

(2022) 06 OHC CK 0109
In the Orissa High Court
Case No : Criminal Appeal No. 289 Of 2019

Buluka Tadingi And Others		APPELLANT
	Vs	
State Of Odisha		RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 201, 302

Citation : (2022) 06 OHC CK 0109

Hon'ble Judges : Dr. S. Muralidhar, CJ;B. P. Routray, J

Bench : Single Bench

Advocate : Devashis Panda, J. Katikia

Final Decision : Disposed Of

Judgement

I. A. No.972 of 2021

1. This is an application filed by Appellants/ Applicants Nos.1,2,6,7,8,10,12,13 and 14 seeking enlargement on bail during pendency of the present appeal, which is directed against the judgment dated 24th January, 2019 passed by the Additional Sessions Judge, Rayagada in C.T. No.33 of 2018 convicting the Appellants for the offences punishable under Sections 147, 148, 302, 201 read with Section 149 IPC. The Petitioners have been sentenced to imprisonment for life for the offence punishable under Section 302/149 IPC and the sentences for the other offences have been asked to run concurrently.

2. According to the prosecution, the deceased was suspected by the accused of practicing sorcery and was therefore attacked by them at around 9 PM in the night of 18th November, 2017.

3. Further, this is a case of corpus delicti as only 1 to 1.5 feet of the dead body was discovered on the succeeding day in the graveyard in a burnt condition.

4. As it transpires at the trial, the independent prosecution witnesses turned hostile except P.W.2, who happened to be the wife of the victim. A perusal of her

deposition shows that she was returning to the village with her husband (the deceased) at around 9 PM on 18th November, 2017 when the accused Gumpa stated to have come in front of them and wrongfully restrained them. She further stated that at the time accused Dandasa assaulted the deceased by means of a lathi on his head and that "immediately the other accused persons who were also present there started attacking my husband by means of lathis". She claims to have run to her house to inform the brother in law of the incident and when they returned, they found her husband was missing. It is only on the next date that they found the half burnt body in the graveyard. She claims to have identified all the accused by means of a torch light that she was carrying.

5. What is interesting that in the examination of the I.O. (P.W.19), it emerges that during investigation she did not inform him of accused Dandasa assaulting her husband by means of a lathi. Secondly it emerges that she did not actually see the assault of her husband by the remaining accused leading to his death as by the time she returned to the spot, the husband and the other accused were all missing. Therefore, she was not aware which accused assaulted the husband in what manner.

6. The further factor to be noted is that there was no scientific evidence to back up the case of the prosecution that the skull and bones found on the following day at the graveyard were actually of the deceased husband of P.W.2.

7. It may be noted here that the remaining accused have already been enlarged by this Court on bail by its order dated 29th November, 2019.

8. This Court has heard the submissions of Mr. Devashis Panda, learned counsel for the Appellants-Petitioners and Mr. J. Katikia, learned Additional Government Advocate for the State.

9. It is not in dispute that barring P.W.2, there is no other prosecution witness supporting the case of the prosecution. Her evidence prima facie makes out an arguable case for the Appellants. Mr. Katikia does not dispute the fact that the Appellants have been in custody since November, 2017 i.e. almost five years now. It is unlikely that the presently appeal in its turn will be taken up for hearing in immediate future.

10. Keeping in view of all the above factors, the Court directs that during pendency of the appeal, the present Applicants i.e. Appellant Nos.1,2,6,7,8,10,12,13 and 14 be enlarged on bail subject to the satisfaction of the trial Court.

11. The interlocutory application is accordingly disposed of.

12. An urgent certified copy of this order be issued as per rules.

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