ORISSA HIGH COURT
CUTTACK

CRIMINAL APPEAL NO.270 OF 1989

From the judgment dated 31.07.1989 passed by Sri K.C. Panda, Addl. Sessions Judge, Titilagarh in S.C. No.53/12 of 1988.

Santosh Kumar Jagat ..... Appellant

Versus

State of Orissa ..... Respondent

For appellant : M/s B. Pujari and R.K. Swain.

For respondent : Addl. Govt. Advocate.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of judgment : 06.08.2008

PRADIP MOHANTY,J. This appeal is directed against the judgment dated 31.07.1989 passed by the learned Addl. Sessions Judge, Titilagarh in S.C. No.53/12 of 1988 convicting the appellant under Sections 394/397 IPC read with Section 27 of the Indian Arms Act and sentencing him to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for two months more.

2. Prosecution case in brief is that on 14.03.1988 morning P.W.4-Mithila Putel and her daughter Panchami Putel (P.W.5) were

plucking tomatoes from their bari. Just then, the appellant appeared and asked P.W.4 to give him tomato. As P.W.4 refused, appellant caught hold of her neck, closed her mouth and snatched away a pair of gold Jhulki, which she was then wearing on her ears. When P.W.4 tried to shout, the appellant stabbed on her chest and back with an iron knife, as a result of which she sustained injuries on her person. But when P.W.5 raised hullah, the appellant started running. He was chased by P.W.2 and others and caught red handed. He confessed his guilt and gave recovery of a blood stained knife, two iron Barchhas and also a pair of golden Jhulki, which he had snatched away from P.W.4. The matter was reported to police. Ultimately, final form was submitted under Sections 397/394 IPC read with Section 27 of the Indian Arms Act.

3. The plea of the appellant was of complete denial. His specific plea was that near Bangomunda bus stand while he was going to answer the call of nature, some people caught hold of him, although he was in no way connected with the crime.

4. In order to prove its case, prosecution examined as many as 7 witnesses, including the doctor (P.W.3) and the I.O., exhibited seven documents and proved three material objects including the weapon of offence, i.e., knife.

Learned Addl. Sessions Judge, Titilagarh, who tried the case, by his judgment dated 31.07.1989 convicted the appellant under Section 394/397 IPC read with Section 27 of the Indian Arms Act and sentenced him as already stated.

5. The appellant assails the impugned judgment on the following grounds:

(i) No T.I. parade was conducted, though the accused was a stranger and the witnesses did not know the accused earlier;

(ii) there is much variation between the FIR lodged by P.W.1 and his deposition in the court;

(iii) P.W.4, the victim, did not say that the accused in the dock committed the alleged acts;

(iv) Ext.2, the seizure list, has not been proved by the prosecution;

(v) all the witnesses having contradicted themselves, no reliance can be placed on their evidence;

(vi) the charge is defective; and.

(vii) examination of the accused-appellant under Section 313 Cr.P.C. is also defective, as no specific question was put to him;

6. Mr. Pattnaik, learned Addl. Govt. Advocate vehemently contended that there is no reason to disbelieve the evidence of P.Ws.2, 4, 5 and 6. The appellant has also confessed his guilt before the witnesses and gave recovery of M.Os.I, II and III as also the pair of Jhulki, which was subsequently seized by the police under seizure list Ext.2. The victim (P.W.4), fully supported the prosecution case. The doctor (P.W.3), who examined the victim (P.W.4), found two incised injuries and opined that the injuries might be caused by M.O.I, the knife. He forcefully submitted that this Court should not interfere with the impugned judgment and order of conviction.

7. Perused the LCR, more particularly the evidence of the witnesses. Admittedly, in the instant case, prosecution has conducted no T.I. parade. It is in the evidence that some of the witnesses and others chased the appellant and caught him red handed and that the appellant confessed his guilt before them, gave recovery of the stolen article, i.e., a pair of Jhulki, and the weapons,

i.e., M.Os. I, II and III including the weapon of offence (knife). P.W.1 orally informed the incident at the police station. P.W.7, the Investigating Officer, reduced the same to writing, issued requisition to P.W.3, the doctor, for examination of the victim (P.W.4) and obtained sanction from the A.D.M. vide Ext.7. P.W.3 found two incised injuries; one on the left side of the chest and the other on the back of P.W.4. He opined that the incised injuries were sustained possibly by the knife (M.O.I). From this, it can safely be inferred that the medical evidence on record substantially corroborates the prosecution case. There are some minor contradictions in the evidence of the prosecution witnesses. P.W.5, who is the daughter of the victim (P.W.4), has categorically stated in her evidence that in the morning of the occurrence day, while she and her mother were plucking tomato from their Bari situated near Bangomunda Bus stand, the appellant came near her mother and asked to give him tomato. Thereafter, he caught hold of the neck of her mother and snatched away the pair of Jhulki and stabbed with a knife on the chest and back of her mother. Hearing her shout, P.W.2-Subash Tandi, Dirju Tandi, Rajkishore Pradhan and others came running, chased the appellant and caught hold him. P.W.5 has clearly identified the appellant in court. There is nothing to disbelieve the evidence of the victim (P.W.4) and her daughter (P.W.5). Evidence of P.Ws.2, 6 and 7 is specific with regard to recovery of the MOs. When the appellant was chased and caught hold of by the witnesses, there was no necessity to conduct T.I. parade. There is no shadow of doubt with regard to the identification of the accused by the witnesses. Therefore, non-holding of T.I. parade will not affect the prosecution case in any manner. P.W.6 has stated that the appellant disclosed his name before him and others and confessed before them to have committed the offence. Nothing was brought out from the mouth of P.W.6 to disbelieve his evidence regarding extrajudicial confession of

the accused. Rather, P.W.3 has categorically stated in his cross-examination that Sridhar Bag and others were present when the accused-appellant confessed his guilt. The extrajudicial confession made by the appellant before P.W.6 and others is also sufficient to bring home the charge to the appellant.

8. For the above reasons, this Court is not inclined to interfere with the conviction of the appellant. However, since he was a young man at the time of occurrence and no criminal antecedents are there, this Court modifies the sentence and directs that he shall undergo rigorous imprisonment for one year and pay a fine of Rs.5,000/- (five thousand), in default of which he shall undergo R.I. for one year more.

9. With the aforesaid modification in sentence, the criminal appeal is dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
August 6, 2008/**G.D.*Samal***