

(1959) 11 OHC CK 0016
In the Orissa High Court
Case No : Criminal Revision No. 97 of 1959

Bikal Mohanty

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 06-11-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 46
Penal Code, 1860 (IPC) — Section 224

Citation : (1960) 26 CLT 92

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : K.P. Acharya, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition, in revision, against an order of the Additional Sessions Judge of Cuttack maintaining the conviction of the Petitioner u/s 224 I.P.C. and reducing the sentence of imprisonment passed by the Magistrate, First Class, Jajpur, from one year's rigorous imprisonment to three months rigorous imprisonment.

2. The charge against the Petitioner was that on 18-4-1955, he used criminal force and resisted his arrest by some police constables who were armed with a warrant for his arrest. During the course of the resistance, an injury was caused to one of the constables, Batakrushna Panda, by the spade of the Petitioner. The said Batakrishna Panda was examined by the Medical Officer on 19-4-1955 and was found to have an incised wound skin deep on the right forearm, caused by a spade.

3. The main facts of the case are practically admitted. On 18-4-1955 two police constables, viz. Shribcharan Lenka (p.w. 2) and Batakrishna Panda (p.w. 3) "came to" the village of the Petitioner with a warrant of arrest for apprehending the Petitioner and 14 other persons. The Petitioner was sent for and the

constable (p.w. 3) read out the warrant of arrest and asked the Petitioner to submit to his custody and proceed to the police station. There was some sort of a scuffle soon afterwards in the course of which Batakrishna (p.w. 3) was injured as aforesaid.

4. There are conflicting versions as to how the injury on (p.w. 3) was caused. According to the two constables the Petitioner refused to accompany them to the police station and hence they wanted to handcuff him. Batakrishna Panda caught hold of his right hand, but the Petitioner snatched away his hand and attempted to give him a blow with his spade. The constable tried to avert the blow and in so doing got the injury on his right forearm. Subsequently, the other constable (p. w 2) managed to escape from the scuffle, reached the police station and lodged a report about the incident.

5. The Petitioner's version was that he expressed his willingness to accompany the constables to the police station and that he never assaulted the constables. He admitted having had a spade with him at that time as he was going to his field and added that as the constable wanted to snatch the spade forcibly from him has received the injuries It is obvious that the two versions put forward by the constable and the Petitioner respectively are not wholly true, and each side has tried to conceal the facts which might have been favourable to the other side. The lower appellate court therefore thought that it would be preferable to believe the evidence of (p.w. 7) who is a respectable man of the village and who appeared to have given a true version of what exactly happened. According to this witness, when the constable told the Petitioner that he must agree to be put under arrest and taken to the police station, the Petitioner replied that he had obtained a bail order from the Magistrate and that he was ready to accompany the constables to the police station, but refused to be arrested. The constables were not however satisfied with the assurance given by him and caught hold of his hand with a view to arrest him. Thereupon, the Petitioner snatched away his hand and attempted to assault the constable by raising his kudi (spade) which was then snatched away by the other constable. P.W. 7 further stated that while snatching away his hand from the custody of the constable the Petitioner again told him that he was always willing to go to the thana. His protest was against his being handcuffed.

6. On the facts as proved by p.w. 7, Mr. Acharya on behalf of the Petitioner urged that the constable Batakrishna Panda (p.w. 3) was not justified in attempting to handcuff the Petitioner and that consequently he had a right to resist such action by the constable. The law regarding the arrest, generally, of a person is laid down in Section 46 Code of Criminal procedure which says that a Police Officer shall touch or confine the body of the person to be arrested unless there is submission to the custody by word or action. Rules 241 and 242 of the Police Manual contain supplementary instructions regarding the circumstances under which handcuffs should be used against under-trial prisoners. It is clearly laid down in those rules that an under-trial prisoner classified as "superior" should

not be handcuffed and that in any case no under trial prisoner should be subjected to more restraint than is necessary to prevent his escape. But Clause (c) of Rule 241 recognises that in these matters the discretion of the Police Officer arresting the under trial prisoner must be left unfettered, and it should be left to that Officer to decide, from the circumstances of each case, whether handcuffs should be used or not.

7. In my opinion, there was no "submission to custody" by the Petitioner when the constable (p.w. 3) told him that he would be arrested and taken to the police station. It is true that (p.w. 7 stated that the Petitioner expressed his willingness to go to the police station, but the same witness also stated that the Petitioner refused to be arrested. Unless an accused agrees to be arrested there can be no submission to custody. The nature of the restraint put on his movements will depend on the discretion of the Police Officer concerned, and in view of the attitude of the Petitioner in refusing to be arrested, p.w. 3 perhaps felt that it would be unsafe to accept his oral assurance to the effect that he would peacefully accompany him to the police station, which was some miles away. There was always the possibility of the Petitioner running away en route thereby placing a serious responsibility on the constables. Under such circumstances, when p.w. 3 caught hold of the Petitioner's hand for the purpose of putting handcuffs, the Petitioner was not justified in raising his spade with a view to assault the constable.

8. But I do not think a very serious view should be taken of this incident. The Petitioner appears to be a fairly respectable man, having some landed property in the village, and it might not have been necessary to put him to the disgrace of being handcuffed and a mere threat to do so would have been sufficient. Apparently, when in the presence of the villagers an attempt was made to handcuff him the Petitioner appears to have lost his head and attempted to assault the police constable. Though I do not wish to minimise the seriousness of the Petitioner's action considering: all the circumstances, the status of the accused, and the fact that in respect of the main offence he has been given bail by the Magistrate, as stated by the Petitioner to the constable (p.w. 3) at that time, a substantive sentence of imprisonment may not be necessary. Moreover the injury on the constable was found to be light.

9. While therefore maintaining the conviction of the Petitioner u/s 224 I.P.C. I set aside the sentence of imprisonment passed on him and in lieu thereof, I direct that the Petitioner should pay a fine of Rs. 200/- (Rupees two hundred only). In default of payment of fine, he shall undergo rigorous imprisonment for three months. Subject to this modification in the sentence, the revision petition is dismissed.