

# ORISSA HIGH COURT CUTTACK

## CRIMINAL APPEAL NO.23 OF 1990

From the judgment dated 22.12.1989 passed by Sri R.K. Mohanty,  
Sessions Judge, Keonjhar in S.T. Case No.57 of 1989.

Tau alias Anirudha Sahu  
and others

.....

Appellants

Versus

State of Orissa

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Respondent

For appellants : M/s U.S. Sahu, Sanjit Mohanty,  
S.Samantray, P.K. Mohanty,  
S.K. Rout and D.K. Mishra.

For respondent : Mr. S. Das,  
Addl. Government Advocate

**PRESENT :**

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 01.07.2009  
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**PRADIP MOHANTY,J.** This criminal appeal is directed against the judgment of  
conviction and order of sentence dated 22.12.1989 passed by the learned  
Sessions Judge, Keonjhar in S.T. Case No.57 of 1989.

2. The case of the prosecution is that on 01.10.1987 at about 8.30 A.M. Tima Dehury, the informant (P.W.1) and P.W.3 were going on the public road in village Naduan. The accused persons pelted stones as a result of which P.W.1, P.W.3, P.W.4, P.W.6, P.W.7 and P.W.8 sustained injuries. On the basis of FIR lodged by P.W.1, investigation was taken up and after its completion charge-sheet was filed against the appellants under Sections 323/337/34, IPC.

3. The plea of the defence is complete denial. The specific plea of the accused Kesab Chandra Sahu is that P.W.1 assaulted him in front of the house of Ghana Dehury for which S.T. No.26 of 1988 was started and to save from that case this case has been falsely foisted.

4. The prosecution, in order to prove its case, examined as many as 10 witnesses. P.W.1 is the informant and injured. P.W.2 is the Medical Officer, who has examined some of the injured persons. P.Ws.4, 6, 7 and 8 are injured. P.W.3 is a witness to the occurrence. P.W.5 is an independent witness. P.W.9 is another Medical Officer, who has examined some of the injured persons. P.W.10 is the I.O. Defence examined none.

5. The learned Sessions Judge, Keonjhar, who tried the case, by his judgment dated 22.12.1989 while acquitting accused Sanatan Sahu of the charge under Sections 323/337/34, IPC, convicted accused Keshab Chandra Sahu, Bula Kabi, Kunja Prusty and Ganeswar Sahu under Sections 337, IPC and sentenced them to pay a fine of Rs.300/- each in default to undergo S.I. for one month each. So far as accused Tau

alias Anirudha Sahu is concerned, the trial court convicted him under Section 323, IPC and sentenced to pay a fine of Rs.300/- in default to undergo S.I. for one month.

6. Mr. Panda, learned counsel appearing for the appellants submits that the evidence of P.Ws.3, 4, 6 and 7 with regard to pelting of stones is contradictory to each other. Therefore, the learned Sessions Judge should have discarded the evidence of the said witnesses. Presence of appellant no.1 is not mentioned in the FIR. Therefore, in absence of any independent corroboration, conviction of appellant no.1 under Section 323, IPC is illegal, contrary to law and cannot be sustained. The material witnesses have been deliberately not examined by the prosecution and therefore the prosecution has suppressed the true state of affairs.

Mr. Das, learned Addl. Government Advocate, on the other hand, contends that evidence of P.Ws.1 and 3 is very clear and cogent. There is nothing to disbelieve their evidence. P.Ws.2 and 9, who treated the injured persons, have corroborated the statements of the injured witnesses. Therefore, there is no illegality or infirmity in the impugned judgment of conviction and sentence warranting interference by this Court.

7. Perused the LCR and decision cited on behalf of the appellants. P.W.1, the informant, in his evidence has tried to develop the prosecution story in Court, which has been confronted to the I.O. P.W.1 has not mentioned the name of appellant no.1 in the FIR. Presence of

appellant no.1 at the place of occurrence is doubtful. Therefore, P.W.1 is not a believable witness. Evidence of P.Ws.3, 4, 6 and 7 with regard to pelting of stones is contradictory to each other. P.W.3 stated that after the assault he went to the house of Dolagobind Jena. But said Dolagobinda Jena was not examined by the prosecution. P.W.5 is the rickshaw puller in whose rickshaw Tima Dehury (P.W.1) and Laxmidhar Dehury (P.W.3) were being carried to Ghasipura hospital. He is an independent ocular witness. He has not stated about pelting of stones. On careful scrutiny of the evidence, this Court arrives at a conclusion that there is no direct evidence against appellants 2 to 6 with regard to causing hurt by an act endangering the life. Therefore, this Court acquits them of the charge under Section 337, IPC. There is also nothing on record to convict appellant no.1 under Section 323, IPC and accordingly he is acquitted of the said charge.

8. In the result, the appeal is allowed and the judgment of conviction and sentence passed by the trial court is set aside.

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**PRADIP MOHANTY, J.**

Orissa High Court, Cuttack  
 July 1, 2007/**G.D.Samal**