

(1975) 01 OHC CK 0021

In the Orissa High Court

Case No : Criminal Revision No. 198 of 1974

Patia alias Abdul Satar Khan and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 15-01-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 323, 324, 427

Citation : (1975) 41 CLT 349

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : B.R. Rao, for the Appellant; N.K. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—The Petitioners and 4 others were prosecuted under Sections 147, 323, 324 and 427, Indian Penal Code. The learned Magistrate by judgment dated 9-5-1973 acquitted accused Soban Khan and convicted all other accused persons including the Petitioners for offences under Sections 147 and 323, Indian Penal Code and sentenced each of them to pay a fine of Rs. 100/-, in default to undergo R.I. for two months for offence u/s 147, Indian Penal Code. No separate sentence was passed for offence u/s 323, Indian Penal Code. He convicted accused Panu alias Abdul Hakim Khan u/s 324, Indian Penal Code and sentenced him to pay a fine of Rs. 100/-, in default to undergo R.I. for two months. The learned Additional Sessions Judge of Bhubaneswar acquitted accused Panu alias Abdul Hakim Khan, Erfan Khan and Kamu alias Kamaruddin Khan, but confirmed the conviction of the Petitioners u/s 323, Indian Penal Code and sentenced them to a fine of Rs. 75/- each, in default to undergo R.I. for two months. It is against this order that the criminal revision has been filed.

2. Prosecution case is that on 16-6-1969 the Petitioners came to the house of p.w. 1 and his sons p.ws. 2 and 3 who regularly used to sell goat-skins to them. On the date of occurrence p.ws. 2 and 3 sold some goat-skins to others at a

higher price. The Petitioners did not like this. Earlier in the day they had abused p.w.s. 2 and 3. They again came that very night to the house of p.w. 1 armed with Tadas and Gupti and assaulted p.w.s. 1 to 3. The defence plea is one of total denial.

3. There were some independent witnesses; but the learned Sessions Judge did not accept their evidence. He convicted Petitioner No. 1 for having assaulted p.w. 2 and Petitioners Nos. 2 and 3 for having assaulted p.w. 3. He did not place reliance on the evidence of p.w. 1 as he had a bad eye-sight and was hard of hearing, and assault on him was not earlier stated by p.w. 2. He however accepted the story of assault on p.w. 2 on the evidence of p.w.s. 2 and 3 corroborated by the medical evidence and the assault on p.w. 3 on his own statement alone corroborated by the medical evidence. The conviction is therefore based on the testimony of the injured corroborated by the medical evidence and not corroborated by any independent evidence.

4. Mr. B.R. Rao appearing for the Petitioners raised two contentions by citing some Supreme Court decisions. His argument is that without independent corroboration the conviction should not have been rested on the evidence of the injured alone and secondly once the learned Sessions Judge did not accept the evidence of p.w.s. 2 and 3 in respect of other parts of the prosecution story, their evidence should have been rejected in toto. Both the contentions are untenable and no such hard and fast rule can be laid down in law. It needs no emphasis that the various pronouncements made by the Supreme Court or the High Courts in this regard are not rules of law. They are merely observations pertaining to taking a common sense view of the matter relating to human affairs. It is well known that offences can be committed in the dead of night inside a house where no independent witness would be available and the only witnesses who can depose are the inmates of the house. To lay down a proposition that the prosecution case cannot be accepted on the evidence of the inmates without independent corroboration would be accepting a position which would be travesty of truth. In such cases the evidence of the inmates or the injured would be examined critically and the prosecution case may be accepted on their testimony without independent corroboration if it is reliable. It is on this principle it has been held in cases of rape that on the sole testimony of the raped a conviction can be sustained provided the Court of fact is alive to the position that corroboration is not necessary in the facts and circumstances of a particular case.

5. In this case the occurrence took place at 10 p.m. when it is difficult to get independent witnesses. Some independent witnesses were examined and the learned Judge was not inclined to accept their evidence as reliable. In the circumstances the only course open to the learned Judge was to critically examine the evidence of the injured and see if without independent corroboration their evidence can be accepted. This is exactly what the learned Judge did and in my opinion rightly. The fact that he discarded the evidence of p.w.s. 2 and 3 in respect of certain part of the prosecution story is no justification for discarding

their evidence in toto. I therefore find no merit in any of the contentions of Mr. Rao. It is not necessary to refer to several Supreme Court decisions on this point. It would be sufficient to say that these are matters of prudence and in what way the prudence is to be exercised by a Court of fact cannot be limited within hard and fast rules.

6. I find no merit in this revision and it is accordingly dismissed.