

(2024) 05 OHC CK 0016
In the Orissa High Court
Case No : Criminal Appeal No. 43 Of 2001

Kalu Patra

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374(2)

Indian Penal Code, 1860 — Section 34, 294, 307, 323, 324, 427, 448, 450, 506

Citation : (2024) 05 OHC CK 0016

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : Jairaj Behera, S.K. Pradhan, N.K. Tripathy, P.K. Mohanty

Final Decision : Partly Allowed

Judgement

D.Dash, J

1. The Appellants, by filing this Appeal, have called in question the judgment of conviction and order of sentence dated 2nd February, 2001 passed by the learned Additional Sessions Judge, Titlagarh in Sessions Case No.49(B)/19 of 2000 arising out of G.R. Case No.270 of 1999 pending on the file of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Titlagarh.

By the impugned the judgment of conviction and order of sentence, the Appellants (accused persons) have been convicted for commission of the offence under sections 506/427/448 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly, each of them has been sentenced to undergo rigorous imprisonment for one (1) year and three (3) months for commission of the offence under section 506 of the IPC; rigorous imprisonment six (6) months for commission of the offence under section 448 of the IPC; and rigorous imprisonment for six (6) months and pay fine of Rs.2000/- (Rupees Two Thousand) in default to undergo further rigorous imprisonment for a period of three (3) months for commission of the offence under section 427 of the IPC with the stipulation that the substantive

sentences would run concurrently. It was further directed that if the fine amount is realized, the same be paid to the lady Subhasini Panigrahi (P.W.4).

2. Learned counsel for the Appellants (accused), from the very beginning, instead of questioning the finding of guilt against these accused persons, as has been returned by the Trial Court, confined his submission only on the question of sentence. He submitted that taking into account the age of the Appellants (accused persons) and the rural background from which they hail, as they do not have permanent and maintaining their family, since they have already faced the mental agony of the criminal trial for about twenty-five (25) years, the sentence of imprisonment, as has been awarded, stands too harsh. He, therefore, submitted that it is a fit case that at this distance of time, keeping in view all the relevant factors and taking those into account, the sentence be appropriately modified to imposition of fine as deemed just and proper.

3. Learned Additional Standing Counsel for the Respondent-State, while submitting that for the offences under sections 506/448/427 of the IPC for which the conviction has been recorded against these Appellants (accused persons) are punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both; with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and with imprisonment of either description for a term which may extend to two years, or with fine, or with both respectively, contended that the sentences, as has been awarded by the Trial Court commensurate the offences committed under that circumstance.

4. Keeping in view the submissions made, I have carefully read the impugned judgment of conviction and have also extensively travelled through the depositions of the witnesses (P.Ws.1 to P.W.6).

5. The Appellants (accused persons) stood charged for commission of the offence under sections 307/506/323/324/427/ 506/34 of the I.P.C. Upon examination of P.W.1 and P.W.4 as also other evidence, the Trial Court has found the prosecution to have failed to establish the charges for commission of the offence under sections 450/307/324/323/294/34 of the I.P.C. So, for all those charges, the Appellants (accused persons) have been acquitted. The Appellants (accused persons), however, have been convicted for commission of the offence only under sections 506/427/448 of the IPC for having forcibly entered inside the house of the informant when P.W.4 and another lady were present inside the house in committing the mischief. As per the version of P.W.4, the accused persons, at the first instance, when entered into the house by breaking open the doors, they shouted and started damaging the household articles. The evidence against the Appellants for Commission of the offences under section 307/506/323/324/427/450/34 of the I.P.C, has been held to be insufficient to establish the commission of said offences. The Appellants (accused persons) have accordingly been acquitted of all the charges. The Appellants (accused persons) hail from the rural background and as it appears, have been undergoing

mental agony of a criminal trial right from the year 2001 till now.

Cumulatively viewing of all these aforesaid, this Court is the view that the sentence of payment of fine of Rs.500/- (Rupees Five Hundred) each in default to undergo simple imprisonment for one (1) month for committing the offence under section 506 of the IPC; payment of fine of Rs.500/- (Rupees Five Hundred) each in default to undergo simple imprisonment for one (1) month for committing the offence under section 448 of the IPC; and payment of fine of Rs.1000/- (Rupees One Thousand) each in default to undergo rigorous imprisonment for two (2) months for committing the offence under section 427 of the IPC at this distance of time, would serve in the interest of justice and meet its ends.

Accordingly, the Appellants' conviction for the offence under sections 506/448/427 of the IPC being confirmed; each of them are sentenced to pay of fine of Rs.500/- (Rupees Five Hundred) in default to undergo simple imprisonment for one (1) month for the offence under section 506 of the IPC; fine of Rs.500/- (Rupees Five Hundred) in default to undergo simple imprisonment for one (1) month for the offence under section 448 of the IPC; and pay fine of Rs.1000/- (Rupees One Thousand) in default to undergo simple imprisonment for three (3) months for committing the offence under section 427 of the IPC at this distance of time, would serve in the interest of justice and meet its ends. It is further directed that in the event of realization of fine, the said sum be paid to P.W.4.

6. In the result, the Appeal is allowed in part with the modification as to the order of sentence dated 2nd February, 2001 passed by the learned Additional Sessions Judge, Titlagarh in Sessions Case No.49(B)/19 of 2000 to the extent as indicated above..

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