
(2008) 11 OHC CK 0064

In the Orissa High Court

Case No : Govt. Appeal No's. 25 of 1986 and Criminal Appeal No's. 157 of 1987

State of Orissa and Others

APPELLANT

Vs

Sarat @ Ajaya Kumar Panda and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 326, 34, 84
Probation of Offenders Act, 1958 — Section 4(4)

Citation : (2008) CLT 16 Supp

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : D. Nayak and D.P. Dhal, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—The Government Appeal and the Criminal Appeal arise out of the same judgment dated 26.04.1986 passed by the Assistant Sessions Judge, Bhadrak in S.T. Case Nos. 1/ 2 of 1986 by which the Trial Court while acquitting the accused persons of the charges under Sections 307/326/34 I.P.C., convicted them u/s 324 I.P.C. but instead of awarding any sentence released them under the provisions of Section 4 (4) of the Probation or Offenders Act on entering into a bond for an amount of Rs. 1,000/- with one surety to keep peace and be of good behaviour for a period of one year. The State has filed the G.A. against the order of acquittal of the accused persons whereas the accused persons have come up in the criminal appeal challenging the order of their conviction u/s 324 Indian Penal Code.

2. The case of the prosecution is that on 17.2.1985 at about 1 P.M. the injured was going on a cycle along with Alok Kumar Roy Mohapatra. While they were near the house of accused Bhagaban Mishra, all the accused persons surrounded and obstructed them and thereafter they assaulted the injured. Accused-Bhagaban Mishra assaulted the injured with a kata, accused-Ajay Panda with a crowbar, accused-Sarbeswar Patnaik with a knife and accused-Laxmidhar with a

bamboo lathi. While injured Padan Sethi was going away from the spot, accused Sarbeswar chased him and dealt blows with lathi. Therefore, he fell down on the road. When some neighbours ran to the spot, accused persons left that place and went away. Thereafter, injured Padan Sethi was taken to Dhamnagar Police Station and reported the matter before the police. After completion of investigation charge-sheet was submitted against the accused persons under Sections 324/84, 324/84 and 307/84 in Government Appeal No. 25/1986 and under Sections 307/326/324/34 Indian Penal Code.

3. The plea of the defence is complete denial of the allegation.

4. In order to prove its case, prosecution examined as many as 13 witnesses and exhibited 16 documents. Defence examined only one witness.

5. Learned Assistant Sessions Judge, who tried the case, by his judgment dated 26.04.1986 convicted the accused persons u/s 324/34 I.P.C. in Criminal Appeal Nos. 157 of 1987 and released them u/s 4 of the Probation of Offenders Act.

6. Learned Additional Standing Counsel submitted that in view of the positive evidence of assault made on the injured which was preplanned and brutal and in view of the number of injuries sustained on vital parts of the body of the injured, the Trial Court should not have acquitted the accused persons of the charge u/s 307/34 Indian Penal Code. He also submitted that the Trial Court should have passed an order of sentence instead of releasing the accused persons u/s 4 (4) of the Probation of Offenders Act while passing an order of conviction for the offence u/s 324/34 Indian Penal Code.

7. Mr. Das, Learned Counsel for the accused persons vehemently contended that no illegality has been committed by the Trial Court in acquitting accused-respondents u/s 307/326/34 Indian Penal Code. He, however, submitted that the Trial Court went wrong in finding the accused persons guilty u/s 324/34 Indian Penal Code on the same set of evidence. He further submitted that some material witnesses have not been examined by the prosecution. The occurrence took place on 17.02.1985 and in the meantime 23 years have elapsed. Therefore, it would not be proper to disturb the order of acquittal at this stage.

8. Perused the L.C.R., more particularly the deposition of witnesses. In the case of Anil Kumar v. State of U.P. AIR 2004 SC 2662, it has been observed that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidenced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. In the instant case P. Ws. 1, 2 and 3 are eye witnesses to the occurrence who specifically stated that accused Sarbeswar had a knife and

accused Laxmidhar had a bamboo lathi and the same have been identified as M.O.I and M.O.II.P.W.7, the doctor found one incised injury with bleeding of 2" x 1/2" X 1/4" size over the right side temporal bone of P.W. 3. According to him it was caused by some sharp cutting weapon. He also found one lacerated injury on the head of accused Laxmidhar. It is argued that P.W. 3 dealt one blow by lathi on Laxmidhar which hit on his head, but such specific plea was not taken by the defence. From the oral evidence of witnesses some discrepancies are found regarding the place of injury. As per the evidence of eye-witnesses, when some girls shouted "Hai Gala Hai Gala," the accused-respondents appeared on the road. Thereafter, accused Bhagaban dragged P.W. 3 from the career of the cycle and all the accused-respondents assaulted him. There is no specific evidence regarding conspiracy among the accused persons or that they assembled for a common intention to kill the injured. Moreover, there are some injuries on the body of accused- Laxmidhar Pattnaik. P.W. 7 in his cross-examination has clearly stated that he could not have opined the injuries found on P.W. 3 to be grievous or any other internal organ was affected. As per the evidence of P.W. 7, injury No. 5 cannot be said to be grievous. Further, the I.O. has stated that one Gouranga Jena was the witness to the occurrence and a material witness. But P. Ws. 1, 2, 3 and 8 did not support the said fact. Said Gouranga Jena has also not been examined, but his non-examination does not vitally affect the prosecution case since prosecution has already examined other independent witnesses.

9. In view of the above, it cannot be said that the Trial Court has committed any illegality or irregularity. Re-appreciating the evidence, this Court does not find any merit in the Government Appeal and the Criminal Appeal, which are accordingly dismissed and the judgment of the Trial Court is confirmed.