

**State Vs. Banambar Samal**

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**Court :** Orissa

**Decided On :** Jun-29-2006

**Reported in :** 2006(II)OLR241

**Judge :** P.K. Tripathy, J.

**Acts :** Indian Penal Code (IPC) - Sections 307 and 326

**Appeal No. :** Government Appeal No. 29 of 1986

**Appellant :** State

**Respondent :** Banambar Samal

**Advocate for Def. :** N.C. Pati,; A.K. Nanda and; B.N. Mishra, Advs.

**Advocate for Pet/Ap. :** Addl. Standing Counsel

**Disposition :** Appeal dismissed

**Judgement :**

**P.K. Tripathy, J.**

1. This appeal has been filed challenging the order of acquittal recorded by the trial Court in Sessions Trial Case No. 2/143 of 1985 of the Court of the learned Assistant Sessions Judge-curt7-Addl.Chief Judicial Magistrate, Puri.

2. Prosecution case is that while sleeping in her bed room at about 1.30 A.M. in the night of 25.2.1985, Nirupama Samal (P.W.No. 1) was attacked by somebody and then she woke up and discovered that accused-respondent was cutting her throat by the knife (M.O.-I). She identified the accused and resisted him by holding the iron portion (blade portion) of the knife and in the struggle, the handle was separated from the iron portion of the knife. Then accused holding the handle of the knife ran away. P.W. No. 2 tried to catch hold the accused and in that process accused managed to escape but his lungi remained in the hands of P.W. No. 2. Then she reported the incident to her uncle-in-law, who was sleeping in another bedroom. She was brought to hospital at Puri and ultimately, to the S.C.B. Medical College and Hospital, Cuttack. In the meantime, the Police Officer of Konark P.S. getting information about the incident appeared at Puri and registered the F.I.R. and after completion of investigation, submitted charge sheet against the respondent for the offence under Sections 307 and 326 I.P.C. In the trial Court, eight witnesses were examined on behalf of prosecution and one from the side of the accused. Besides that, all the incriminating articles and the documents seized together with the F.I.R. and the injuries certificates were tendered in evidence out of which M.O.I, is the knife and M.O.III is the lungi.

3. Admittedly, prosecution relied on the testimony of the injured P.W. No. 1 as the sole witness to the occurrence. On assessment of that evidence, trial Court doubted her veracity because of discrepancies and there being no chance of the accused to enter into that room without breaking the door or damaging the roof and in that respect, there being no corroborative evidence. In addition to that, several discrepancies were noted relating to actual weapon of offence inasmuch as the Investigating Officer (P.W. No. 7) stated in his evidence that at the time of spot visit one blood-stained knife was lying on the verandah of the occurrence room but he seized M.O.I. being produced by the informant-P.W. No. 1 and that he was also told by P.W. No. 1 that another blood-stained knife is also available (as the third knife). On account of all such discrepancies, trial Court granted benefit of doubt to the accused.

4. On perusal of the entire evidence and the findings recorded by the trial Court, learned Addl. Government Advocate argues that the non-impeachable evidence of

P.W. No. 2 proves the occurrence, which is supported by injury certificates and evidence of the doctors (P.Ws. 4 and 8). P.W. No. 2 suffered the injuries, which could not be self-inflicted and, therefore, when the matter stands thus, there is no scope to entertain doubt on merit of the prosecution case. Accordingly, he prays to set aside the order of acquittal.

5. This Court find that trial Court has not committed illegality or perversity in appreciating the evidence and circumstances. In addition to that, this Court also find that there is no evidence on record that P.W. No. 2 had no injury on her palms. Since her evidence is that she snatched the knife by holding the iron portion of the knife and it was separated from the wooden handle, therefore, that event, if true, could not have resulted in no injury to her palm. Be that as it may, when two views are possible from the evidence on record and the trial Court has accepted one out of same, we do not find it to interfere with the same that too after lapse of two decades from the date of occurrence.

Accordingly, the Government Appeal is dismissed.

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