

(2000) 03 OHC CK 0005

In the Orissa High Court

Case No : Criminal Revision No. 417 of 1995

Sarangadhar Nayak and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 140, 143, 380, 506
Probation of Offenders Act, 1958 — Section 3

Citation : (2000) 90 CLT 740

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Manoj Mishra, U.C. Patnaik and P.K. Mohanty, for the Appellant; A.R. Dash, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The Petitioners on being convicted by the Sub divisional Judicial Magistrate, Dhenkanal, in G.R. Case No. 628 of 1983 under Sections 143, 380, and 506, I.P.C. preferred an appeal before the Sessions Judge, Dhenkanal-Angul who; while allowing the appeal in part, set aside the conviction and sentence under latter part of Section 506, I.P.C. and confirmed the conviction and sentence under Sections 143 and 380, I.P.C.. The Petitioners in this revision challenge the aforesaid order of the learned Sessions Judge on various grounds.

2. The case of the prosecution, in brief, is that on 11-11-1983 at about 12.30 p. m. while the informant and other Forest Guards were in Chhotatentulia Forest Beat House, the accused persons armed with spitted wooden sticks came and forcibly entered into the beat house and took away four bags of charcoal seized in U.D. Case No. 32/83-84 and G.R. Case No. 191/88-84. The accused persons also took away the cycle of the Forest Guard A.C. Rout but on his request they left the same. The accused also threatened to set fire to the beat house and out of fear the forest guards did not resist more. Thereafter the matter was reported to the Range Officer who forwarded the same to the O.I.C.. Goinda P.S. for action.

3. During the course of trial, the prosecution examined as many as four witnesses. The defense plea was one of complete denial of the occurrence. The learned Magistrate found that there was material discrepancy between the contents of the F.I.R. and the statement of the informant (p. w. 1), as alleged by the defense. During the trial the defense also raised a plea that there was delay in lodging the F.I.R. and that no independent witness so named in the charge-sheet was examined.

The learned Magistrate came to find that independent witnesses were named in the charge-sheet but it was successfully explained by the prosecution that the said witnesses being of the same village did not come forward to depose against the accused persons being afraid of them. The trial court also observed that it is well settled that non-examination of independent witness cannot be the sole basis to reject the evidence of a single witness. It was also held by the learned Magistrate that there was nothing on record to disbelieve the prosecution case because no discrepancy had been brought out by the defense during the cross-examination of the witnesses so as to disbelieve the case of the prosecution even if the same is based upon evidence of official witnesses. So far as the delay in lodging the F.I.R. is concerned, the same was rightly dealt with by the trial court in para 7 of the judgment and, in my view, there was no laches on the part of the informant who informed the matter immediately after the occurrence. The delay in taking up the investigation by the Investigating Officer shall not in any case vitiate the trial. On scrutiny of the evidence adduced in the case, the trial court came to the conclusion that the prosecution proved its case for the offences u/s 143, 380 and 506, I.P.C. against the accused persons beyond all reasonable doubts and accordingly convicted them there under.

4. The trial court, while hearing on the question of award of sentence has taken into consideration the prayer of the accused to release them u/s 3 of the Probation of Offenders Act (in short "the Act") as there was no previous conviction, but rejected the same on the ground that benefit of the said provision was not available to the accused person who were found guilty of the offence under latter part of Section 506, I.P.C..

5. The learned Sessions Judge came to the conclusion that the accused persons stood charged under first part of Section 506, I.P.C. and the maximum sentence for such offence is imprisonment of either description for a term which may extend to two years or with fine or with both, but the trial court in the judgment recorded that the punishment for the offence under the latter part of Section 506 is seven years. Therefore, the appellate court set aside the conviction of the accused persons under the second part of Section 506, I.P.C. on the ground that the accused persons stood charged u/s 506, I.P.C. and hence could not have been convicted under the second part of Section 506, I.P.C. The appellate court, however, upheld the conviction and sentence under Sections 140 and 380 of the I.P.C.

6. After hearing learned Counsel for the parties and perusing the evidence on

record I am of the opinion that there is no irregularity or illegality committed by the appellate court in upholding the conviction under Sections 143 and 380, I.P.C. so as to warrant interference by this Court. The learned Counsel for the Petitioners has alternatively argued that there is no material on record to show any criminal antecedents against the Petitioner but the Petitioners prayer for availing the benefit of the provisions of Probation of Offenders Act was refused by the trial court as the same was not applicable to conviction under later part of Section 506, I.P.C.. However, there was no cogent reason for the appellate court to refuse the prayer of the Petitioners to release them under the Probation of Offenders " Act as the conviction u/s 506, I.P.C. was set aside. I find that in the present case the benefit of the Probation of Offenders Act should be granted in favor of the Petitioners. Accordingly, I direct that the Petitioners shall appear before the Learned S.D.J.M., Dhenkanal on 10th April, 2000 when the learned Magistrate shall admonish the accused persons in accordance with the provisions of Section 3 of the Probation of Offenders Act. It may be made clear that the Petitioners need not be sent to jail. In the event the Petitioners do not appear on that day to receive admonition, this order to release them u/s 3 of the Probation of Offenders Act will be treated as non set and the Petitioners shall surrender to undergo the sentence as awarded by the appellate court.

The Criminal Revision is accordingly dismissed.

Crl. Revision dismissed.