

(2002) 12 OHC CK 0025
In the Orissa High Court
Case No : Criminal Revision No. 672 of 1999

Asit Kumar Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 401
Penal Code, 1860 (IPC) — Section 324

Citation : (2003) 95 CLT 648 : (2003) CLT 538 (Suppl CrI) : (2003) 24 OCR 376 : (2003) 1 OLR 306 : (2003) OLR 538 (Suppl CrI)

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : Debasis Samal, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

P. K. Mohanty, J.—This revision is directed against the appellate judgment of the learned Sessions Judge, Cuttack confirming the conviction and sentence passed by the learned Assistant Sessions Judge, Cuttack holding the petitioner guilty of offences u/s 324, Indian Penal Code and Section 27 of the Arms Act, 1959 and sentencing thereunder.

2. The petitioner along with another was tried for commission of offences punishable under Sections 307/326/34, IPC and Section 27 of the Arms Act. On the basis of the FIR lodged by P.W. 7 (the injured, due to pistol shot injury on his belly) at the S. C. B. Medical College and Hospital, Cuttack on 14.10.1993 at about 10.00 P.M., Purighat P.S. Case No. 409 of 1993 was registered under Sections 307/ 326/34, IPC read with Section 27 of the Arms Act. The FIR story is that P.W. 7 Ananda Das, the injured-informant, earlier had informed the police regarding movement of one Anil Sen of his Sahi and his friends with pistols, the persons were arrested and pistols were seized from his friends and as such Anil Sen allegedly bore grudge against the informant. On 14.12.1993 at about 10.30 P.M., while the informant was purchasing cheese, Anil Sen along with two of his

friends came towards his house and Anil identified the informant and his house to his friends. After their departure, the informant had gone to Durga Mandap and came out wearing his sweater, he was seen by Anil and his two friends. Suddenly, one of the friends of Anil came near him and fired the pistols pointing to his belly. The informant, however, caught hold of one of the persons with the pistol, while Anil and others fled away. Hearing the sound of firing, some Sahi people came out, detained the accused-petitioner Asit and by then the informant fell down because of the injuries. The police after investigation, submitted charge-sheet under Sections 307/326/34, IPC and Section 27 of the Arms Act.

3. The prosecution has examined nine witnesses in all in support of its case. P.Ws. 1 and 2 are the witnesses to the seizure, P.W. 3 is the Assistant Director of State Forensic Science Laboratory, Bhubaneswar who had examined the seized pistol and P.W. 4 is the Scientific Officer of the District F.S.L., Cuttack who visited the spot after the occurrence and collected the materials. P.W. 5 is a post-occurrence witness who had reached the spot after hearing the sound and found his Sahi people by then had captured Asit and the injured-informant was lying on the ground. The injured-informant was removed to the S. C. B. Medical College & Hospital, Cuttack. P.W. 6 is another witness, who was near the spot while both the accused persons came to Durga Mandap and Asit fired the pistol at P.W. 7. P.W. 7 is the injured-informant. P.W. 8 is a post-occurrence witness and P.W. 9 is the Investigating Officer.

4. The learned Assistant Sessions Judge, Cuttack on elaborate discussion and appreciation of evidence found that the accused Asit Sahu, the petitioner had caused the injury on the person of P.W. 7 by firing from his pistol. However, the learned Trial Court acquitted accused Anil Sen since he was found to be present at the spot without playing any specific overt act. Basing on the evidence of P.Ws. 5, 6 and 7, the learned Assistant Sessions Judge held that accused Asit had fired from his country made pistol aiming at the belly of the injured-informant resulting in the injuries thereon in terms of the medical report. P.W. 3, the Assistant Director, S.F.S.L., Bhubaneswar had proved that the country made pistol with chamber for chambering a .315 calibre rifle cartridge, hammer action firing mechanism, trigger with trigger guard, metal plated stock was in efficient working order to discharge fatal bullets of .315 calibre. P.W. 4, the Scientific Officer of the District Forensic Science Laboratory, Cuttack had proved the seizure list Ext. 1/2 which contained a country made pistol with fire cartridge inside the barrel and a live cartridge and fired "sisha" seized by the Investigating Officer, P.W. 9 and other blood-stained lungi, sweater, hawani belonging to the victim. P.W. 9 also had seized from the custody of the accused a live cartridge. The injury report of the Doctor, who treated the injured at the hospital and his report is marked as Ext. 8, on admission disclosed a clean cut wound 1 cm diameter 4 cm. below in between depth upto peritoneum towards upper surface of urinary bladder and right inguinal region skin is inverted, bleeding blackened. Colour is signing, which is the wound of entry. Another wound clean cut 1 cm. diameter, 4 cm. depth skin is everted on the medical aspect of the right thigh.

