HIGH COURT OF ORISSA: CUTTACK.

Jail Criminal Appeal No.68 of 2009

An application under Section 383 of the Code of Criminal Procedure from the judgment of conviction and sentence dtd.25.07.2009 of learned Ad hoc Addl. Sessions Judge, (Fast Track Court), Chatrapur passed in Sessions Case No.18 of 2002 (S.C. No.32/2001 of GDC).

Santosh Maharana ..... Appellant.

- Versus-

State of Odisha ..... Respondent.

Counsel for Appellant :Miss. Swateleena Das.

Counsel for Respondent : Mrs. Saswata Pattnaik, Additional Government Advocate.

PRESENT:

THE HONOURABLE SRI JUSTICE PRAMATH PATNAIK.
&
THE HONOURABLE DR. JUSTICE A. K. MISHRA.

Date of hearing and judgment : 29.02.2020

Dr. A. K. Mishra, J. In this appeal under Sec.383 Cr.P.C. the sole appellant has assailed his conviction U/s.302 and 307 of the Indian Penal Code (in short 'the I.P.C.') and sentence to undergo imprisonment for life on each count by the learned Ad hoc Addl. Sessions Judge, (F.T.C.), Chatrapur in his judgment dtd.25.07.2009 passed in Sessions Case No.18 of 2002 (S.C. No.32/2001 of GDC). Both the sentences are directed to run concurrently.

2. The case of the prosecution, in short, is that on 18.02.2000 at 4 P.M. in village Sunapalli, the accused, out of previous enmity, entered inside the respective houses of deceased persons, dealt Parsuram Tangia blows to deceased Laxmi and Maya and attempted to commit murder of P.Ws.4 and 5. Both the injured survived after treatment. The husband of Laxmi, P.W.6 lodged F.I.R. (Ext.4) at 6 P.M. resulting registration of Kabisuryanagar P.S. case No.20 of 2000. In course of investigation accused was arrested and gave recovery of weapon of offence M.O.I which was seized along with other articles. Inquests over the dead bodies were made so also post mortem. After completion of investigation, charge-sheet was submitted U/ss.307 and 302 of the I.P.C. The case was committed to the court of Sessions and accused faced trial under the aforesaid charges.

3. The plea of defence was denial initially but the accused has admitted the incriminating materials U/s.313 Cr.P.C.

3-A. In support of its case, prosecution examined 14 witnesses in all including P.Ws.4 and 5 the injured eye-witnesses. P.W.14, the doctor who conducted post mortem examination, proved the post mortem report, Ext.31 and Ext.33. P.W.10 is the doctor who proved injury reports Ext.8 and Ext.9. The seized Tangia, wearing apparels and photographs of deceased persons were marked as M.O.I to M.O.VII. Defence examined none.

4. Learned trial court relying upon the evidence of injured eye witnesses and doctor P.W.14 held that the death of both the deceased persons were homicidal in nature and such injuries were found to have been caused by M.O.I. basing upon that, he also recorded finding that accused has attempted to commit murder of P.Ws.4 and 5 inflicting injuries by M.O.I. While doing so, learned trial court has considered the admission of guilt of accused U/s.313 Cr.P.C. relying upon the Hon'ble Apex Court judgment reported in **1992 (II) OLR (SC) 209, State of Maharastra Vrs. Sukhdeo Singh and Others**.

5. Learned counsel for the appellant submits that P.Ws.4 and 5 are not reliable and the accused was suffering from legal insanity of mind and for that he should be given benefit of doubt U/s.84 of the I.P.C. It is further submitted that statement U/s.313 Cr.P.C. should not have been considered once the injured persons are found unreliable for enmity.

6. Mrs. Saswati Patnaik, learned Addl. Government Advocate supports the judgment on the grounds stated therein. Adding further, she submits that the plea of insanity was not shown by defence with any probability during trial and also there is no material available to that effect. A well reasoned judgment relying upon injured eye witnesses should not be upset in the appeal when accused is already released prematurely by the State.

7. Keeping the contentions in view, we carefully perused the evidence on record and found that plea of insanity is not proved with preponderance of probability as per illustration U/s.105 of the Evidence Act. No such circumstances are shown. The testimony of P.W.5 during further cross-examination that the accused was not of sound mind during the time of occurrence, is not acceptable keeping the gamut of scenario in which the crime was committed resulting loss of two lives and injuries on the persons of P.Ws.4 and 5 and his admission of guilt U/s.313 Cr.P.C.

8. The death of Laxmi Maharana and Maya Maharana are proved by doctor P.W.14 and P.M. reports Ext.31 and Ext.33 to be homicidal in nature. M.O.I corroborates the same. Doctor P.W.10 has proved the injuries upon P.W.4 vide injury report Ext.9 and upon P.W.5 vide Ext.8. He has proved his opinion on the seized weapon of offence vide Ext.10. On perusal of nature of injuries upon P.Ws.4 and 5, it can be well said that such infliction by M.O.I was meant to be attempt to commit murder. There is presence of an intent with infliction of injuries. Once the prosecution has proved the charge to the hilt from the evidence adduced by it, the consideration of the statement recorded U/s.313 Cr.P.C. is permissible within the scope of Section 313, Sub-Clause-4 of the Cr.P.C. The learned trial court has not committed any error in considering the same.

9. On our independent appreciation of evidence, we found that P.Ws.4 and 5 are wholly reliable witnesses and learned Trial Court has not committed any error by relying upon their evidence and the conviction based upon that is not required to be upset in this appeal. Hence we are not inclined to interfere with the impugned judgment of conviction and sentence passed thereon. Direction to run two life sentences concurrently cannot be said illegal in view of observation of Hon'ble Apex Court in the decision reported in **2015 (2) S.C.C. 501, O.M. Cherian @ Thankachan Vrs. State of Kerala and Ors.** wherein it is held as follows:-

> *"13. Section 31(1) Cr.P.C. enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment of fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31(1) Cr.P.C. There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are*

imposed on the convict, necessarily, Court has to direct those sentences to run concurrently."

10. At this juncture, it is pertinent to mention that the accused has already been released prematurely on 22.11.2019 pursuant to the order No.12367 dtd.18.11.2019 of the Government of Odisha, Law Department in exercise of State power to commute sentence.

In the result, the appeal stands dismissed.

Send back the L.C.Rs. forthwith.

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Dr. A.K.Mishra, J.

Pramath Patnaik, J I agree

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Pramath Patnaik, J.

Orissa High Court, Cuttack,
Dated the 29th February, 2020/MKP