
(2009) 01 OHC CK 0068
In the Orissa High Court

Ramesh Chandra Sahu and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 307, 324, 337

Citation : (2009) CLT 337 (Suppl CrI) : (2009) CriLJ 1690 : (2009) 1 OLR 137 Supp

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Judgement

B.K. Patel, J.—This revision is directed against the judgment passed by the learned Additional Sessions Judge, Jeypore dismissing the Criminal Appeal No. 50 of 1993 (Criminal Appeal No. 152 of 1992 of the Court of learned Sessions Judge, Jeypore) and confirming the judgment and order passed by the learned Additional Sessions Judge-Cum-Subordinate Judge, Jeypore in S.C. No. 74 of 1991 (S. C. No. 292 of 1991 of the Court of Sessions Judge, Jeypore) convicting petitioner No. 1 u/s 337 of the I.P.C. and sentencing him to undergo R. I. for three months and to pay a fine of Rs. 200/-, in default R. I. for fifteen days; and petitioner No. 2 Sanjay alias Babuli u/s 307 of the I.P.C. and sentencing him to undergo R. I. for three years and to pay a fine of Rs. 1,000/-, in default R.I. for six months.

2. Informant P.W. 1 is petitioner No. 1's estranged wife. Prior to the occurrence the informant was residing in a rented house separately from her husband. Petitioner No. 2 is informant's step son. Prosecution case, in brief, is that on 23-7-1991 at about 10.00 A. M., P. W. 1 asked petitioner No. 2 as to why he used to bolt the door of her house from outside. At this, petitioner No. 1 pelted stones causing injuries on her hand and head. The informant went and complained before petitioner No. 1's uncle. Petitioner No. 1 arrived there and asked petitioner No. 2 finish her by stabbing. Petitioner No. 2 came out from the house with a knife and stabbed on P. W. 1's abdomen as a result of which P. W. 1 sustained

injury and fell down senseless. She received treatment in the hospital. Receiving telephonic message regarding the incident, S.I. of Police, Jeypore Town P. W. 15 made Station Diary Entry and directed S. I. of Police P. W. 14 to verify the information. After regaining her sense in the hospital, P.W. 1 orally reported regarding the occurrence before P. W. 14. The report was reduced into writing by S. I. of Police P. W. 13 and treated as F. I. R. In course of investigation witnesses were examined and seizures including seizure of weapon of offence M. O. II were effected. On completion of investigation, charge-sheet was submitted against petitioners.

3. Petitioners took the plea of denial.

4. In order to substantiate the charges, prosecution examined fifteen witnesses apart from relying upon documents marked Ext. 1 to 9 and material exhibits M. Os. I and II. P. Ws. 1, 13, 14 and 15 have already been introduced. P. Ws. 2, 3, 4, 5, 10 and 12 did not support the case of the prosecution and were declared to be hostile witnesses. P. W. 6 is post-occurrence witness. P. W. 7 deposed regarding prior enmity between the parties. P. W. 8 is the doctor who medically examined P. W. 1. P. Ws. 9 and 11 were witnesses to seizure. Relying upon the evidence of injured informant P. W. 1 corroborated by medical evidence of P. W. 8, and the circumstances of strained relationship between the parties and recovery of weapon of offence, the trial Court convicted and sentenced the petitioners, as stated supra.

5. In support of the revision it was submitted by the learned Counsel for the petitioners that the learned Court below should not have based their findings solely on the evidence of P. W. 1 when other witnesses were available and did not support her version. It was further contended that even if the evidence of P. W. 1 is accepted, commission of offence u/s 307 of the I.P.C. is not made out against petitioner No. 2 inasmuch as circumstances attending upon the occurrence do not indicate that the petitioner No. 2 intended to cause P. W. 1's murder. In support of such contention learned Counsel for the petitioners relied upon the decisions of this Court in *Abhiram Mukhi Vs. State of Orissa*, *Srikumar Bhadra v. State of Orissa* (2002) 22 OCR 395 and *Gula and Others Vs. State of Orissa*, . It was contended that keeping in view the relationship between the parties and the fact that the offences were committed by the petitioners on the spur of the moment, without premeditation, liberal punishments should have been awarded.

6. In reply, learned Counsel appearing for the State argued that there is no infirmity in the evidence of P. W. 1 which is corroborated by medical evidence and other circumstances. On a thorough scrutiny of her evidence both the Courts below have found P. W. 1 to be reliable. In such circumstances, there is no scope to interfere with the concurrent findings of the Courts below. It was further argued that as the petitioner No. 2 stabbed P. W. 1 with a big knife causing injury of the size 1 1/2" x 1/2" x 3", the only inference is that petitioner No. 2 intended to kill his step mother due to previous enmity. Therefore, there is no scope to interfere with the impugned judgment which he supported lock, stock and barred.

