

(1996) 03 OHC CK 0009
In the Orissa High Court
Case No : Criminal R. No. 317 of 1994

Shyama Pradhan alias Shyam Sundar Pradhan and Others APPELLANT
Vs
State of Orissa RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 326, 34, 341

Citation : (1996) 81 CLT 738 : (1996) CriLJ 2936

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R.N. Mohanly, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioners challenge the order of conviction and sentence of one year's R. I. each u/s 324, Indian Penal Code, imposed by the Second Additional Sessions Judge, Cuttack, in Criminal Appeal No. 148 of 1992.

2. The three petitioners who are brothers faced trial for commission of offences under Sections 341, 307 and 326/34. Indian Penal Code, on the allegation that they had wrongfully restrained and severely assaulted and tried to commit murder of Basant Pradhan (P.W. 2). their own brother, in furtherance of their common intention, in the Midnight of 9/10-2-1991. The prosecution case is that in the night of 9/10-2-1991. P.W. 2, the injured and his daughter (P.W. 3) were returning from the rice huller and P. W. 1 was following them. All of a sudden, the three accused-petitioners appeared being armed with various weapons, such as Katis and iron rod and detained P.W. 2. Accused Shyama Pradhan and Makar Pradhan were holding Katis whereas accused Chandrameni was armed with iron rod. P.W. 2 tried to escape and started running, but accused Shyama dealt a Kati blow on his back side and near the ankle, as a result of which P.W. 2 fell down on the ground. Shyama gave further blows; so also, Nakar by means of Kati on other parts of the leg. The other accused Chandramani pressed the iron red on

the chest of P.W. 2 and threatened to kill. Due to the aforesaid assaults, the injured (P. W. 2) sustained several injuries. His daughter (P.W. 2) and co-villager(P.W. 1)who were following the injured raised alarm. P.W. 4. a school boy, who was preparing for his Matriculation examination in the nearby M.E. School saw the occurrence and rushed to the spot. Hearing the shouts of P. Ws. 1, 3 and 4, other villagers came to the spot, but in the meantime, the accused persons had left the place of occurrence. The injured was immediately shifted to the Capital Hospital where he was treated as an indoor patient for a long time. F.I.R. was lodged on the next morning by P.W. 1 and after investigation charge sheet was submitted under Sections 341, 326 and 307/34, Indian Penal Code.

3. The plea of the accused persons was one of denial.

4. The prosecution had examined witnesses and proved several documents including the injury report, whereas the accused persons examined D.W. 1 to prove that no electric light connection had been taken to the M.E. School or to the Bhagabat Ghar. On consideration of the evidence on record, the trial court while acquitting the accused persons of the charges under Sections 341 and 307, convicted them under Sections 326/34, Indian Penal Code, and sentenced each of the accused persons to undergo R.I. for 3 years and to pay a fine of Rs. 500/-, in default, to undergo R.I. for 6 months.

In appeal, the order of conviction was altered to one u/s 324, Indian Penal Code, inasmuch as the appellate Court felt that the prosecution had failed to prove that the injuries were grievous in nature, and the sentence was reduced to one year's rigorous imprisonment in respect of each of the petitioners.

5. In this revision, Mr. R.N. Mohanty, the learned counsel appearing for the petitioners, has strenuously argued that in view of the serious contradictions in the evidence and in view of the fact that independent witnesses had not been examined, the order of conviction should be set aside. He has laid emphasis on the fact that there was no proof that any electric connection had been taken to the M.E. School or to the Bhagabat Ghar, as evident from the evidence of D.W. 1, and as such the identity of the real assailants is doubtful. He has further submitted that though the accused persons as well as the injured are brothers, there was hostility among themselves and a false case has been foisted due to enmity.

The learned Additional standing counsel has supported the order of conviction and has submitted that the concurrent findings of the courts below should not be interfered with in exercise of revisional power of the High Court.

6. Though ordinarily, the High Court in exercise of revisional jurisdiction does not enter into the realm of appreciation of evidence, in order to satisfy myself and in view of the vehement contentions raised by Mr. Mohanty for the petitioners, I have perused the evidence of all the relevant witnesses including the eye-witnesses (P.Ws. 1, 3 and 4) and the injured (P.W. 2). Though there are certain minor contradictions here and there, I do not feel it is a fit case where the

concurrent findings of the courts below regarding the guilt of the accused persons should be upturned in exercise of revisional power of the High Court. The minor contradictions do not affect the substratum of the prosecution case which has been amply proved through the evidence of the injured (P.W. 2) and corroborated by the evidence of P.Ws. 1, 3 and 4. The appellate Court while agreeing with the contention of the learned counsel for the appellants before it regarding the absence of torchlight and electric light as claimed by the prosecution has held that since the accused persons were either close relations or co-villagers of the witnesses, there was no possibility of any wrong identification.

It is quite well known that in villages people who are quite well known to each other and can be recognised in darkness from their facial features, built, goit (sic) and voice. The accused persons being the brothers of P. W. 2 were quite well-known to him and his daughter (P.W. 3). P.Ws. 1 and 3 saw the occurrence from close proximity. So also. P.W. 4. Besides, the unassailed evidence of P.W. 4 discloses that at the relevant time he was studying in the verandah of the M.S. School preparing for his matriculation examination. Evidently, there must have been light. The occurrence took place hardly 8 to 10 cubits away from the verandah. In view of the aforesaid circumstances, it is difficult to accept the contention of the learned counsel for the petitioners that there was possibility of mistaken identity due to insufficient light. Mere non-examination of another boy said to be present along with P. W. 4 also does not affect the prosecution story. It is not the law that in each case all the witnesses said to be present at the time of occurrence must be examined. The prosecution has been able to prove its case through the mouth of the injured as well as other eye-witnesses. The order of conviction as passed by the appellate court does not merit any interference.

7. Mr. Mohanty has submitted that in case the order of conviction is upheld, the sentence should be altered and the petitioners should be released on probation under the provisions of the Probation of Offenders Act. The petitioners are brothers of the victim and as evident from the prosecution case, the occurrence took place because P.W. 2 had earlier asked for refund of the money which he had given to the accused persons. The assault was predetermined. In view of the aforesaid, I am not inclined to apply the provisions of the Probation of Offenders Act in this case, though it has been held in some cases of this Court that provisions of the Probation of Offenders Act should be applied to convictions u/s 324, Indian Penal Code. However, I find "that during the trial of the case, the petitioners had remained in custody for about 10 days. They have already experienced the agony of fighting out the case in three Courts. It would not subserve justice, if they are sent to custody once again. On the other hand, ends of justice would be amply met if the sentence is reduced to the period already undergone and fine is imposed. Accordingly, while sustaining the order of conviction, the sentence is altered to the period already undergone and in addition, each of the petitioners is directed to pay a fine of Rs. 1,000/- (one thousand rupees), in default, to undergo R.I. for one month. Out of the fine

amount, if realised, a sum of Rs. 1,000/- (one thousand rupees) be paid to the injured (P.W. 2).

8. Subject to the aforesaid modification in the sentence, this Criminal Revision is dismissed.