The injuries were, however, reported to be simple in nature. The learned Assistant Sessions Judge, on the basis of the injury report in absence of any specific finding in it that the injury was on any vital part of the body and sufficient in course of nature to cause death, while acquitting the petitioner from the charges under Sections 307/326, IPC held him guilty u/s 324, IPC and Section 27 of the Arms Act and convicted him thereunder to undergo rigorous imprisonment for two years. The learned Sessions Judge, on appeal, has confirmed the order of conviction and sentence relying on and discussing elaborately, the evidence of the prosecution witnesses.

5. The learned counsel for the petitioner contends that the non-mention of the petitioner's name in the FIR as well as in the 161, Cr.P.C. statement is fatal to the prosecution case and the learned Courts below ought to have disbelieved the prosecution story. The further contention is that in absence of the test-identification parade and in view of the fact that P.W. 7 was not known to the petitioner earlier, his identification in the court ought not to have been believed and as such, the order of conviction was bad in law and liable to be set aside. The contention is also raised that in absence of specific evidence that the accused had possessed the pistol and had the intention to use the arm and in absence of any prior enmity, the learned Courts below ought to have disbelieved the prosecution story to record an order of conviction.

6. It is the settled position of law that the High Court would not interfere with the concurrent finding of the lower Courts by re-appreciating the evidence in its revisional jurisdiction, unless the concurrent findings are shown to be perverse or without evidence, or not tenable in law. The High Court would normally not set aside the order, simply because another view is possible or the High Court takes such a view. Both the Courts below, as discussed earlier, have made elaborate discussion in the judgments and have recorded the concurrent finding holding the petitioner guilty of the offences u/s 324, IPC and Section 27 of the Arms Act. The contention of the learned counsel that the evidence of P.W. 7 with regard to his identification of the accused in Court only, in absence of any test-identification parade, is of no avail since otherwise P.W. 6, who was present at the spot has categorically stated to have seen the accused firing a shot from his pistol at P.W. 7 causing the injuries, inasmuch as, he also caught hold of the accused-petitioner while the other accused fled away. P.W. 5 similarly has stated that hearing the sound when he came out of his house, he saw his Sahi people have captured the accused-petitioner and the injured was lying on the ground. The evidence of P.W. 7 has been thoroughly corroborated by the evidence of P.Ws. 5 and 6. The contention of the learned counsel that in absence of mens rea, the prosecution story is doubtful, is of no assistance to the accused-petitioner, because it is the prosecution case that the other co-accused, Anil Sen since acquitted, bore a grudge on P.W. 7, he having informed the police about possession of pistol and that he had identified the injured to his friends, the present petitioner and the other.

7. In any view of the matter, I do not find any cogent reason to interfere with the concurrent finding, of the Courts below holding the petitioner guilty of the offence. However, the learned counsel for the petitioner submits that the petitioner has been convicted for commission of offence u/s 324, IPC along with Section 27 of the Arms Act and he has already in custody for more than one year and, therefore, this Court may consider reduction in sentence.

The offence was committed in the year 1993 and in the mean time long years have passed. Keeping in view the nature and gravity of offence, the injury caused, the facts and situation of the case and that the petitioner is already in custody for little more than a year, I feel that it will not be in the interest of justice to send the accused-petitioner to jail to serve the balance sentence. In such view of the matter, I am inclined to reduce the sentence to the period undergone. It is ordered accordingly. The Lower Court records be sent back.