

HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL NO. 37 OF 1989

From the judgment dated 09.06.1989 passed by Sri S.N. Nanda, Addl. Sessions Judge, Jajpur in Sessions Trial No.290 of 1988/No.47 of 1988.

State of Orissa Appellant

Versus

Rama Chandra Aich & another Respondents

For appellant : Addl. Government Advocate

For respondents : M/s S. Sahoo
and S.K. Nayak

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 14.08.2008

PRADIP MOHANTY, J. This Government Appeal is directed against the judgment of acquittal dated 09.06.1989 passed by the learned Addl. Sessions Judge, Jajpur in Sessions Trial No.290 of 1988/No.47 of 1988.

2. The case of the prosecution is that on 06.12.1987 at about 5.30 P.M. when informant Raghunath Jena (P.W.1) was coming from his paddy field, both the accused-respondents, in front of their house assaulted him by two weapons. Hearing the alarm raised by him, when his children came to the place of occurrence, they were also

assaulted by the accused-respondents by the said weapons. It is stated that Krushna Chandra Aich, respondent no.2 was holding a Gupti at the time of occurrence. On being reported, the police took up investigation and after its closure submitted charge-sheet under Section 307/34 IPC against the accused-respondents.

3. The plea of the accused-respondents is complete denial of the occurrence.

4. In order to prove its case the prosecution has examined as many as nine witnesses including the doctor and the injured and proved ten documents in evidence. Defence examined none.

5. Learned Addl. Sessions Judge, who tried the case, acquitted the accused-respondents of the charge under Section 307/34 IPC on the ground that there was inimical relationship between the informant and the accused-respondents prior to the occurrence, prosecution witnesses to the occurrence were more or less interested and there are contradictions in the evidence of the prosecution witnesses.

6. As it appears from order dated 13.08.2008, this appeal has been abated as against Rama Chandra Aich, respondent no.1, he having died on 05.02.2001.

7. Mr. Pattnaik, learned Additional Government Advocate submits that respondent no.2 is the main assailant. He assaulted by means of a 'Gupti' to the informant, i.e., P.W.1. Injuries caused to P.W.1 are on the head and other vital parts of the body. Respondent No.2 also assaulted P.W.2, another injured, on the neck, which is also a vital part of the body. Evidence of the doctor (P.W.6) is very cogent and clear and it corroborates the ocular evidence of witnesses. He further submits that P.Ws.5, 7 and 8, the independent witnesses, fully corroborate the evidence of P.Ws.1 and 2. He lastly

submits that the trial court has committed grave illegality by doubting the evidence of the prosecution witnesses on the ground that as the alleged incident took place at 5.30 P.M. in the month of December, it was not possible to identify the accused.

8. Mr. Sahoo vehemently contends that there is absolutely no material against respondent no.2. There are major contradictions in the evidence of the prosecution witnesses. Admittedly, there is inimical relationship between the informant and the accused-respondent no.2. P.Ws.5, 7 and 8, the so-called independent witnesses are interested for successful termination of the case. There is no evidence with regard to sharing common intention. In absence of any evidence that M.O. I was used for causing injury and in view of the non-availability of any blood stain, the prosecution case is doubtful. FIR was forwarded to the court three days after its registration, which creates doubt about the genuineness of the time and date of occurrence. The medical report contradicts the manner of assault as deposed by the witnesses.

9. Perused the LCR. In the instant case, all the injuries are simple, most of them are not on any vital part of the body and there is no opinion of the doctor that any of the injuries is dangerous to life. Therefore, this Court is of the opinion that no ingredients of Section 307 IPC are made out. There is no material to disbelieve the evidence of P.Ws.1, 2, 4, 5 and 7. Nothing has been elicited by way of cross-examination from the doctor (P.W.6) to disbelieve the prosecution case. The trial court has disbelieved the evidence of the witnesses to the occurrence on the ground that at the time of occurrence it was dark, but since all of them (accused and witnesses) are co-villagers and they are known to each other and in December at 5.30 PM it does not become so dark that there would be difficulty on part of persons having acquaintance with the accused to identify him.

The trial court has illegally discarded the evidence of P.Ws.4, 5 and 7 on the ground of interestedness and also on the ground of darkness. Considering the evidence of P.Ws.1 and 2, injured persons, which is corroborated by P.Ws.5, 7 and 8 coupled with the evidence of the doctor (P.W.6), this Court holds that there is ample material to convict the respondent no.2 under Section 324 IPC, since injuries are simple in nature. Therefore, this Court sets aside the judgment of acquittal passed by the trial court, convicts respondent no.2 under Section 324 IPC and sentences him to pay a fine of Rs.500/- (five hundred), in default undergo R.I. for one month.

10. The Govt. Appeal is allowed in part to the extent indicated above.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
 August 14, 2008 / ***Samal***