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Court : Orissa

Decided On : Mar-28-2006

Reported in : 101(2006)CLT806

Judge : P.K. Tripathy, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 307

Appeal No. : Criminal Appeal No. 150 of 1989

Appellant : Lalit Prusty @ Lalit Kumar Prusty and anr.

Respondent : State

Advocate for Def. : A.K. Mishra, S.C.

Advocate for Pet/Ap. : B. Senapati,; B.N. Rath and; S.N. Mohapatra, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Tripathy, J.

1. Heard Learned Counsel for the appellants and Learned Standing Counsel and the Criminal Appeal stands disposed of in the following manner.

2. Appellants were accused persons in Sessions Case No. 5 of 1989 of the Court of Sessions Judge, Phulbani on the allegation that on 16.10.1988 at about 3 p.m. at Village Brahmanpada accused Golla Prusty by means of axe and accused Lalit Prusty by means of a spear attempted to commit murder of injured Simanchal Sahu (P.W. No. 2) and in that process caused bleeding injuries on the right hand and chest of the said injured.

3. Accused persons denied to the allegations and claimed for trial.

4. In course of trial, prosecution examined seven witnesses and relied on documents marked Exhibits 1 to 5 and the weapons of offence marked as material objects I and II and the blood stained cloth No. III.

5. According to the case of prosecution, accused Golla Prusty cut and damaged a drumstick tree belonging to the complainant during his absence from his house. After returning to the house, complainant saw the said incident and when asked for the reason of cutting the said tree, accused persons in an enraged mood declared to do away with the life of complainant and dealt blows. Accused Golla Prusty dealt Farsa (axe) blow aiming at head, but the injured protected it by raising his right hand and that is how he sustained incised wounds on the right hand. At that time the other accused person came running with a spear and pierced that into injured's chest causing bleeding injury. Eye witnesses (P.W. Nos. 3 and 4) were present there to save the injured (P.W. No. 2). Injured was examined on police requisition and Ext. 1 is the injury certificate. P.W. No. 1 is the Doctor who treated P.W. No. 2 and granted the aforesaid injury certificate so also gave his opinion evidence that the injuries found on the body of P.W. No. 2 are possible by the M.Os. I and II.

6. Learned Sessions Judge, on assessment of evidence on record found that evidence of P.W. No. 2 read with evidence of P.W. No. 1 and the injury certificate Ext. 1 are sufficient to prove the charge. Therefore, notwithstanding the fact that P.W. Nos. 3 and 4 were declared hostile for not supporting the prosecution, Learned Sessions Judge found the accused persons guilty of the offence under Section 307, IPC and Sentenced each of them to undergo rigorous imprisonment for two years.

7. Learned Counsel for the appellant after reading the evidence and findings recorded by the Trial Court tries his best to capitalize on the hostility shown by P.W. Nos. 3 to 4 so also the witness to the seizure and some trifling lacunae in course of investigation conducted by the Investigating Officer in support of his contention to grant benefit of doubt in favour of the accused and in the alternative to acquit him or to convict him for a lesser offence with modification of sentence and imposition of fine only.

Learned Standing Counsel advances argument supporting the findings and the order of conviction and further argues that leniency in sentence has already been shown by the Trial Court and, therefore, no further leniency should be shown, when a case for the offence under Section 307/34, IPC has been made out against the appellants,

8. It appears from the evidence of P.W. No. 1 that he found the following two injuries :

(i) One stab injury over the sternum length 1' and breadth 6 m.m. at the middle and depth 2' penetrated to the right side of the chest wall. It was situated over the sternum below the sternal angle and penetrated to the right side of chest wall having a depth of two inches.

(ii) One cut injury over the right arm. The length of the injury 2', breadth 1/4th'. The injury was situated over the right arm over the bicep muscle starting three inches from the tip of the right acromion process over anterior aspect!

9. In his evidence, P.W. No. 2 has narrated about the incident and alleged that accused Gola dealt the axe blow and the other accused dealt spear blow respectively on the right hand and the chest. When that evidence has not been discredited inspite of strenuous cross examination, credibility of such evidence is not, shattered simply because two independent witnesses turned hostile for no good reason. Therefore, this Court finds no reason to interfere with the order of conviction. As rightly argued by Learned Standing Counsel when the Trial Court has already taken a liberal view and has awarded minimum sentence for the charge under Section 307, IPC, therefore, this Court finds no good reason to

interfere with the sentence. In other words, the judgment of conviction and sentence are maintained and the Criminal Appeal is accordingly dismissed.

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