

# ORISSA HIGH COURT CUTTACK

## GOVERNMENT APPEAL NO.46 OF 1989

From an order dated 21.06.1989 passed by Sri Prahallad Mishra, Sessions Judge, Dhenkanal in Criminal Appeal No.45 of 1987, reversing the order dated 31.03.1987 passed by Shri K.C. Panda, Assistant Sessions Judge, Dhenkanal in S.T.Case No.92D/84 of 1986.

State of Orissa

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Appellant

Versus

Bhikari Mohanty & 3 others

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Respondents

For appellant : Addl. Govt. Advocate

For respondents : M/s N.C.Pati, S.K.Swain  
and B.Sahoo

**PRESENT :**

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 19.10.2006  
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**PRADIP MOHANTY,J.** This Government Appeal is directed against the judgment and order dated 21.06.1989 passed by the Sessions Judge, Dhenkanal in Criminal Appeal No.45 of 1987, acquitting all the respondents of the charges under sections 323/324/34 IPC and also acquitting respondent no.3 of the charge under section 326 IPC by setting the judgment and order of conviction passed by the Assistant Sessions Judge, Dhenkanal in S.T. Case No.92D/84 of 1986.

2. Case of the prosecution, in short, is that on 22.06.1986 at about 8.00 A.M., Natha Mohanty (P.W.3) was ploughing his land situated at Badajoda Nala of Chhadasingh village with the help of his field servant Nilamani Singh (P.W.8) to sow paddy thereon. At that time P.W.3 found that accused-respondent Bhikari Mohanty had cut and removed the intervening ridge standing in between his land and the land of the said accused. When P.W.3 asked Bhikari as to why he had done so, there ensued a quarrel between them. In course of such quarrel, accused Akhaya Mohanty, who was holding a Tangia, gave a blow with the same to P.W.3, which struck his nose causing bleeding injury. Accused persons Iswar Mohanty and Sikhar Mohanty gave Lathi blows to his mouth, for which there was bleeding from his mouth and ear. At that time, when Gurubari (P.W.2) came running to the spot and protested, accused Akhaya gave a Tangia blow to the said witness, who warded off by raising both his hands and the blow fell on the back of Iswar Mohanty. Then accused Iswar Mohanty, Bhikari Mohanty and Sikhar Mohanty gave Lathi blows to P.W.2. Accused Akhaya also gave two Tangia blows causing bleeding injury. When Lachhaaman @ Laxman Mohanty (P.W.4) protested, accused-respondents Iswar, Bhikari and Sikhar assaulted him with Lathis whereas accused Akhaya gave a Tangia blow to him, which hit near his left ear. Thereafter, when Aabhimanyu Mohanty (P.W.1) came and tried to protest, accused Akhaya gave a Tangia blow to his head causing bleeding injury. The injured persons came to Dhenkanal Sadar P.S. where P.W.1 lodged the F.I.R. Police took up investigation and on its completion submitted charge-sheet.

3. Though the trial court framed charges under sections 307/323/324/34 IPC, ultimately it acquitted the accused persons of the charge under section 307/34 IPC. It, however, convicted all the accused persons under sections 324/323/34 IPC and also accused Akhaya under section 326 IPC. The trial court sentenced each of the accused persons to undergo R.I. for one year under section 324/34 IPC and six months under

section 323/34 IPC. Accused Akhaya Mohanty was further sentenced to undergo R.I. for two years and to pay a fine of Rs.100/-, in default to undergo R.I. for one month under section 326 IPC. The sentences were directed to run concurrently. Against the said judgment and order of conviction, the accused-respondents preferred Criminal Appeal No.45 of 1987 before the Sessions Judge, Dhenkanal, who, by his order dated 21.06.1989 allowed the same by setting aside the order of conviction and sentence, as passed by the trial court. The learned Sessions Judge recorded findings that the prosecution has not explained as to how the accused persons sustained the injuries; that it has not given a true picture of the occurrence; and that there has been suppression of material facts.

4. Mr. Khuntia, learned Additional Government Advocate, submits that there are ample materials against the accused-respondents for recording an order of conviction against them. He also submits that all the witnesses are reliable and trustworthy. His further contention is that though the accused-respondents had sustained some minor and superficial injuries, non-explanation of the same shall not affect the prosecution case. He, however, fairly admitted that it was the bounden duty of the prosecution to explain the same.

5. Perused the judgment of the trial court as well as that of the lower appellate court and the evidence of the witnesses. P.W.1 is the informant and the injured. P.Ws.2, 3 and 4 are also injured persons who had come to Dhenkanal Sadar P.S. along with P.W.1. P.Ws.6, 7 and 8 are said to be witnesses to the occurrence. P.W.1 in his evidence stated that during the course of quarrel, Akhaya gave a Tangia blow aiming at the head of Natha Mohanty, but that blow hit the nose of Natha causing bleeding from his nose. Accused Akhaya also gave three Tangia blows to Gurubari causing bleeding injuries. P.Ws.2 to 4 have corroborated the version of P.W.1 and have stated as to how they had been assaulted by the accused persons. P.W.9, the doctor who had examined the injured persons, has also

corroborated their testimony. Thus, the assault on P.Ws.1 to 4 by the accused persons has been amply proved by the prosecution.

6. P.W.9 had also examined accused Iswar Mohanty and found two incised wounds situated on the supra clavicular region. Such injuries, as opined by P.W.9, were caused by sharp cutting weapons. The prosecution has not explained as to how the injuries were sustained by the accused persons. Attempts were made to prove that the injuries were caused the accused persons by their own weapons. But, it is found that the injuries on the accused persons are not superficial. Some of the injuries were on the vital parts of the body and serious in nature. Such injuries had been sustained at the same place and time and during the same transaction.

7. The above discussion shows that the prosecution has not explained how during the course of the incident, accused persons sustained injuries. Therefore, the prosecution has not come with a clean hand and is guilty of suppression of facts. Admittedly, a case and a counter case had been registered. P.Ws.6, 7 and 8, who are said to be the witnesses to the occurrence, have admitted the same in their cross-examination.

8. In view of the above, this Court is of the opinion that the lower appellate court has rightly acquitted the accused-respondents by setting aside the order of their conviction as passed by the trial court. This Government Appeal is devoid of any merit and is accordingly dismissed.

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**PRADIP MOHANTY, J.**

Orissa High Court, Cuttack  
 October 19, 2006 / **Routray**