

(1975) 11 OHC CK 0011

In the Orissa High Court

Case No : Criminal Appeal No. 204 of 1974

Sarat Chandra Naik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 12-11-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 325

Citation : (1975) 41 CLT 1392

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

**Advocate : J.K. Mohanty and A.K. Mohanty, Addl. Standing, for the Appellant;
R.K. Rath and N.C. Panigrahi. J., for the Respondent**

Final Decision : Allowed

Judgement

N.K. Das, J.—This ten Petitioners along with four others were convicted by the trying Magistrate under Sections 148 and 324, Indian Penal Code and sentenced to pay a fine of Rs. 100/ - in default to undergo R.I. for one month each on each count. Petitioners 2 and 9 were also convicted u/s 325, Indian Penal Code and sentenced to pay a fine of Rs. 100/ - in default to undergo R.I. for one month each. In the appellate Court three of the accused persons were acquitted and Petitioners 1, 3, 4, 8 and 10 were convicted under Sections 147 and 323, Indian Penal Code and sentenced to pay a fine of Rs. 100/ - in default to undergo R.I. for one month each on each count. Petitioners 2 and 9 were convicted under Sections 147 and 323, Indian Penal Code and sentenced to pay a fine of Rs. 100/ - in default to undergo R.I. for one month each on each count. Further they were convicted u/s 325, Indian Penal Code and sentenced to pay a fine of Rs. 100/ each in default to undergo R. 1. for one month each. Petitioners 5, 6 and 7 were convicted under Sections 148 and 324, Indian Penal Code and sentenced to pay a fine of Rs. 100/ - in default to undergo R. 1. for one month each on each count. Out of the eleven persons convicted by the appellate Court sanatan Subudhi has not filed any revision and the rest ten persons have come upon the

present revision.

2. Prosecution case is that on 23-3-1970 in the afternoon while P.W. 1 Narayan Samantaray was ploughing a piece of land the Petitioners along with others came there being armed with Bhala, Lathi and gun. Pravakar Harichandan (since acquitted) Prohibited P.W. 1 from further ploughing the land as he had himself cultivated it. As P.W. 1 refused, Petitioners 1, 2, 7 and 8 assaulted him with lathi. Petitioner No. 5 threatened him with a gun. P.w. 1 fell down senseless and when P.W. 2 to 11 came to the spot to intervene they were also assaulted by the Petitioners. F.I.R. (Ext. 1/1) was lodged at Khurda Police Station by P.W. 1 on the date of occurrence. P. ws. 1 to 11 who were injured were also medically examined. The plea of the petitions is a complete denial of the occurrence. The appellate Court has summarised his findings in paragraph 24 of the Judgment.

3. Admittedly, there is a party faction between the prosecution party as well as the party of the Petitioners regarding possession of the land. The learned appellate Court has come to the conclusion that neither P.W. 1 nor Pravakar has been able to prove his respective possession. Ext. 15 shows that there was a proceeding u/s 145, Code of Criminal Procedure between P.W. 1 and Pravakar relating to the land in dispute and P.W. 1 has been held to be in possession of the property. After institution of the present criminal case a proceeding under the O.L.R. Act was started which is now pending in appeal. The evidence of PWs. 1, 2, 3 and 4 coupled with that of the boundary witnesses PWs. 12, 13 and 15 clearly establishes that P.W. 1 was in possession of the land in question. This is also supported by Ext. 15. the judgment in the proceeding u/s 145, Criminal Procedure Code. The learned lower Court is more impressed with the judgment in a proceeding under the O.L.R. Act which was started during the pendency of the present case. After considering the evidence as to possession I am not in agreement with the finding of the Court below. I, therefore, hold that P.W. 1 was in possession of the land.

4. The next question that arises for consideration is as to whether the Petitioners were aggressors. Eleven persons have been severely injured on the prosecution side and Petitioners, 6, 8 and 10 have sustained some injuries. The Court below has come to the conclusion that the injuries found on the aforesaid Petitioners are not so serious as found on the body of the prosecution witnesses. In view of the number of persons injured from either side it is evident that the party of the Petitioner were the aggressors.

5. It is contended by Mr. Mohanty appearing on behalf of the Petitioners that the lower appellate Court has based his findings on the uncorroborated, testimony of partisan witnesses. From the facts and circumstances of the case and the nature of the incident it appears that besides these two parties no other persons were present in the locality. It has not been brought to the record by way- of cross examination or by way of introducing defence evidence that other persons were present in the locality. It is quite natural that in the circumstances of the case each individual injured witness has named his assailants. The learned lower

Court has disbelieved the evidence of several witnesses where he has found that they have tried to exaggerate or suppress facts. After going through the statements of witnesses I find that the evidence as to assault on each of the witnesses as found by the lower appellate Court is not vitiated by any intrinsic infirmity or it is not a case where the findings are not supported by any evidence. There is no glaring defence in the procedure for there is manifest error" of law resulting in flagrant miscarriage of justice. Therefore, I am in agreement with the Bindings of the Court below relating to assault on PWs. 1 to 11 by the Petitioners.

6. The next question for consideration is whether the conviction of Petitioners 2 and 9 u/s 325, Indian Penal Code is sustainable. P.w. 11 has tried to support the evidence of P.W. 1. He does not state at which place Petitioner No. 2 assaulted on the body of P.W. 1. So also the evidence of P.W. 4 relating to Petitioner No. 9 is not clear as to the place of assault. No X-ray photo has been produced regarding any fracture as alleged by the doctor. Ext. 8 shows that there was a query by the investigating officer from the medical hospital of Khurda in which it has been noted by the doctor that by screening he could find out the fracture. In the absence of the X-ray examination the evidence as to grievous hurt cannot be said to have been established. Accordingly, I am of the view that conviction of Petitioners 2 and 9 u/s 325, Indian Penal Code is not sustainable.

7. In the result, the revision is allowed in part. The conviction of Petitioners 2 and 9 u/s 325. Indian Penal Code is set aside. Notice of enhancement of sentence issued to them is discharged. The conviction of an the Petitioners on other counts and sentences passed thereunder are maintained.