

**HIGH COURT OF ORISSA,
CUTTACK**

CRIMINAL APPEAL No.66 of 2002

From the judgment and order dated 22.03.2002 passed by Shri Jagadananda Panda, Additional Sessions Judge, Malkangiri in S.C. No.56 of 1999 (S.C. No.58 of 1997 of Sessions Judge, Koraput at Jeypore).

Kamalu Hantal & Another Appellants

Versus

State of Orissa Respondent

For Appellants - Mr. J.K. Panda, B.C.Barik
and P.K.Ray.

For Respondent - Mr. J.P. Patnaik
Addl. Govt. Advocate.

PRESENT

**THE HON'BLE SHRI JUSTICE PRADIP MOHANTY
A N D
THE HON'BLE SHRI JUSTICE B.P.RAY**

Date of hearing & judgment : 19.01.2010

PRADIP MOHANTY, J. In the present criminal appeal, the appellants have assailed the judgment and order dated 22.03.2002 passed by the learned Additional Sessions Judge, Malkangiri in S.C. No.56 of 1999 (S.C.58 of 1997 of Sessions Judge, Koraput at Jeypore) convicting them under Sections 324/114 IPC and sentencing each of them to undergo rigorous imprisonment for two years and pay a fine of Rs.1000/- in default to undergo R.I. for two months.

2. The case of the prosecution is that on 23.10.1996 at 5.30 PM informant Surendra Rauta with his labour Gopinath Mandi was going to bring

paddy bundles from their field when he found the wife of appellant no.1 Kamulu Hantal and daughter of Sadhu Hantal, namely, Bimala catching fish at RAJA BANDHA BILLO. The informant asked them not to catch the fish as he had given the ridge on the said land. Meanwhile, accused Sadhu Hantal came there and quarrelled with the informant. His younger brother Kamulu Hantal also came and joined Sadhu Hantal. Just then Lambodhar Rauta, the middle brother of the informant, who was returning home for taking meal, came to the spot, separated them and asked them to go to Arjuna Sahani, the village Sarpanch, who had permitted them to give ridge on the said land for catching fish. All on a sudden accused Sadhu Hantal became angry, brought out a knife from his waist and stabbed on the chest of Lambodhar Rauta. The informant immediately came to his rescue. At that juncture, Bimala, the daughter of Sadhu Hantal, brought a knife and handed over the same to Kamulu Hantal, the younger brother of Sadhu Hantal, who gave two knife blows on the left side back of Lambodhar Raut. On receiving the blows dealt by Sadhu Hantal and Kamulu Hantal, Lambodhar Raut fell down on the ground and died. Thereafter, the dead-body was removed from the place of occurrence by the witnesses present there. On receipt of the FIR police registered a case, proceeded with the investigation and after its completion filed charge-sheet against the present appellants and accused Sadhu Hantal under sections 302/34 IPC.

3. The defence plea is one of complete denial. The specific case of the accused persons is that the informant party had set ablazed their house. Since they had initiated criminal proceedings against the informant party, they have been falsely implicated in this case.

4. In order to prove its case, prosecution examined as many as fifteen witnesses including the doctor and the I.O. and exhibited 15 documents. Defence examined none.

5. The trial court after conclusion of the trial convicted accused Sadhu Hantal (not an appellant here) under section 302 IPC and sentenced him to undergo imprisonment for life. So far as the present appellants are concerned, the trial court convicted them under sections 324/114 IPC and sentenced each of them to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for two months with the finding that appellant no.1 independently and voluntarily caused hurt on the back of the deceased and appellant no.2 abetted the offence by handing over the knife to appellant no.1 for stabbing the deceased.

6. Mr. Panda, learned counsel for the appellants assails the judgment on the following grounds:

- (i) There are major contradictions in the evidence of P.Ws. 5, 9 and 10, the so called eye witnesses to the occurrence, and they have developed the story in Court.
- (ii) The trial court has not appreciated the evidence of the prosecution witnesses in proper perspective and has mechanically accepted the same.
- (iii) There was enmity between the appellants and the deceased, but the trial court has not considered the same.
- (iv) P.W.5 is an interested witness and P.W.7, another brother of the deceased, who was allegedly present at the time of occurrence, did not support the evidence of P.W.5. But the trial court failed to appreciate the same.
- (v) P.Ws.9 and 10 are the co-villagers and interested witnesses. Therefore, conviction cannot be based on such evidence.

