

**ORISSA HIGH COURT,
CUTTACK**

CRIMINAL APPEAL NO. 155 OF 1987

From the judgment dated 15.07.1987 passed by Sri K.C. Panda, Addl. Sessions Judge, Sambalpur in Sessions Trial No.88/14 of 1986.

Chaku Khadia & another Appellants

Versus

State of Orissa Respondent

For appellants : M/s N.C. Pati, S.K. Swain
and G.S. Rath. Behera

For respondent : Mr. R. Patnaik,
Addl. Standing Counsel.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 20.06.2007

PRADIP MOHANTY, J. This criminal appeal is directed against the judgment and order dated 15.07.1987 passed by the Addl. Sessions Judge, Sambalpur in Sessions Trial No.88/14 of 1986 convicting the appellants under sections 325/34 IPC and sentencing each of them to undergo rigorous imprisonment for two years and to pay fine of rupees one hundred, in default to undergo rigorous imprisonment for one month, with the further direction to set off the period of detention.

2. The prosecution allegation in brief is that on 25.01.1986, on Pousa Purnima evening, at about 7.30 P.M. suddenly the straw heap stacked on the thrashing floor of co-accused Lepa Khadia (since acquitted) started burning. On getting information from the co-accused Basu Khadia (since acquitted) that the deceased Bajru Khadia had set fire to the said straw heap, both the appellants entered inside the dwelling house of deceased Bajru Khadia, dragged him out of his house and took him to their thrashing floor where the straw heap was burning. Both the appellants with other accused persons surrounded the deceased there and gave fist blows, kicks and slaps to him. They also dealt thenga blows to him and shouted to throw the deceased to the burning fire. But the witnesses intervened and advised them to hand over the deceased to the police if he had committed any offence. Thereafter, both the appellants along with other accused persons took the deceased towards Sasan P.S. Further case of the prosecution is that the appellants and other accused persons mercilessly assaulted the deceased at Padhanpali Railway crossing, as a result of which he succumbed to the injuries and thereafter tried to burn the dead body. Charge was framed under Sections 342, 201, 304/34 and 457 IPC against the appellants and four other accused persons.

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

4. In order to prove its case the prosecution examined as many as 11 witnesses and relied on 14 documents marked Ext.1 to 14. Appellants examined none in support of their plea.

5. The learned Addl. Sessions Judge, Sambalpur, who tried the case, by his judgment dated 15.07.1987 acquitted the co-accused persons of all the offences but convicted the appellants under Sections 325/34 IPC and sentenced each of them undergo rigorous imprisonment for two years and to pay fine of rupees one hundred in default to undergo rigorous imprisonment for one month.

6. Learned counsel for the appellants submits that the evidence of the prosecution witnesses is highly discrepant and is not reliable. The evidence of the prosecution witnesses is not specific with regard to assault on the deceased. He further submits that the finding of the trial court is very specific to the effect that no lethal weapon was used at the time of assault on the deceased. The materials on record do not make out a case under Section 325/34 IPC against the appellants. Lastly he submits that the sentence imposed is higher and excessive.

7. Mr. Pattnaik, learned Addl. Standing Counsel, vehemently contends that there is no illegality or infirmity in the judgment of the trial court in convicting the appellants under Section 325/34 IPC. P.Ws.1, 2, 4 and 5 have specifically stated about the appellants assaulting the deceased.

8. Perused the LCR and deposition of the witnesses. P.W.1 is a neighbour of both the deceased and the informant. He specifically stated about dragging of the deceased by both the appellants and about their assaulting the deceased by fist and kick blows. He also stated about the slap and kick blows given by the appellants to the deceased and about use of short lathi by both of them. He further stated that he saw the appellants assaulting the deceased near Padhanpalli crossing. He orally reported the matter to the police. Nothing has been elicited from him during cross-examination to discredit his version. Though there are some minor contradictions in the statements of this witness, the same do not in any manner affect the veracity of his evidence. P.W.2 is also an eye witness to the occurrence. In his deposition, he stated in similar manner as P.W.1. P.W.4 is an occurrence witness. He also stated about the assault by the appellants to the deceased at the first instance. Nothing has been elicited by way of cross-examination to disbelieve his testimony. P.W.5 is also a witness to the occurrence. He stated in his deposition that the appellants along with others dealt lathi blows, fist blows, slaps and kicks on the deceased and also tried to throw him into the burning fire. Thereafter, he went away to his work. Nothing has been elicited by way of cross-

examination to discredit his testimony. P.W.11 is the doctor, who conducted autopsy over the dead body of the deceased. In his evidence, he stated that the cause of death was syncope and coma. According to him, all the injuries excepting the left shoulder dismemberment were ante mortem in nature. The injuries could be possible due to hard and blunt force impact.

9. In the instant case, admittedly the appellants while assaulting the deceased used no lethal weapon. P.Ws.1, 2, 4 and 5 in their evidence stated about the dealing of fist blows and slaps by the accused persons. Only P.Ws.1 and 5 stated about the lathi blows. Law is well settled that merely because death has been caused, intention or knowledge on the part of the accused cannot be assumed. The degree of guilt of the accused is not to be extended beyond what he had intended or known as the probable consequence of his act. In the absence of intention or knowledge, the offence committed may be one of causing grievous hurt or simple hurt, as the case may be. Therefore, basing upon the evidence of P.Ws.1, 2, 4 and 5 coupled with the injuries sustained by the deceased, it can safely be concluded that the prosecution has made out a case under section 325/34 IPC against the appellants and the trial court has rightly convicted and sentenced them under the said section.

10. At this stage, learned counsel for the appellants submits that the occurrence had taken place in January, 1986, i.e., more than two decades ago. The appellants are living with their family members and they have not indulged themselves in any criminal activity since then. Therefore, they may be leniently dealt with while awarding sentence.

11. Considering the submissions made and in the facts and circumstances of the case, this Court feels that the period of imprisonment already undergone by the appellants along with a fine of Rs.10,000/- (ten thousand) each, in default to undergo rigorous imprisonment for six months, will meet the ends of justice; and this Court so directs. If the fine

amount is realized, the same shall be disbursed to the legal heirs of the deceased.

12. The Criminal Appeal is disposed of accordingly.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
June 20, 2007/ ***Samal***