

Punia Sethi Vs. State

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Court : Orissa

Decided On : Apr-12-2004

Reported in : 2004(I)OLR663

Judge : P.K. Mohanty, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Criminal Revision No. 493 of 1996

Appellant : Punia Sethi

Respondent : State

Advocate for Def. : Addl. Government Adv.

Advocate for Pet/Ap. : S.K. Mohanty, S.P. Mohanty and P.K. Lenka

Judgement :

P.K. Mohanty, J.

1. This revision is directed against the judgment of the learned 1st Addl. Sessions Judge, Berhampur in Criminal Appeal No. 64 of 1995 (Crl. Appeal No. 20/95 GDC) confirming the order of conviction and sentence under Section 307, I.P.C. passed by the learned Chief Judicial Magistrate-cum-Asst. Sessions Judge, Berhampur.

2. The prosecution case in short is that on 17.4.1992 at about 11.15 P.M., the informant Balabhadra Brahma, a police constable attached to Gosani Nuagaon Out Post while was proceeding to Dilli Chhok along with another constable Sarat Chandra Mohapatra, the accused-petitioner suddenly appeared before them and asked as to why accused Gola Parsu was arrested by them. The informant having replied that said Gola Parsu was arrested in connection with some case, the petitioner brought one sword and dealt a blow aiming at the head of the informant. However, the blow cut the left side ear and another blow came in contact with his left leg, for which the informant sustained the bleeding injury and the other Constable Sarat Chandra Mohapatra, who was present, tried to intervene, but the accused fled away from the spot by brandishing the sword. The injured and the other Constable came to Gosani Nuagaon Out Post with bleeding injury and Station diary entry was made. The injured was taken to the Berhamur Police Station, where F.I.R. was lodged and on police requisition, he was sent for treatment to M.K.C.G. Medical College and Hospital. However, the Doctor found certain simple injuries and treated him in the hospital.

3. The defence plea as appears was that the injured- constable was in love with a girl and the accused was being asked to carry love letters to her. But subsequently, when he refused to do so, a false case has been foisted against him. It is further suggested that on 17.4.1993, the injured and the other constables were in examination squad duty at K.C. High School and there was disturbance between the outsiders and the police staff and in the process, the informant has sustained the injuries. However the police after investigation filed charge- sheet against the petitioner under Section 307, I.P.C.

4. The prosecution examined 10 witnesses including the informant and the Doctor and none for the defence. On consideration, the statement of witnesses and the materials placed, the learned trial Court came to the finding that on the date of occurrence at the relevant point of time, the accused assaulted the informant P.W. 1 on a sword on its blunt portion, as a result of which he sustained two lacerated injuries and an abrasion on his left ear and left leg and all those injuries were simple in nature. But however, the learned Assistant Sessions Judge having found from evidence that the sword was used in its blunt portion, held that the accused-

petitioner was not guilty of the offence punishable under Section 307, I.P.C. but convicted the petitioner for offence punishable under Section 324, I.P.C. and sentenced the accused-petitioner to undergo rigorous imprisonment for a term of one year.

5. The learned 1st Addl. Sessions Judge in Criminal Appeal No. 64 of 1995 has concurred with the findings recorded by the learned Asst. Sessions Judge and confirmed the conviction and sentence as against which the petitioner has approached this Court in the present revision.

6. The petitioner assails the impugned judgment solely on the ground that the Courts below have not appreciated the evidence on record in its proper perspective and thus, the findings are not sustainable in law.

7. It is well settled law that concurrent findings of facts cannot be upset by the High Court in its revisional jurisdiction unless the findings are perverse and or otherwise result in miscarriage of justice. On perusal of the findings recorded by the learned Assistant Sessions Judge confirmed by the order of the learned Sessions Judge, I do not find any illegality or perversity in the same. Accordingly, there is no scope in interfering with the impugned orders of conviction.

8. In such view of the matter, I do not find any reason to interfere in the order of conviction. However, it appears that the occurrence took place in the year 1993 and by now more than 10 years has elapsed. The petitioner appears to have already remained in custody for quite a substantial period of about 7 months and at this stage to again send him to the custody would serve no purpose and not in furtherance of ends of justice and accordingly, I reduce the sentence to the period already undergone.

The Criminal Revision is disposed of in the aforesaid terms.