

(2000) 05 OHC CK 0001

In the Orissa High Court

Case No : Criminal Revision No. 773 of 1994

Santosh Kumar Mohanty

APPELLANT

Vs

Brajabandhu Mohanty and Others

RESPONDENT

Date of Decision : 23-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232, 313
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2001) CriLJ 1618

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : A.C. Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This revision has been filed at the instance of the informant challenging the order dated 1-12-1994 passed by the Assistant Sessions Judge, Bhubaneswar, acquitting the accused-opposite parties.

2. Shri A. Mohanty, learned counsel appearing for the petitioner, submits that on 6-10-91 the accused-opposite parties armed with deadly weapons entered inside the house of the informant and assaulted the uncle of the informant. On the basis of the F.I.R. lodged by the informant, investigation was taken up and charge-sheet was submitted for offence committed u/s 307/34, IPC. After commitment of the case to the Court of Session, charge-sheet was framed and summons were issued to the witnesses for appearing in the court. Shri Mohanty further submits that short adjournments were granted by the learned Assistant sessions Judge for which attendance of prosecution witnesses could not be possible and learned Assistant sessions Judge recorded an order of acquittal. According to him, in absence of any evidence on record, the learned Assistant Sessions Judge only could have discharged the accused persons.

3. The learned Additional Standing Counsel submits that there is no illegality in the

order, as in spite of several adjournments the prosecution witnesses were not produced before the Court.

4. From the impugned order it appears that the case was fixed for trial to 21st April, 94. Although summonses were issued against two witnesses, the same returned unserved with a report that they refused to receive the summonses. Summons issued against Babuli Sahu returned after personal service on him and the summons issued against two other witnesses returned after service by affixture. However, on the date fixed, the witnesses did not turn up and the case was again posted to 26-3-94. On the said date also the witnesses were not present. The learned Assistant Sessions Judge had earlier issued bailable warrants of arrest against Witnesses Jaikrushna Srishodan (sic) and Krushna Chandra Jena on 3-6-94, but the same were also not executed. The Officer-in-charge was reminded for execution of the warrants as per orders dated 8-7-94, 28-7-94 and 26-8-94. The case was again taken up on 22-2-94 and the prosecution witnesses were found absent. Thereafter the learned Assistant Sessions Judge issued reminders to get the warrants executed to the Officer-in-charge of Baliana P. S: and the Supdt. of Police, Khurda with copy to the Director of Public Prosecution.

Non-bailable warrants of arrest were also issued against some of the witnesses. Since the warrants were not executed, on 19-11-94 letter was addressed to the Superintendent of Police, Khurda, for early execution of the warrants. In spite of repeated reminders when warrants were not executed, the learned Assistant Sessions Judge closed the prosecution case and recorded an order of acquittal.

5. The contention of the learned counsel for petitioner that if no prosecution witness was examined, it was open for the learned Assistant Sessions Judge to discharge the accused persons, is not tenable in law. In the present case charge had already been framed and it was open for the learned Assistant Sessions Judge to discharge the accused persons only at that stage. He could not have recorded an order of acquittal u/s 232, Cr. P.C., as no evidence had been adduced on behalf of the prosecution and the statements of the accused persons were not recorded u/s 313, Cr. P.C. Therefore, the impugned order is not in accordance with law. However, the alleged occurrence took place on 6-10-91 and in the meantime almost nine years have passed. In view of this long delay and considering the fact that the prosecution witnesses in spite of repeated adjournments did not appear before the Court to depose, I am of the view that no fruitful purpose will be served by quashing the impugned order and allowing the case to be tried. Though the impugned order is not in accordance with law, I am not interfering with the same only on the ground that nine years have already passed in the meantime and no fruitful purpose will be served by allowing the case to continue again.