaulted the informant by the iron rod, for which the informant was severely injured & fell down. The Appellants thinking that the informant was dead, left the place of occurrence. On these allegations, charges under Section 341 IPC for unlawful restraint & under Section 307 IPC for attempt to murder have been framed against the Appellants accused.

2. In order to prove the case, the prosecution has examined as many as seven

witnesses, out of whom, P.W. 1 is the informant, P.W.2 is an occurrence witness, P.Ws. 3 & 4 turned hostile, P.Ws. 5 & 6 are two Medical Officers & P.W.7 is the Investigating Officer. However, the defence did not examine any witness.

3. The Appellant-accused, who pleaded not guilty, rather complained that the informant took grocery articles worth Rs. 10,000 from them to open "his new shop & avoided to re-pay the amount & in order to escape from the liability, he lodged F.I.R. against them.

4. Learned Counsel for the Appellants vehemently urges that if the evidence of the witnesses is taken into consideration, the Appellants would be liable for acquittal of the charges levelled against them. He also submitted that the dispute is of the year 1990 & in the meantime more than twenty three years have passed & the Appellants are now more than fifty years of age.

5. Learned Counsel for, the State, on the other hand, contended that the sentence imposed on the Appellants by the Trial Court is just & reasonable & this Court should not interfere with the same. However, taking a lenient view of the matter & considering the fact that the incident has taken place more than twenty three years back, no useful purpose will be served best in sending the Appellants to custody at present. Following the decision in the case of Sarup Singh v. State of Haryana represented by the Home Secretary, (2009) 16 SCC 479, this Court is of the view that interest of justice would be best served if the substantive period of sentence is reduced to the period already undergone by the Appellants & a fine of Rs. 10,000 (rupees ten thousands) is imposed on them, as compensation to the injured informant-Manoj Kumar Swain or his legal heirs, as the case may be & further directing them to pay a sum of Rs. 1000 (rupees one thousand) to the Bolangir Bar Association & Rs. 1000 (rupees one thousand) to the State.

Ordered accordingly.

The aforesaid amount shall be deposited before the Learned Trial Court by the end of November, 2014, failing which the Judgment & order of conviction passed by the Learned Sessions Judge shall remain operative.

The Criminal Appeal is accordingly disposed of.