7. The first contention raised on behalf of the petitioners relates to appreciation of evidence of informant P. W. 1. In this context, it may be observed that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. In this connection, decision of Duli Chand Vs. Delhi Administration, may be referred to. In *Rabindra Sethi v. Premalata Sethi* 1989 (II) OLR 548 it has been observed by this Court:

The established principle of law is that the revisional jurisdiction is not to be ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on record. (See *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*, and *Duli Chand Vs. Delhi Administration*,). If the revisional Court on appreciation of the evidence on record and re-appraisal of the evidence, takes a view different from and contrary to the view taken by the lower Court, then also it cannot be a ground for interfering in revision.

In the present case, both the Courts below have concurrently held the evidence of P. W. 1 to be reliable to conclude that petitioner No. 1 pelted stones, as a result of which P. W. 1 sustained injuries and that petitioner No. 2 caused stab injury on P. W. 1. Evidence of P. W. 1 is corroborated by medical evidence. Prosecution has also proved seizure of weapon of offence. Having perused the evidence on record and the judgments of both the Courts below, there appears absolutely no reason to interfere with such findings.

8. The second contention relates to sustainability of conviction of petitioner No. 2 u/s 307 I.P.C. As has been reiterated by this Court in *Srikumar Bhadra v. State of Orissa* (supra), the essence of an offence of attempt to murder consists of the fact that the act committed, if went unrestricted, would have resulted in the offence being committed but could not be achieved because of certain other supervening actions or circumstances not within the control of the assailant. What is important to find out is the intention of the assailant and the accompanying actions in execution of the intention. If it is found that he did not intend to complete the act of commission of the offence of attempt to commit that act is not committed. It is true that the criminality of the attempt lies in the intention, the mens rea, but this mens rea must be evidenced by what the accused has actually done towards the attainment of his ultimate objective.

9. In *Abhiram Mukhi Vs. State of Orissa*, , the victim-P. W. 4 was stabbed with a knife on the abdomen by the petitioner for which he was convicted by the trial Court for offence u/s 307 I.P.C. While considering maintainability of such conviction, it was observed by this Court that in order to bring home the charge u/s 307 I.P.C., "the prosecution has to establish the following:

(i) death of human being was attempted to be caused by or in consequence of the act of the accused.

(ii) such act was done by the accused with intention of causing death or with

intention of causing such bodily injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death, or that by doing such an act as the accused knew to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

In other words, the prosecution should make out facts and circumstances as envisaged in Section 300, Indian Penal Code. Unless it can be said that the intention or knowledge of the accused was to cause such bodily injury as would come within the scope of Section 300, Indian Penal Code, he cannot be found guilty u/s 307, Indian Penal Code. It must be proved that if act complained of would have culminated in the death of the victim, the offences would have come within the ingredients as envisaged in Section 300, Indian Penal Code.

10. In the present case, though it was alleged in the F. I. R by the informant P. W. 1 that on being asked by petitioner No. 1 to kill P. W. 1 by stabbing, petitioner No. 2 came out of the house with the knife M. O. II and stabbed P. W. 1, as a result of which P. W. 1 sustained injury and fell down unconscious, while deposing in Court informant P. W. 1 did not allege that petitioner No. 1 instigated petitioner No. 2 to kill her upon which Petitioner No. 2 stabbed her. She simply stated that when P. W. 1 went to her in-laws and told regarding pelting of stones by petitioner No. 1, petitioner No. 2 came out and all in a sudden stabbed her. Also, she did not say that she became unconscious immediately after such stabbing. Evidence of P. W. 1 did not indicate that the petitioner No. 2 made any attempt to deal any other blow by means of the knife nor is there any evidence to the effect that the petitioner No. 2 was prevented by any circumstance to deal with further knife blows on the informant. It is not disputed that apart from two abrasions caused on the informant due to pelting of stones, P.W. 8 found one simple stab injury on the lower part of the chest. Therefore, even if the informant was stabbed on the abdomen, keeping in view the nature of injury, manner of assault as well as the fact that all in a sudden the petitioner No. 2 dealt only one blow, it cannot be concluded beyond reasonable doubt that the petitioner No. 2 intended to commit offence u/s 307 I.P.C. Rather, in view of the circumstances attending upon infliction of stab injury, it is obvious that petitioner No. 2 is guilty of commission of voluntarily causing hurt to her by knife, which is a dangerous weapon, punishable u/s 324 of I.P.C. Conviction of petitioner No. 2 u/s 307, I.P.C. is not sustainable.

11. In view of the above discussions, the revision is partly allowed. While maintaining conviction of petitioner No. 1 u/s 337 of I.P.C., conviction of petitioner No. 2 u/s 307 I.P.C. is set aside and altered to one u/s 324 I.P.C.

Parties are members of one family. The alleged occurrence took place! more than 15 years back. It is stated that the petitioners were detained in custody for more than two months as under-trial prisoners. In such circumstances, sentences of imprisonment and fine imposed on both the petitioners is modified to periods already undergone.