

(2005) 05 OHC CK 0049

In the Orissa High Court

Case No : Government Appeal No. 23 of 1993

State of Orissa and Others

APPELLANT

Vs

Prafulla Kumar Biswal and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2005) CLT 746 (Suppl CrI)

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

Bench : Single Bench

Advocate : N.C. Pati, B.K. Nayak, S. Ratho and B. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard the parties and the Government Appeal are disposed of in the following manner.

2. The six Respondents were the accused persons in S.T. Case No. 125D of 1991 of the Court of Assistant Sessions Judge, Kamakhyanagar. As per the impugned judgment on 24.2.1993 the Trial Court acquitted them u/s 235 of the Code of Criminal Procedure, 1973 (in short "the Code"). Challenging to that order of acquittal, application for leave to appeal was moved and on 24.6.1993 leave was granted.

3. Accused persons were charged for the offence under Sections 147, 148, 323, 324, 307/149, Indian Penal Code for rioting and forming an unlawful assembly to cause simple hurt as well as to attempt murder of Trinath Naik (P.W. No. 8) and Pramod Kumar Majhi (P.W. No. 2).

According to the prosecution, on 3.12.1990 on the direction of the informant (P.W. No. 1) one Chakradhar Nayak (not examined) had gone to the land at Baragadia Chaka to harvest the standing paddy crops. Chakradhar Nayak returned and reported to P.W. No. 1 at about 10.30 A.M. that the accused

persons resisted his action of cutting paddy. P.W. 1 thus sent his nephew, Pramod Kumar Majhi (P.W. No. 2) and another agricultural laborers Trinath Naik (P.W. No. 8) along with Chakradhar Nayak to the spot and sometimes after they returned from the disputed case land in severely injured conditions of P.W. Nos. 2 & 8 and reported that they were brutally assaulted by the accused persons. Accordingly, P.W. No. 1 lodged a report and law was set into motion. P.W. Nos. 2 & 8 were sent for medical examination. On completion of investigation, charge sheet was submitted against the accused persons for the aforesaid offences. In defense, accused persons took a plea of complete denial to such allegation. On the other hand they advanced the case that on the date of occurrence while they were harvesting the standing paddy crops from the case land being belonging to them, P.W. Nos. 2 & 8 along with the other supporters of the P.W. No. 1 forming an unlawful assembly cane and assaulted them as a result of which accused Trinath Biswal, Pravakar Biswal, Sudhakar Biswal and Sita Biswal sustained injuries and on the basis of the FIR lodged by the accused party charge sheet was submitted against the informant party inter alia for the offence u/s 307, Indian Penal Code and the same was pending adjudication before the Assistant Sessions Judge as Sessions Case No. 6-D of 1992.

4. Prosecution examined the injured persons and the eye-witnesses so also the Doctor and the Investigating Officer besides the injury certificates and the seizure list etc. to substantiate the charge against the accused persons. Accused persons examined one defense witness and also relied on FIR, the injury certificates in the counter case and the record of right as defense evidence. The Trial Court on assessment of such evidence found that the allegation of assault and causing injury to the P.W. Nos. 2 & 8 by the three named accused persons, Trinath Biswal, Prabhakar Biswal and Sudhakar Biswal was proved. Both the injured and the other two eye witnesses to the occurrence pleaded their ignorance about any injury on the accused persons at the time of such occurrence and the prosecution also did not explain how the accused persons sustained the injuries in course of the same incident. Therefore, referring to a series of decision of the Apex Court and this Court (as noted in Para 17 of the Impugned Judgment), the Trial Court found the evidence of the eye witnesses suffers from the guilt of suppression of the material fact in such evidence and granted the order of acquittal in favor of the accused persons. Learned Standing Counsel does not disputer to the ratio in the citation noted by the Trial Court or against their applicability to the facts and circumstances of the present case. Thus the approach of the Trial Court being not suffering from any illegality or perversity, this Court finds no reason to interfere with that order of acquittal.

Accordingly the Government Appeal is dismissed.

Appeal dismissed.