ORISSA HIGH COURT
CUTTACK

CRIMINAL APPEAL NO. 96 OF 1990

From the judgment dated 13.02.1990 passed by Sri P.N.Patnaik, Addl. Sessions Judge, Jeypore in Sessions Case No.82 of 1989.

Miniaka Asai ..... Appellant

Versus

State ..... Respondent

For Appellant - M/s A.K.Nanda and G.Majhi

For Respondent - Mr. S. Behera, Addl. Government Advocate

PRESENT:-

THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 08.08.2006

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 13.02.1990 passed by the learned Addl. Sessions Judge, Jeypore, in Sessions Case No.82 of 1989 convicting the appellant under Section 323 IPC and sentencing him to undergo rigorous imprisonment for one year.

2. The appellant faced trial along with 18 others in the court of the Addl. Sessions Judge, Jeypore in Sessions Case No.82 of

1989 being charged under Sections 148, 302, 302/149 and 323 IPC. The allegation against the accused persons was that there was a common tamarind tree, the fruits of which were being enjoyed by the family of the deceased and the family of accused Huika Bagi in alternate years. In the year in dispute, the deceased Dangri Ghenu and his family members were to enjoy the fruits. But as Huika Bagi and others plucked the tamarind from the tree, the deceased made a complaint before the Sarpanch. On that day, the villagers had gone for hunting and in the after noon at about 4 p.m. returned with one Sambar. Since the deceased was not given his share in the Sambar meat, he challenged. At this, some of the accused persons physically carried him, threw him on the village Dando and assaulted him by means of tangia and tangi, as a result of which, the head of the deceased was separated from his body. It was also alleged that while accused Praska Basini was assaulting on the head of the deceased by means of a stone, Dangri Minjai (P.W.2), the wife of the deceased, tried to come to his rescue, but the present appellant assaulted her by means of lathi, for which she sustained bleeding injury and fell down. The police, on receipt of information, proceeded with investigation and after closure of the same, submitted charge sheet against the appellant and 18 others under Sections 147/148/302/149 IPC.

3. The plea of the defence was complete denial of the occurrence. A specific plea was taken by the present appellant and co-accused Praska Pakiri that since they had deposed against deceased Dangri Ghenu in theft cases, this false case has been foisted against them.

4. In order to prove its case, the prosecution examined as many as 11 witnesses and relied on 27 exhibits. P.W.2 is the informant and the widow of the deceased, P.W.3 is her nephew, P.Ws.4 and 5 are the two wives of Dangri Benu, the brother of the

deceased, P.Ws.1 and 6 are the doctors, of whom, P.W.1 examined P.W.2 on police requisition and P.W.6 performed the autopsy over the dead body of the deceased, P.Ws.8 and 9 are witnesses to seizure, P.W.7 is the local Sarpanch before whom the deceased had complained about plucking of tamarind by the accused persons, P.W.12 is the Constable who escorted the dead body to Rayagada Sub-Divisional Hospital, and P.Ws.10 and 11 are the investigating officers. Defence examined none in support of its plea.

5. The learned Addl. Sessions Judge, Jeypore, who tried the case, by his judgment dated 13.02.1990 acquitted all the accused persons of the charges under Sections 148, 302 and 302/149 IPC. However, he convicted the present appellant under Section 323 IPC and sentenced him to undergo imprisonment for one year.

6. Mr. Nanda, learned counsel for the appellant, submitted that the trial court mainly relying upon the evidence of P.Ws.2, 3 and 4 and the doctor (P.W.1) has convicted the appellant. But, their evidence stands at variance with each other. Therefore, no credence can be attached to their evidence. P.W.2 is the widow of the deceased, P.W.3 is her nephew and P.W.4 is the wife of the brother of the deceased. They being the relations of the deceased are interested for successful termination of the case. Therefore, the trial court has fell into error in relying upon their evidence. The doctor (P.W.1), who examined the injured (P.W.2) has stated in his evidence that the injury sustained by P.W.2 can be possible by fall. On face of such evidence, it is difficult to fasten the liability of causing injury to P.W.2 with the appellant.

7. Mr. Behera, learned Addl. Government Advocate, on the other hand, contended that on the ground of interestedness the evidence of P.Ws.2, 3 and 4 should not be brushed aside, if they are otherwise trustworthy witnesses. P.W.2's evidence is very clear with

regard to assault on her. Nothing has been elicited by way of cross-examination to discredit her evidence. Her evidence also finds corroboration from P.Ws.3, 4 and the doctor-P.W.1.

8. P.W.2 in her evidence specifically stated that when accused Lada, Basani and Pakiri assaulted her husband by means of axe, she immediately rushed to the spot to rescue her husband, but the appellant assaulted by means of a lathi on her left side head. Although P.W.2 was cross-examined at length, nothing substantial has been brought out to disbelieve her evidence.

P.W.3 in his evidence stated that when P.W.2 came running to the spot, the appellant assaulted on her head by means of a lathi causing bleeding injury. Out of fear, he ran away to his house. P.W.4 in her evidence stated that when P.W.2 came, she was assaulted by the appellant by a lathi on her head causing bleeding injury. P.W.1, the doctor, who examined P.W.2 on police requisition found lacerated injury with blood clot, size 2 cm x 1 cm over left parietal region of scalp. It was simple in nature and could be possible by hard and blunt weapon. In the instant case, M.O.IV was the lathi seized from the spot and sent for chemical examination and the Chemical Examiner's report reveals that it contained human blood.

No doubt, P.Ws.2, 3 and 4 are related to each other. Now, law is fairly well settled that on the ground of interestedness, the evidence of the witnesses cannot be thrown above board, if they are otherwise trustworthy witnesses. There is no material before this Court to disbelieve the evidence of P.Ws.3 and 4.

So far as the other contention raised by the appellant that the evidence of P.Ws.1, 2, 3 and 4 stand at variance with each other, there is no material to that effect. Rather, the evidence of P.W.2 with regard to assault on her is very clear and is corroborated by P.Ws.3 and 4 in all material particulars.

9. In view of above, there is nothing to doubt that the appellant dealt a blow on the head of P.W.2 by means of a lathi causing bleeding injury. However, since the occurrence took place in the month of April, 1989 and the appellant is aged about more than 55 years and he was re-arrested on 29.07.2006 pursuant to the orders of this Court dated 28.03.2006 and since then he is in custody, this Court feels it proper to modify the sentence to the period already undergone and to pay a fine of Rs.1000/-(one thousand), in default to undergo S.I. for two months. If the fine amount is realized, 50% of the same, i.e., Rs.500/-(five hundred) shall be disbursed to the injured (P.W.2).

10. The appeal stands disposed of with the modification of sentence to the above extent.

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PRADIP MOHANTY, J.

High Court of Orissa, Cuttack,
The 8th August, 2006/***Samal***