

Basudev Kar Vs. State of Orissa

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Court : Orissa

Decided On : Jan-27-2004

Reported in : 2004CriLJ1572; 2004(I)OLR318

Judge : A.S. Naidu, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 326

Appeal No. : Criminal Revn. No. 390 of 1995

Appellant : Basudev Kar

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : D.P. Dhal, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

A.S. Naidu, J.

1. This Criminal Revision has been filed inter alia challenging the order of conviction and sentence passed in G.R. Case No. 1042 of 1985 (Tr. No. 204 of 1992) by the learned J.M.F.C., Bhadrak convicting the petitioner under Section

326 of Indian Penal Code and sentencing him to undergo S.I. for three years and to pay a fine of Rs. 3,000/-, in default to undergo S.I. for three months. The learned Additional Sessions Judge, Bhadrak in Criminal Appeal No. 37 of 1992, confirmed the said order of conviction and sentence.

2. Bereft of all unnecessary details, the short fact of the case were that on 23rd October, 1985 in the evening when the injured, P.W. 1 sat down to urinate in front of a fence near his house, the accused stealthily approached and threw acid by a plastic mug on the left side of his face and body. P.W. 1 raised hulla and P.W. 5, Udaya rushed to the spot, found the wearing apparels of P.W. 1 to be smoldering with acid fumes and he had sustained burn injuries on his face, chest, hand and leg. The injured was immediately shifted to Agarpada Hospital. On regaining sense for a little while, the injured disclosed that the accused threw acid on him. He was treated at Agarpada Hospital and was thereafter, shifted to Bhadrak Hospital. From Bhadrak, he was later referred to S.C.B. Medical College Hospital, Cuttack, where he remained under treatment as an indoor patient for a period of two months. At 1 a.m. on 24-10-1985 the son of the injured lodged a written report before the Officer-in-Charge Agarpada Police Station, which was treated as F.I.R. and the case under Section 326, I.P.C. was registered against the accused, investigation was taken up and after conclusion of the investigation, charge-sheet was submitted.

3. The plea of the defence was of total denial. It was submitted that as there was inter se dispute between the parties and a civil dispute was pending, A Pancha, which was convened to decide the dispute, could not arrive at a conclusion. Being enraged false and frivolous allegations were levelled against the accused.

4. The prosecution examined as many as eight witnesses to prove the case, out of which P.W. 1 was the injured, P.W. 5 was the informant and son of the injured, P.W. 2 was the wife of the injured P.Ws. 3 and 4 were the villagers, P.Ws. 6 and 7 were the post-occurrence witnesses, who turned hostile, P.W. 8 was the doctor, who had examined the injured and had issued medical certificate. On behalf of the defence, no witness was examined.

5. The learned Magistrate after vivid discussion both oral and documentary relying upon the evidence of P.W. 1, who had categorically stated that the accused threw acid, which was carrying in a plastic mug, which was corroborated by P.W. 8, the doctor came to the conclusion that the prosecution had successfully proved the case against the accused and convicted the petitioner for committing the offence under Section 326, I.P.C. The petitioner in C.A. No. 37 of 1992 challenged the said order of conviction and sentence before the Sessions Court. The learned Additional Sessions Judge, Bhadrak after discussing the evidence both oral and documentary came to the conclusion that due to throwing of acid by the accused on P.W. 1, the latter not only sustained grievous injuries but also lost one of his eyes. After discussing the evidence both oral and documentary, the appellate Court also arrived at the conclusion that the prosecution was successful to prove its case beyond all reasonable doubts against the accused and as such, confirmed the order of conviction and sentence.

6. Mr. Dhal, learned counsel for the petitioner-accused forcefully submitted that both the Courts below lost the sight of the fact that due to previous enmity, a false case had been foisted. It was also submitted that basing on the sole evidence of P.W. 1, who admittedly had civil dispute with the appellant, conviction of the petitioner should not have been made. It was also submitted that the Investigating Officer was not examined in this case thereby prejudice to the defence. According to Mr. Dhal, the Courts below have not properly appreciated the evidence on record and the conclusions arrived at were really on the basis of surmises. On the other hand, learned Additional Standing Counsel appearing for the State forcefully submitted that P.W. 1 was the only witness, who had himself seen the petitioner throwing acid on him. He is the victim and his statement should not be disbelieved. That P.W. 1 has sustained acid burn injuries caused by acid, is corroborated by the medical evidence. According to the State, the Courts below have properly appreciated the evidence and the conclusions arrived at were just and proper and it is a fit case, where the Court should not interfere with the order of conviction and sentence of the petitioner.

7. After hearing the learned counsel for both the sides and keeping in mind the limitation of a revisional Court, I once again scrutinised the evidence of P.W. 1, the

injured. According to him, he sat down in front of a fence for the purpose of urination. At this juncture, the accused came from a side and threw acid on him. Due to such overt act of the accused, P.W. 1 not only sustained grievous burn injuries on his body but also lost his left eye. The doctor, P.W. 8, in his injury report has clearly corroborated the fact that P.W. 1 sustained acid burn injuries due to acid. The injury report also clearly reveals that P.W. 1 not only sustained grievous injuries but also lost one of his eyes. Though P.W. 1 was cross-examined at length, the defence could not elicit any material to disbelieve the statement made by him in his examination in chief. He categorically stated that he saw the accused, who threw acid by a plastic mug when he was urinating. Thus, there was absolutely no doubt with regard to identity of the accused. The statement of P.W. 1 can be safely believed. The medical evidence shows that the acid was not thrown from the full front but from the left side. According to the prosecution case, P.W. 1 sat down for urinating in front of a fence. This act was but natural. In view of the fact that in front of P.W. 1, there was advancement, as stated by P.W. 1, the petitioner approached him on his left side and threw acid on his left side face and body. From the spot also, the Investigating Officer seized some glass pieces, which were burnt by acid. P.W. 5 also to some extent corroborated the statement made by P.W. 1. A reading of the evidence thus leaves no doubt in mind that the petitioner alone had thrown acid on P.W. 1 thereby not only causing grievous injuries but also destroying one of his eyes. Non-examination of the Investigating Officer, in the present case was not a prejudice to the defence. The forwarding report and other materials were produced in Court and have been marked as exhibits. The evidence of doctor, P.W. 8 leaves no doubt that due to overt act of the petitioner, P.W. 1 lost one of his eyes besides sustaining other grievous injuries. The medical evidence supports the prosecution case. After going through the materials available and after perusing the judgments of the Courts below, I find that there is absolutely no reason to interfere with the order of conviction as the Courts below have not committed any error. Accordingly, I confirm the order of conviction of the petitioner under Section 326 of I.P.C. But then the incident occurred in the year 1985 and nineteen years have passed in the meanwhile. The petitioner, who was 48 years of age at the relevant time, has now become old. Taking into Consideration all these facts and more so the age of the petitioner, I

modify the sentence of imprisonment passed against him by the Courts below and sentence him to undergo S.I. for a period of one year and to pay a fine of Rs. 5,000/- (five thousand) instead of Rs. 3,000/- in default to undergo further S.I. for three months. If fine is paid, the same shall be paid to the informant towards compensation.

8. With the aforesaid modification in sentence the Criminal Revision is dismissed.

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