
(2008) 03 OHC CK 0020
In the Orissa High Court
Case No : Criminal Appeal No. 149 of 1991

Muijit Rana and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2008) 1 OLR 228 Supp

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

Bench : Single Bench

Advocate : N.C. Pati, A.K. Sahu and B. Sahu, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A.S. Naidu, J.—The judgment dated 30th May, 1991 passed by the learned Addl. Sessions Judge, Titilagarh in S.C. No. 35/10 of 1990 is assailed in this appeal.

2. By the impugned judgment the Court below has convicted all the Appellants of the charges under Sections 147, 148 and 307/149 IPC and has further convicted Appellants 3, 4, 5 and 6 namely, Budu alias Abhiram Rana, Jujesti alias Judhistir Rana, Dutta Rana and Muli alias Muniram Ram respectively, of the charge u/s 325 IPC. The Court below has sentenced all the Appellants to undergo R.I. for one month for each of the charges under Sections 147 and 148 IPC and to undergo R.I. for one year for the charge u/s 307/149 IPC. While the Court below has passed no separate sentence for conviction under the charge u/s 325 IPC, has directed that the sentences under the aforesaid two charges would run concurrently.

3. The prosecution case was that there was prior litigation over a piece of paddy land among the informant side and the Appellants and two of their co-accused (the two co-accused having been acquitted by the trial Court). It was alleged that on 2nd August, 1989 at about 7 a.m. forming an unlawful assembly being armed with Tangias and Lathis all the accused persons attacked the informant and his men while the latter were transplanting paddy seedlings on the disputed

land. Due severe assault by the accused persons with Tangias and Lathis, Alekh Rana, Bhuta Rana, Tirtha Rana and others were severely injured. The occurrence being orally informed by P.W.1 at the Titilagarh Police Station, the OIC concerned drew up an FIR, visited the place of occurrence, sent the injured persons for medical examination and after completion of investigation filed charge-sheet against the accused persons for alleged commission of offences under Sections 147/148/307/325/324/323/149 IPC. Ultimately the case having been committed to the Court of session, the accused persons including all the Appellants faced trial in the aforesaid Sessions Case for the charges under Sections 147/148/307/149 IPC. Of them, present Appellants 3, 4, 5 and 6 also stood charged u/s 325, IPC.

While denying their complicity in the alleged offences, the defence stated that in fact the informant and his associates had assaulted the accused persons, but the case had been falsely filed against them.

After discussing the evidence, the trial Court while acquitted two of the accused persons (Kumar Rana and Shyama Rana), convicted and sentence all the rest as stated above.

4. This Court heard the learned Counsel for the parties at length. According to the learned Counsel for the Appellants, the evidence reveals that there was a free fight among the informant and his associates on one hand and the accused persons on the other and there were case and counter-case. The trial Court having not considered the case from this angle and having not appreciated the evidence in correct perspective, the impugned judgment is not sustainable and the Appellants are entitled to acquittal, even on benefit of doubt. Fortifying the aforesaid submission, learned Counsel for the Appellants submitted that there was no iota of evidence to show that the Appellants had any mens rea to attempt to commit any murder.

5. A perusal of the entire evidence reveals that admittedly there was dispute with regard to a land and civil suits were pending at the time of the alleged occurrence. On the alleged date of occurrence the informant with his men was transplanting paddy seedlings on the disputed land when the Appellants and their associates reached there being armed. A tussle ensued. Some persons from the side of the informant were injured and some from the side of the Appellants were also injured. Prosecution has not explained the injuries sustained by the persons from Appellants' side. From such fact it is inferred that the informant side was also well prepared to meet the Appellants in any contingency and were armed with weapons to assault them. The injury report of the doctor clearly reveals that the injuries sustained by the persons of the informant side were not that severe, while it was so on the persons of the Appellants.

There is absolutely no evidence to conclude that the Appellants and their associates had any intention to kill anybody during the alleged tussle. Thus this Court feels that the ingredients of offence u/s 307 IPC have not been made out.

However, on a cumulative assessment of the entire evidence this Court finds that the charges under Sections 147/148/325/149 IPC against the Appellants only was made out. The conviction of the Appellants is confirmed to the above charges. While sentencing the Appellants, this Court finds that the alleged occurrence was of the year 1989. Nineteen years have rolled by in between. Considering such fact, this Court disposes of the Criminal Appeal modifying the sentence passed by the trial Court against the Appellants and sentencing them to undergo R.I. for a period of three month on each count i.e. Sections 147/148 and 325 IPC and to pay a fine of Rs. 1,000/- each, in default to undergo further R.I. for one month each.