
(2007) 08 OHC CK 0069
In the Orissa High Court
Case No : Criminal Appeal No. 241 of 1988

Ghanashysm Parida

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 332, 34
Probation of Offenders Act, 1958 — Section 4

Citation : (2008) 39 OCR 108

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : S.K. Mund, G.N. Mohapatra, S.K. Das and D.P. Das, for the Appellant;

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This Criminal Appeal has been filed against the judgment and order dated 13.9.1988 passed by the learned Sessions Judge, Keonjhar in S.T. Case No. 53 of 1987 convicting the Appellant u/s 332 I.P.C. and sentencing him to undergo rigorous Imprisonment for one year.

2. The brief facts of the case are that the Appellant was working as a Junior Engineer, P.H.D., Keonjhar now working as Assistant Engineer, GPHD, Sambalpur. He was allotted one house of the Municipality as a tenant since long where he was staying. He was asked several times to vacate the quarters by the Executive Officer but he failed to vacate the same. He had also constructed a cowshed adjoining the quarters. Thereafter the Executive Officer obtained orders from the Chairman of the Municipality to get the quarters vacated and the unauthorized construction adjoining to the house demolished with the police help. Consequently, the Octroi Superintendent, Mr. Kalpataru Chakra and the officials of the Municipality including the informant together with the police party went to the spot at about 4 p.m. on 7.7.1987. On seeing the Municipal Staff, the Appellant Ghanashyam Parida and his wife closed the doors. The Appellant was

then called by the officials and was informed about the purpose of their coming and asked him to vacate the quarters. At this the Appellant along with his family members and other persons brought out all his belongings from the quarters occupied by him and shifted to his own constructed house which was nearby that place; but he refused to demolish the cow-shed and removed the articles kept inside the same. Thereafter when the members of the team started to demolish the unauthorized construction, the Appellant picked up a bamboo pole piece (M.O.I) and dealt blow to the Octroi Superintendent Mr. Kalpataru Chakra as a result of which he sustained injury. He was examined by P.W. 6 who found the following injury on his person:

One lacerated injury 1 "x1/2"x1/2" situated over the right side of the scalp 21/2" above root of the right ear. Fresh blood was coming out of the wound.

3. An F.I.R. was lodged by the Tax Daroga P.W. 2 whereafter investigation was taken up. After conclusion of investigation, charge-sheet was filed against the Appellant and three other accused persons for the offences punishable under Sections 307/332/34 I.P.C.

4. After committal of the case to the Court of Session, Sessions Trial was commenced in which as many as seventeen witnesses were examined on behalf of the prosecution. The accused persons produced one defence witness D.W. 1 Purusottam Mahanta.

5. The witnesses, proved the prosecution story. The order in question to be executed was proved by P.W. 10 who was then functioning as the Executive Officer-cum-Municipal Engineer of Keonjhar Municipality. The statement of the injured was also recorded and the Learned Sessions Judge found the Appellant guilty of committing offence punishable u/s 332 I.P.C. and sentenced him to undergo rigorous imprisonment for one year.

6. I do not find any good reason to interfere with the impugned judgment since the prosecution has proved its case beyond all reasonable doubt against the Appellant. However, considering the fact that the Appellant is now aged about 66 years and is a senior citizen, I am of the opinion that he may be given the benefit of Probation of Offenders Act, 1958. Therefore, the appeal is dismissed on merit. However, the Appellant is granted the benefit of Section 4 of the Probation of Offenders Act, 1958. I, therefore direct that the Appellant be released on his entering into a bond for Rs. 5,000.00 (Rupees five thousand) with one surety for the like amount to the satisfaction of the Trial Court for a period of one year to appear and receive sentence when called upon during the aforesaid period and in the meantime to keep to the peace and be of good behaviour.