
(2006) 02 OHC CK 0049
In the Orissa High Court
Case No : CRLREV No. 295 of 2004

Butu @ Govinda Kamar and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2006) 1 OLR 149 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : A.K. Mishra, G.S. Panda, N. Mohanty and T. Mishra, for the Appellant; S. Pradhan, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Though the matter was listed for orders, on the consent of the learned Counsel for the parties, the same was taken up for hearing and final disposal.

2. This revision has been filed challenging the order dated 21.7.2003 passed by the learned C.J.M.-cum-Asst. Sessions Judge, Jeypore in S.C. No. 24 of 2001.

3. The said case was initiated on the basis of an F.I.R. filed on 5.11.2000 by the informant, P.W. 2, alleging that on the preceding night three known culprits entered into his house, assaulted him by dealing kick blows and by means of knife, terrorized the family members, procured the key of the Almirah and looted valuables like cash, gold ornaments, etc. In course of investigation, the accused-Petitioners were arrested.

4. In order to prove its case, prosecution has examined as many as 14 witnesses and exhibited several documents. Out of the said witnesses, P.W. 1 was the Police A.S.I., P.W. 2 was the informant, P.W. 3 is the daughter of the informant, P.W. 4 is the wife of the informant, P.W. 5 is a post-occurrence witness, P.Ws. 6

and 7 were witnesses to the seizure of articles u/s 27 of the Evidence Act, P.W. 8 was the scribe of the F.I.R., P.W. 9 was an occurrence witness, P.W. 10 is the doctor who examined the informant and others P.W. 11 was the Magistrate who conducted the T.I. Parade of suspects, P.W. 12 was the Investigating Officer, P.W. 14 was a witness to the seizure of currency notes, P.W. 13 however turned hostile.

5. The plea of the defence was complete denial. The defence did not examine any witness.

6. The trial Court after vivid discussion of the entire evidence and other materials, arrived at a conclusion that the prosecution succeeded to prove the guilt of the accused-Petitioners under Sections 395/397, I.P.C. It convicted the accused-Petitioners of the said charges and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- each in default, to undergo rigorous imprisonment for three months for commission of offence u/s 395, I.P.C. and also sentenced them to undergo rigorous imprisonment for seven years for commission of offence u/s 397, I.P.C. Both the sentences were directed to run concurrently.

7. Mr. Mishra, learned Counsel for the Petitioners assails the impugned order before this Court on the ground that the lower Court has not properly assessed the evidence and the conclusions arrived at based on surmises and conjectures. Mr. Pradhan, learned Counsel for the State, on the other hand, strongly repudiates the submission of Mr. Mishra. It appears that the order of conviction was assailed by the Petitioners before the learned Sessions Judge, Koraput, Jeypore, in CrI. Appeal No. 85 of 2003. The learned Sessions Judge also after going through the materials on record, refrained from interfering with the order of conviction and sentence.

8. I have heard learned Counsel for both parties at length and also perused the evidence both oral and documentary and find that the conclusions arrived at by the Courts below are in consonance with law and materials available. The reasoning are rational, prudent and reasonable. It is stated that the accused-Petitioners have already undergone a substantial portion of sentence inasmuch as out of seven years, they have already undergone sentence for a period of more than five years. Taking the aforesaid submission into consideration while upholding the order of conviction, I modify the substantive sentence imposed on the accused Petitioners and reduce the same to the period of imprisonment already undergone by them.

9. With the aforesaid modification of sentence, the Criminal Revision is disposed of.