

(2006) 04 OHC CK 0035

In the Orissa High Court

Case No : Criminal Revision No. 18 of 2006

Makardhwaj Naik and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 307, 323, 324, 326, 34

Citation : (2006) 1 OLR 194 Supp

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

Bench : Single Bench

Advocate : S.R. Mohapatra, B.R. Mohanty, B.K. Raj, M.K. Mohanty, R. Choudhury, P.K. Das and S.C. Mohanta, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—Petitioners as accused faced trial for alleged commission of offences under Sections 307 and 323 read with Section 34 of the Indian Penal Code in G.R. Case No. 94/2002 of the Court of learned S.D.J.M., Karanjia. The said case was subsequently committed to the Court of Sessions and registered as S.T. Case No. 15/34 of 2003 which was tried by learned Asst. Sessions Judge, Karanjia.

2. Bereft of unnecessary details, the short facts leading to initiation of the prosecution is that on 12th April, 2002, P.W. 3 filed an F.I.R. at Raruan P.S. alleging that when P.W. 9 was returning to his house he met with P.W. 6 on the way and then P.W. 9 went to a nearby tube-well to clean his legs. At that juncture, accused Makardhwaj Naik came with a small size axe and dealt a blow with that on the neck of P.W. 3, who sustained severe cut injury and fell down. Thereafter, it is alleged that accused Sakuntala Naik, W/o. Makardwaja Naik dealt two to three blows by means of a lathi on P.W. 3. Hearing cries, Pradeep Naik, P.W. 6, who was moving ahead returned back and tried to lift P.W. 9. P.W. 2, a

cousin of P.W. 9, also came to the spot and snatched away the lathi from the hand of Sakuntala Naik. They carried P.W. 9 to his house. Bhubananda Naik, P.W. 3, came to the house of P.W. 9 and with his help they carried P.W. 9, the injured, in a Commander Jeep to Singhada Outpost and lodged the F.I.R. which was scribed by P.W. 1.

3. The plea of defence was complete denial.

4. The prosecution got examined 12 witnesses and exhibited 6 documents. Out of the witnesses, P.W. 9 was the injured, P.Ws. 1, 2, 4 and 6 were co-villagers of the injured P.W. 9, P.W. 3 was the brother of the injured as well as the informant, P.W. 5 was the driver of the Jeep, P.Ws. 7 and 8 were the seizure witnesses, P.W. 10 was the I.O., P.W. 11 was the Surgery Specialist, who had examined the injured, and P.W. 12 was a Radiographer. On behalf of defence no witnesses were examined.

5. After discussing the evidence, both oral and documentary, and relying upon the medical report, the Court below arrived at the conclusion that on the alleged date the accused persons had assaulted the injured and injury caused to P.W. 9 was grievous in nature. However, as only one blow was given by axe, considering the said fact and other circumstances, the Court below came to the conclusion that the accused had at best intention to cause injury but had no intention to cause his death. On the basis of such conclusion the trial Court held that the charge u/s 307 of the I.P.C. failed against accused Makardhwaj. It was also held that there was no evidence against Sakuntala Naik that she had intention to kill Harihar Naik. On the basis of such conclusion the Court below convicted Makardhwaj u/s 326 of the I.P.C. and accused Sakuntala u/s 323 of the I.P.C. and sentenced Makardhwaj to undergo imprisonment for three years and to pay a fine of Rs. 1,000/-, in default to undergo imprisonment for six months, and Sakuntala Naik to undergo imprisonment for six months.

6. Both the accused preferred appeal before learned Sessions Judge, Mayurbhanj-Baripada. The appeal heard by the Ad hoc Addl. Sessions Judge, Fast Track Court, Baripada. The appellate Court after discussing the evidence once again particularly the evidence of P.W. 9 and the medical evidence confirmed the order of conviction, but then in the peculiar facts and circumstances while confirming the sentence imposed on Makardhwaj modified the substantive sentence so far as Sakuntala Naik was concerned and instead of imposing substantive sentence on her sentenced her to pay a fine of Rs. 500/-, in default to undergo S.I. for one month.

7. In this revision learned Counsel for the Petitioners forcefully submitted that the basic ingredients of alleged offences were lacking and that the Courts below acted illegally and with material irregularity in convicting the Petitioners on the basis of the evidence of interested witnesses. It is further argued that the alleged occurrence having taken place in a pitch dark night it could not have been possible on the part of the witnesses to identify any person. This aspect

according to learned Counsel for the Petitioners was not kept in mind by the Courts below.

8. The submissions are strongly repudiated by learned Counsel for the State. The incident in question admittedly took place in the year 2002. Almost four years have passed in the meanwhile. That apart P.W. 2 is a lady. To appreciate the submissions made this Court once again scrutinized the evidence. P.W. 9, the injured, has clearly deposed in his evidence with regard to the occurrence. Though he was cross-examined, nothing elicited from him to disbelieve his statement. But then, the evidence of P.W. 9 clearly reveals that the occurrence took place on Amabasya Day and there was no light nearby. According to him while he was cleaning his legs somebody dealt a blow on his back and that after the blow was given, he lost his sense. His statement made before the Police u/s 161 Code of Criminal Procedure did not disclose that Upendra was with him. P.W. 3 could at best be a post occurrence witness. He has not stated to have seen Makardhwaj giving assault on P.W. 9, but has deposed that when he came to the spot he found Sakuntala assaulting the injured by means of a bamboo lathi. There was some discrepancy between the evidence of P.W. 2 and that of P.W. 9, inasmuch as so far the assault given by Makardhwaj was concerned, it appears that P.W. 2 heard the said fact from P.W. 6. Thus, her statement being hearsay, cannot be accepted in evidence. Perusal of the entire evidence reveals that no one had seen accused Makardhwaj giving blow on P.W. 9, but then from the evidence of P.W. 11, the Doctor, it is clear that the injured sustained grievous injuries. Other evidence available on record also points a finger at Makardhwaj. A cumulative assessment of the entire evidence thus leads to an irresistible conclusion that Makardhwaj was the author of the grievous injuries caused to P.W. 9. There is also ample evidence with regard to the implication of Petitioner No. 2, Sakuntala Naik. In fact she was present at the spot and the bamboo stick was snatched away from her possession. However, the prosecution has totally failed to prove the mens rea of the Petitioners. No iota of evidence is there with regard to the intention of the accused. The Courts below have rightly found both the Petitioners not guilty of the charge u/s 307 of the I.P.C. and have convicted them u/s 326 of the I.P.C. But then, it appears the night on which the occurrence took place was an Amabasya and it was pitch dark. Though evidence reveals that Makardhwaj had given a blow with a Tangia, it is not possible to arrive at a conclusion that he had any intention to cause any grievous injury. Taking into consideration all these facts and the circumstances, the nature of injury caused to P.W. 9, the weapon used and other factors, this Court feels that it will be appropriate if Petitioner No. 1, Makardhwaj Naik is convicted u/s 324 of the I.P.C. and convicts him accordingly and sentences him to undergo R.I. for one year and to pay a fine of Rs. 2,000/-, in default to undergo R.I. for a further period of six months. This Court confirms the conviction and modified sentence passed against Sakuntala, Petitioner No. 2, by the appellate Court. Out of the fine collected a sum of Rs. 1500/- (rupees fifteen hundred) be paid to the injured, P.W. 9.

The CrI. Revision is thus partly allowed.