
(2005) 04 OHC CK 0048
In the Orissa High Court
Case No : Criminal Appeal No. 65 of 1987

Sukadev Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 137, 148, 149, 302, 304

Citation : (2005) 100 CLT 61

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; A.G.A., for the Respondent

Judgement

I.M. Quddusi, J.—The present Criminal Appeal has been filed against the Order dated 23.3.1987 passed by the First Additional Sessions Judge, Cuttack in Sessions Trial No. 123 of 1986, State v. Sukadev Mohanty and 14 Ors.. Additional Sessions Judge, Cuttack acquitted all the accused persons except the present appellants. Out of them Sukadeva Mohanty (Appellant No. 1), Bijay Mohanty (Appellant No. 2) and Sarat Mohanty (Appellant No. 3) were convicted and sentenced to undergo rigorous imprisonment for one year each for the offence punishable u/s 323, I PC whereas, Hemanta Mohanty (Appellant No. 4) was convicted and sentenced to undergo rigorous imprisonment for two years for the offence punishable u/s 324, IPC.

2. The brief facts of the case are that an FIR was lodged mentioning therein that in the year 1984 there was dispute regarding cultivation of Anabadi land in between village Kolangiri and Nankar and the Bhadrals prohibited cultivation of Anabadi land and a Panch Faisala to that effect was made. But the villagers cultivated the Anabadi land in the year 1985. On 31.8.85 at about 1 PM. when Ratnakar Mallik (P.W. 4) and his son Michhu Mallik (P.W. 5) were ploughing the Anabadi land, the accused persons and other being armed with Latis, Tentas, Badchha, stones, Bahunga attacked and assaulted them along with Sarbeswar Mallik (P.W. 1), Lokanath Mallik, the informant (P.W. 2), Raghab Mallik (P.W. 6),

Michhu Mallik. S/of Pari (P.W. 7), Duryodhan (P.W. 8), Gurubari Mallik (P.W. 9) who came to their rescue causing grievous injuries to them. The injured persons were removed to Gopalpur PHC where they were medically examined by the Medical Officer who sent P.Ws. 1, 4 & 5 to the SCB Medical College Hospital, Cuttack for treatment. The FIR was lodged at Balichandrapur out post on 31.8.85 at 5.30 PM., on the basis of which case was registered at Barachana P. S. on the same day at 9.00 PM. and the police took up investigation, seized some stones lying on the spot, sent requisition for medical examination of the injured persons and examined including the appellants were charge sheeted and consequently the learned Magistrate committed the case to the court of session. The trial was conducted by the learned First Additional Session Judge, Cuttack for the offence punishable under Sections 148/137/149, 324/149, 323 & 324, IPC.

3. The prosecution produced and examined twelve witnesses (P.Ws. 1 to 12) and the accused persons examined one witness (D.W. 1) in support of their defence. Amongst the prosecution witnesses, P.Ws. 1 to 9, namely, Sarbeswar Mallik (P.W. 1), Lokanath Mallik-informant (P.W. 2), Akhaya Mallik (P.W. 3), Ratnakar Mallik (P.W. 4), Michhu Mallik (P.W. 5), Raghav Mallik (P.W. 6), Michhu Mallik, S/of Pari (P.W. 7), Duryodhan (P.W. 8), Gurubari Mallik (P.W. 9) were the eye-witnesses and injured persons. P.Ws. 10 and 11, namely, B.K. Satapathy and B.N. Mohanty respectively were the Investigating Officers and P.W. 12, Dr. A.C. Naik was the Medical Officer who medically examined the injured persons.

4. It may be noticed here that the injured witnesses got only simple injuries on their persons but the accused persons sustained simple and grievous injuries also. The weapons used against the prosecution witnesses were allegedly hard and blunt and sharp end of weapons while the weapons used for causing injuries to the accused persons were hard and blunt and also hard and blunt/sharp cutting. One of the persons from the side of the accused, namely Mushei Dhal succumbed to his injuries allegedly caused by P.Ws. 2, 4 and 5. Learned counsel appearing for the appellants submitted that against P.Ws. 1 to 9 on the FIR lodged on behalf of the accused persons, trial was conducted by the same court, i.e., First Additional Sessions Judge. He has submitted that in the memo of appeal in Paragraph-7 it has been specifically mentioned that the learned Additional Sessions Judge has convicted P.Ws. 2, 4 and 5 u/s 304 Part-II read with Section 34, IPC for causing death of Mushei Dhal and sentenced them to undergo rigorous imprisonment for five years each and has acquitted others on the ground that there was no independent corroboration to establish the charges under Sections 325, 148, 325 read with Sections 149, 302 read with Section 149, IPC in ST. No. 78 of 1986. Further in the instant matter, the Learned Additional Sessions Judge acquitted all the 15 accused persons from the charges under Sections 148, 307/149, 324/149, IPC and only sentenced the appellants as mentioned above. Further Shri Dhal has submitted that the place of incident is the residence of the accused persons i.e. village Kolangiri and, therefore, it is clear that the accused-appellants had not gone to the place of P.Ws. rather P.Ws. came to the place of the accused and thus it cannot be said that there was

common intention of the accused and thus it cannot be said that there was common intention of the accused to cause hurt to the P.Ws. and as such the prosecution has not come with clean hands.

5. It is an undisputed fact that the incident in question had taken place in which the P.Ws. had also got injuries. No doubt some of the accused had also got injuries and one of the persons from the side of the accused succumbed to his injuries but the fact remains that on sudden provocation, the accused persons were also involved in causing hurt/grievous hurt. They could not prove that they attacked those who hurt/grievous hurt due to self-defence. It also could not be proved by them that they did not attack first. Therefore, in the absence of the same, the convictions of the appellants cannot be held to be wrong. However, they deserve leniency in awarding sentences. It may be noticed that the appellants were taken into custody on 4.9.1985 and were released on bail on 10.9.1985.

6. In view of the facts and circumstances discussed above, this Court is of the opinion that the Judgment and Order dated 23.2.1997 passed by the learned Additional Sessions Judge acquitting all the accused persons except the present appellants, out of whom Sukadev Mohanty (Appellant No. 1), Bijay Mohanty (appellant No. 2) and Sarat Mohanty (Appellant No. 3) were convicted and sentenced to undergo rigorous imprisonment for one year each for the offence punishable u/s 323, IPC whereas. Hemanta Mohanty (Appellant No. 4) was convicted and sentenced to undergo rigorous imprisonment for two years for the offence punishable u/s 324, IPC, should be upheld. However, the sentences awarded are to be modified.

7. Therefore, in the result, the judgment/order passed by the Learned Court below convicting the appellants is upheld, However, the sentence awarded to the appellants modified to the extent that the Appellant No. 1 - Sukadev Mohanty, Appellant No. 2 - Bijay Mohanty and Appellant No. 4-Sarat Mohanty are sentenced to the period already undergone with fine of Rs. 500/- and in case of non-payment of fine, he will have to undergo a further period of three months simple imprisonment.

8. With regard to Appellant No. 3 Hemanta Mohanty, he is sentenced to the period already undergone with fine of Rs. 1,000/-and in case of non-payment of fine, he will have to undergo a further period of six months simple imprisonment.

The appeal is allowed in part accordingly.