
(1991) 03 OHC CK 0013
In the Orissa High Court
Case No : C.R. No. 259 of 1987

Rabi Behera

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-03-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326, 393, 443, 457

Citation : (1992) CriLJ 2392

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : Deba P. Das, for the Appellant; Debasis Das, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mahapatra, J.—Accused is petitioner in this revision against his conviction Under Sections 307 and 458, IPC for which he has been sentenced to undergo rigorous imprisonment for six years u/s 307, IPC, and for one year u/s 458, IPC. In respect of his conviction Under Sections 457 and 326, IPC, which is also assailed, no separate sentence has been passed.

2. P.W. 1 had taken the first floor of the house of P.W. 8 at Khatbin Sahi of Cuttack Town on rent, where he was residing with his family members. P.W. 5 is his younger brother who was staying with him. On 18/19-8-1983 at about 2 a.m. in the dead of night, P.W. 5 came out to urinate. He found the utensils and other household articles scattered. When he was trying to find out the cause for the same, petitioner who was concealing appeared and stabbed P.W. 5 with the knife he was holding. That night, P.W. 2 eldest sister of P. Ws. 1 and 5 was in the house. Hearing shout of P.W. 5 when she came out, she found that P.W. 5 was lying on the floor with bleeding injuries. When she found petitioner was scaling over the well to escape from the house she caught hold of the petitioner. Petitioner fell down. When she shouted for help others came. Petitioner was detained and intimation was sent to police station. Investigating Officer immediately reached spot and received the written first information report at the

spot. After investigation, he submitted charge-sheet against petitioner and other accused persons.

3. Case of petitioner in one of denial of occurrence and he pleaded not guilty to the charges.

4. Prosecution examined ten witnesses, proved four documents and produced three material objects to bring home guilt of the accused persons.

5. Trial court on appreciation of evidence acquitted two other accused persons from all charges and petitioner from charge Under Sections 460/393, IPC. It, however, convicted petitioner under Sections 457/458/307/326, IPC. Appellate court has dismissed the appeal finding that on conviction u/s 307, IPC it is not warranted to convict the petitioner u/s 326, IPC. also.

6. Allegation against petitioner is that in dead of night he went into house of P.W. 1 with a knife in hand and concealed himself when P.W. 5 came out and stabbed him when detected. Petitioner denied the same. Therefore, first question for consideration is whether petitioner went into the house of P.W. 1 at night.

7. House of P.W. 1 taken on rent from P.W. 8 is not the house of petitioner. If prosecution case that petitioner trespassed into the house and concealed himself when P.W. 5 came out would be accepted, he would commit the offence of lurking house trespass as provided u/s 443, IPC which reads as follows:--

443. Lurking house-trespass:-- Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass.

Since after sunset and before sunrise, petitioner criminally trespassed into the house, has committed lurking house-trespass by night. As he went into the house of P.W. 1 at night with a knife he can be said to have committed offence u/s 458, IPC, since knife with him is an instrument to cause hurt and it can safely be held that he committed offence of lurking house trespass at night with preparation to cause hurt to a person.

8. With the aforesaid analysis it is to be determined whether petitioner committed lurking house trespass at night with a knife. There can be no doubt that by the time of arrest by Police, in the night of 18/19-8-1983, petitioner was found in house of P.W. 1 which is not his house. No explanation of permissive entry or entry by mistake or to avoid a grave danger is given by petitioner. Thus, it is clear that petitioner committed house trespass at night since in normal course a person would not be in the house of another in dead of night if he was not there earlier. How petitioner came to house of P.W. 1 in the dead of night is within his special knowledge and he does not give any explanation for the same. Thus, evidence of P.W. 5, P.W.2, P.W. 8 and P.W. 1 read with evidence of P.W. 10, it is clear that accused committed the offence of lurking house trespass at night into house of P.W.1.

9. Evidence of P.W. 5 is clear that petitioner stabbed him. From the nature of injury, P.W. 10 clearly stated that it is such that it would have caused death if it would not have been attended to immediately. Knife penetrated into the plural cavity on left side. Any person causing such injury has knowledge that it would cause death. Thus, petitioner having knowledge that the stab injury caused by him would cause death of P.W. 5, an offence u/s 307, IPC is brought home. Both courts after careful consideration of evidence have come to the same conclusion. Chain of events as narrated by P.W. 2 makes it clear that accused has caused the injury. Therefore, accused is guilty of offence u/s 307, IPC.

10. On the discussion as made above both the Courts were correct in appreciation of evidence that petitioner is guilty of offence Under Sections 307 and 458, IPC.

11. Coming to the question of sentence, I find accused was aged 22 years only in 1983 when he committed the offence. Accused would have been a youngman engaged in no work, I would have taken a more stringent view since having no contribution to society he is an evil to be excluded from the society, for its peace. There is some evidence that accused was selling milk to earn a part of his livelihood. While keeping it in mind I am conscious that it is not uncommon now-a-days that young men prefer to move in streets than at home whether educated or employed having no respect to the time when they are on the street. They do not move in the street as gentlemen. Their companion is dangerous weapon which can be utilised without any restrain or control. Peace in the society is affected thereby and those found guilty are to be punished so that others would either give up roaming in the street at unusual hours or at least give up company of hazardous weapon, I am also conscious that every saint had a past and every sinner has a future, As the accused has long distance to cover in his life, a chance should be given to have repentance and to conduct himself as a good citizen in future. Weighing all the circumstances, in the facts of this case, I am inclined to hold that although normal sentence for 6 years would be adequate in the present case, a sentence of two years to the petitioner would meet the ends of justice on all counts.

12. In the result, this revision is dismissed subject to reduction of sentence. Accused shall surrender to custody.