
(1969) 08 OHC CK 0006

In the Orissa High Court

Purna Chandra Parida and Others

APPELLANT

Vs

Ganeswar Parida

RESPONDENT

Date of Decision : 28-08-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 441, 447

Citation : (1969) 35 CLT 1105 : (1970) CriLJ 298

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Judgement

A. Misra, J.—Each of the four petitioners has been convicted Under Sections 447 and 323 I.P.C. and sentenced to fine of Rs. 30/- and Rs. 40/- respectively, and in default, to undergo S. I. for fifteen days on each count.

2. Petitioners nos. 1 and 2 are sons of petitioner No. 4 and petitioner No. 3 is their cousin. According to the complainant (P. W. 2), on 28-3-64, petitioner No. 1 entered his bari which is plot No. 933 and was about to climb and pluck cocoanuts from his tree. On protest, himself and his cousin (P. W. 5) were assaulted by all the petitioners. P. Ws. 2 and 5 were treated by the doctor in Nima-para for some days, thereafter they came to Puri where they received further treatment and then filed the complaint petition. Petitioners, in defence, deny the occurrence and allege that out of existing enmity P. W. 2 has filed a false case against them and other P. Ws. have falsely deposed. The courts below accepting the testimony of the P. Ws. convicted and sentenced the petitioners, as stated above.

3. The convictions are assailed mainly on two grounds. Firstly, it is contended that the courts below erred in placing reliance on the testimony of P. Ws. 3 and 4 in spite of proof of their interested-ness. Secondly, it is contended that the conviction u/s 447 I. P. C. is bad in law in the absence of a finding that all or any of the petitioners committed criminal trespass.

4. It has no doubt been elicited during cross-examination of P. Ws. 3 and 4 that

the former's father has filed an O. T. R. case against petitioner No. 2 and petitioner No. 4 has filed a case against the father of P. W. 4. Both the courts below have noticed these facts, while considering the evidence. These P. Ws. who claim to have witnessed the occurrence have deposed about different petitioners committing assault. Merely because each of them may have some bias against individual accused, it will not justify rejection of their evidence as they have no ostensible reason for deposing against the others. Further, interestedness, even if proved, will not justify rejection of their evidence in toto, though it may necessitate scanning their evidence more carefully and with caution. In the present case, these two P. Ws. have corroborated P. Ws. 2 and 5, the victims of the assault. The Courts below have accepted their testimony and I find no valid reason to differ from the assessment of the evidence by them. Thus, there is no merit in the first contention.

5. Each of the petitioners has been convicted u/s 323 I. P. C. for causing hurt to P. Ws. 2 and 5 and each of them has also been convicted u/s 447 I. P. C. for having committed criminal trespass. It is contended by learned Counsel for petitioners that the conviction u/s 447 I. P. C. is not sustainable in the absence of a finding that the trespass was with one of the intents enumerated in Section 441 I. P. C. In my opinion, there is considerable force in this contention.

6. Every trespass by itself is not criminal. To constitute criminal trespass, the prosecution has to prove and the Court has to give a finding on the evidence that the trespass was committed with one of the intents enumerated in Section 441 I. P. C.. Neither of the courts below appears to have applied its mind to this aspect nor come to a specific finding as to whether all the petitioners committed trespass, and if so, if it was with one of the requisite intents. Not a single question has been put to any of the petitioners during their examination u/s 342 Cr. P. C. as to whether they committed the trespass with intent to annoy, assault, etc,. The learned Additional Sessions Judge has not given any finding on this question, while the trying Magistrate has made a vague observation that petitioners trespassed into the land of P. W. 2 to cause him annoyance. Learned Counsel for opposite party contends that when petitioners entered into P. W. 2's land and assaulted him, obviously the trespass was committed with the intention of committing an offence. There is no finding to that effect by either of the courts below. In the absence of any such finding, the conviction u/s 447 I. P. C. cannot be sustained simply because some assault was committed on P. W. 2 and 5. The conviction and sentence u/s 447 I. P. C. are therefore set aside.

7. In the result, the revision is allowed in part. While maintaining the conviction and sentence passed against each of the petitioners u/s 323 I. P. C. the conviction and sentence passed against each of them u/s 447 I. P. C. are set aside. Revision allowed in part.