

Panchanan Muduli and ors. Vs. State

Panchanan Muduli and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/532526

Court : Orissa

Decided On : Apr-21-2000

Reported in : 2000(I)OLR595

Judge : P.K. Patra, J.

Acts : Indian Penal Code (IPC) - Sections 307, 323, 324 and 506

Appeal No. : Criminal Appeal No. 57 of 1993

Appellant : Panchanan Muduli and ors.

Respondent : State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : R.K. Nayak, Adv.

Disposition : Appeal allowed

Judgement :

P.K. Patra, J.

1. The judgment dated 10.2.1993 passed by Sri J.P.Mishra, learned Additional Sessions Judge, Bhadrak in S.T.No. 135/ 48/92 convicting the appellant No. 1- Panchanan Muduli Under Section 324, I.P.C. and sentencing him to undergo R.I. for one month and convicting the appellant No. 2-Hiralal Muduli and appellant No.

3-Jayalal Muduli Under Section 323. I.P.C. and releasing them Under Section 3 of Probation of Offenders Act after due admonition in Court, is under challenge in this appeal. The appellant No. 1 has been acquitted of the charge Under Sections 307/506. I.P.C. and the appellant Nos. 2 and 3 have been acquitted of the charge Under Sections 307/34, I.P.C.

2. The prosecution case briefly stated is as follows :

The informant-Narayan Chandra Sahoo (P.W. 1) and the appellants are co-villagers being residents of village Somia under the Bhadrak (B) Police Station in the erstwhile district of Balasore. Appellant No. 1 is the father of appellant Nos. 2 and 3. On 23.12.1990 P.W. 1 found that appellants were constructing a new ridge on their land encroaching upon a portion of his land, after removing the old ridge. It is alleged that when the informant protested the appellant No. 1 directed appellant Nos. 2 and 3 to assault him and the appellant Nos. 2 and 3 assaulted the informant with sticks and the appellant No. 1 attempted a blow by means of a knife on the informant which was warded off by the informant with his left hand resulting in injury to his left hand. The informant raised hullah, hearing which P.Ws. 2, 3, 4 and 5 reached the spot and the appellants fled away threatening P.W.I with death. Informant went to the Sabrang out post under Bhadrak (B) Police Station and at 12.30 p.m. lodged the FIR (Ext. 1) before the A.S.I, of the out-post (P.W. 1) who sent the same to the O.I.C., Bhadrak (B) P.S. for registration of the case and took up investigation. During investigation the A.S.I. (P.W.7) examined the witnesses, visited the spot, seized the weapons of offence-knife (M.O.I.) and three sticks (M.Os. II, III and IV) from the spot. He also seized a Banian (M.O.V.) from the informant which the informant had put on at the time of occurrence. He sent the informant for medical examination. He arrested the appellant No. 1 and forwarded him to Court in custody on 24.2.1990. After completion of investigation he submitted the charge-sheet under Sees. 341/294/323/324/307/506/34, I.P.C. against the appellants showing appellant Nos. 2 and 3 as absconders. The appellant No. 1 was charged Under Sections 307/506, I.P.C. whereas the other two appellants were charged Under Sections 307/34, I.P.C. and they stood their trial.

3. Defence plea is one of denial and false implication due to land dispute with the informant.
4. In order to bring home the charge against the appellants prosecution examined seven witnesses in all, out of whom P.W.I is the informant, P.Ws. 2, 3 and 4 are co-villagers of the parties who reached the place of occurrence hearing hullah raised by the informant, P.W. 6 is the Medical Officer who medically examined the informant (P.W.I) and P.W.7 is the Investigating Officer.
5. Learned Additional Sessions Judge relied on the statement of informant (P.W. 1) holding that the same finds corroboration from the statements of P.Ws. 2 and 3 and the Medical Officer (P.W.6) and convicted the appellants for lesser offences and passed the sentences as stated earlier, but acquitted them of the charge framed against them.
6. Shri S.K. Nayak, learned counsel for the appellants assailed the impugned judgment contending that the learned Additional Sessions Judge should not have placed reliance on the testimony of P.W. 1 and the medical evidence on record and should have acquitted the appellants. The learned Government Advocate supported the impugned judgment contending that the findings of the learned Addl. Sessions Judge are not erroneous. The rival contentions require careful consideration.
7. The informant, (P.W.I) while narrating the prosecution case in details as per the F.I.R. (Ext. 1) has stated that being directed by the appellant No. 1, appellant Nos. 2 and 3 assaulted him by means of sticks and appellant No. 1 aimed a blow by means of a knife at his chest but he warded off the blow by his left hand as a result of which he sustained bleeding injury on his left hand. When several persons reached the spot the appellants left the place, threatening to finish him. He went to the Sabrang out post and lodged the F.I.R. (Ext. 1). He was also medically examined by P.W.6. He has identified the knife (M.O.I.) to have been wielded by the appellant No. 1. He has also stated that his blood stained banian (M.O.V.) was seized by the I.O. P.W.2 has stated that he was present in his bari, adjacent to the place of occurrence and has claimed to have seen the occurrence and has corroborated the statement of P.W.I. P.W.3 has stated to have rushed to the place

of occurrence hearing hullah and to have seen the knife blow dealt by appellant No. 1 on the hand of P.W.I. P.Ws. 4 and 5 have turned hostile and have not supported the prosecution case. The medical officer (P.W.6) has stated that on 23.12.1990 he medically examined P.W.I and found the following injuries :

1. Cut injury 3' x 1/4' x 1 x 6' over ventral spect of left fore arm extended upto wrist joint from lower portion of fore arm. Tail towards wrist. It was simple in nature and caused by sharp cutting instrument and the age was within 6 to 12 hours.