- (vi) Alternatively, learned counsel for the appellants submits that since appellant nos.1 and 2 are first offenders and appellant no.2 is a lady, they may be released under section 4 of the Probation of Offenders Act.

7. Mr. Pattnaik, learned Additional Government Advocate vehemently contends that the evidence of P.Ws.5, 7, 9 and 10 is very clear, cogent, convincing and unimpeachable. They have categorically stated that appellant no.2 handed over a knife to appellant no.1 who gave knife blows on the back of the deceased. Their evidence cannot be brushed aside on the ground of interestedness. P.Ws.9 and 10 are co-villagers and independent witnesses and their evidence is clinching to establish the guilt of the appellants. Therefore, there is no illegality or infirmity in the judgment and order of conviction passed by the learned Additional Sessions Judge, Malkangiri.

8. Perused the LCR. In the instant case, P.Ws.1 and 4 are seizure witnesses. P.W.2 is not only a seizure witness but also a witness to the inquest. P.Ws.3, 6, 7, 8 and 11 although have not supported the prosecution case, the prosecution has not declared them hostile and put any leading question to them. P.W.5, who is the brother of the deceased, is the informant. He is an eye witness. P.W.7 is also a brother of the deceased and a witness to the occurrence. P.Ws.9 and 10 are the co-villagers and witnesses to the occurrence. P.W.12 is the constable who carried the dead-body of the deceased for postmortem examination. P.W. 13 is the doctor who conducted autopsy over the dead-body of the deceased. P.W.14 and 15 are the Investigating Officers. P.W.5 stated in his examination-in-chief that accused Sadhu Hantal (not appellant here) stabbed the deceased by a knife on his left chest being caught hold of by appellant no.1 Kamulu Hantal and that appellant no.1 Kamulu had brought the knife. This statement of P.W.5 was confronted to the I.O. (P.W.15)

who denied the same and specifically stated that Kamulu Hantal had not caught hold of the deceased. P.W.9 in his examination-in-chief stated that appellant no.2 Bimala brought a knife and handed it over to appellant no.1 Kamulu who gave the knife blow to the back of the deceased Lambodhar. This part of the evidence of P.W.9 has remained unshaken despite cross-examination. This was also not confronted to the I.O. P.W.10 stated in his examination-in-chief that being instructed by Kamulu Hantal, Bimala brought a knife and handed it over to Kamulu Hantal and Kamulu Hantal gave a knife blow to the back side of Lambodhar Rauta. But it is revealed from the evidence of the I.O. that P.W.10 had not stated so before him. P.W.13, the doctor, specifically opined that the cause of death was due to severe injury to the left side of the chest on the third inter-costal space and that the injuries on the back were simple in nature. That means, the injuries caused by appellant no.1 to the backside of the deceased were not grievous and were simple in nature. Taking into account the evidence of P.W.9 which is amply supported by P.W.13, the doctor, this Court finds that the trial court has rightly convicted appellant no.1 under Section 324 IPC and appellant no.2 under Section 324/114 IPC. So far as inimical relationship between the parties is concerned, that could be a ground for false implication and could be a ground for motive to assault as well.

9. For the foregoing discussions, this Court is not inclined to interfere with the conviction of the appellants. But since appellants are first offenders and appellant no.2 is a lady, by applying the ratio decided in **Halappa and others v. State of Karnataka**, (2009) 3 SCC (Cri) 1068 this Court feels it expedient that they should be released on probation of good conduct. Therefore, this Court sets aside the sentence imposed on them and remits the matter back to the trial court with a direction to secure report of the Probation Officer

concerned and then pass appropriate orders in accordance with the provision of section 4 of the Probation of Offenders Act.

10. The Criminal Appeal is accordingly disposed of.

B.P.RAY, J. I agree.

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Pradip Mohanty,J.

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B.P.RAY, J.

Orissa High Court, Cuttack
The 19th January,2010/ ***Routray***