2. Bruise four in number 2 to 2 1/2' over back both sides from middle of scapulae to interior angle. All the four bruises are simple in nature and might have been caused by hard and blunt weapon. The age of all the injuries was within 6 to 12 hours at the time of examination.

3. Trauma to left side wrist and back. It was simple in nature.

He submitted his report (Ext.3). He also submitted his opinion to the query made by the I.O. He opined that the incised injury can cause death in case of damaging important blood vessels in the thorax. According to him the injury No. 1 cannot be self-inflicted.

8. In his statement in cross-examination the informant (P.W.I) has stated that there are demarcation cases between him and the appellant No. 1 in the Court of Tahsildar, Bhadrak bearing Demarcation Case Nos. 193/86. 533/87 and 1 69/90. He has also stated to have removed the ridge constructed by the appellants on his land. He has stated to have received 2 to 3 stick blows dealt by appellant Nos. 2 and 3, but he has not stated on which part of his body the blows were dealt. He has also not stated what type of sticks the appellants used while assaulting him. According to him there was no bleeding injury due to the stick blows. In the requisition for medical examination (Ext. 3/4), the I.O. has mentioned that the informant had sustained injury on his left hand fore-arm and complained of pain over his right waist, but the medical officer has found four bruises over the back both sides from middle of scapulae to interior angle of scapulae and had trauma to left side wrist and back, besides cut injury over left fore arm extended upto wrist joint by sharp cutting weapon as per the report (Ext.3). The seizure list Ext. 2

reveals that a knife (M.O.I.) was seized from the waist of the appellant No. 1 and three pieces of bamboo sticks (M.Os. II, III and IV) were seized on production by the appellant No. 1. Though the knife (M.O.I) was shown to the informant for identification, the sticks M.Os. II, III and IV were not shown to him. It is not known why three sticks were seized as it is alleged that the appellant Nos. 1 and 3 assaulted by means of two sticks. The seizure list Ext. 4 reveals that a white coloured banion stained with blood has been seized but the banion has not been sent for chemical examination and the informant was not shown that banion in Court for identification. The I.O. (P.W.7) has stated that the informant had put on that banion when he went to the P.S. to lodge the F.I.R. Had there been blood stains on the seized banion, the I.O. should have sent the same for seorologist's examination. The learned Addl. Sessions Judge has noticed the discrepancies and infirmities in the statement of P.Ws. 2 and 3 and their interestedness to depose against the appellants. P.W.2 has stated that there was a Demarcation Case between him and the appellant No. 1 in the Court of Tahsildar, Bhadrak prior to the occurrence. He has claimed to have seen the occurrence standing in his BARI adjoining the disputed ridge intervened by green fence but he has stated that the occurrence took place at about 10 to 11 a.m., while according to the statement of the informant the occurrence took place at about 12 a.m. He has also not stated on which part of the body of the informant, appellant Nos. 2 and 3 dealt blows with sticks and as to what types of sticks were used and as to how many blows were dealt. In his statement in cross-examination P.W.2 has stated that while P.W.I tried to destroy the ridge constructed by the appellants, appellant No. 1 pushed P.W.I but the P.W.I did not fall down on the ground and even after the stick blows dealt by appellants 2 and 3. Subsequently he added that the stick blows were dealt on the waist of P.W. 1. He went to the extent of saying that P.W.I had put on a banion having full sleeves (upto the cuff) which is apparently false inasmuch as the banions are always with half sleeves or without sleeves. Thus the statement of P.W.2 which is tainted with interestedness being not free from infirmities and inconsistencies, cannot be relied upon. So also the statement of P.W. 3 is tainted with interestedness, he having admitted pendency of a civil suit between him and the appellant No. 1 since 1991 and having reached the spot hearing hullah raised by P.W.I apparently after knife blow was dealt by appellant No. 1. Though he has

stated that 30 to 40 persons were present on the spot, he could not name any of them. He has also not stated to have seen the assault of P.W.1 by appellants' 2 and 3 though he has stated to have seen the knife blow dealt by the appellant No. 1. P.W.3 is also a witness to the seizure of the knife and lathis under seizure list Ext. 2. In his statement in cross-examination he has stated that the seized lathis and knife were not measured at the time of seizure and he did not remember whether the knife was stained with blood or not: but the seizure list Ext. 2 reveals that the seized lathis and knife have been measured. Thus the interestedness of P.W.3 to depose against the appellants and the discrepancies and infirmities in his statement would render his statement incredible and he cannot be safely relied upon. Though the learned Additional Sessions Judge has discussed the interestedness of P.Ws. 2 and 3 and the discrepancies and infirmities in their statements, he has not given a clear finding as to whether the statements of P.Ws. 2 and 3 were trustworthy or not and whether their statements were relied upon for corroboration of the statement of the informant. He has reached the conclusion that the statement of the informant corroborated by the medical evidence on record was sufficient to base a conviction of the appellants which is found to be erroneous and unsustainable in the eye of law. in view of the discrepancies in the statement of the informant and the medical evidence on record, as discussed earlier.

9. In the premises, basing a conviction on the testimony of the informant (P.W. 1) which is tainted with interestedness and not consistent with the medical evidence, will not be sustainable in the eye of law. Though the charge was Under Sections 307/506, I.P.C. against the appellant No. 1 and Under Sections 307/34, I.P.C. against the other two appellants, there is no evidence on record that the appellant No. 1 attempted to commit murder and criminally intimidated the informant and that the appellant Nos. 2 and 3 attempted to commit murder of the informant in furtherance of their common intention.

10. In view of the discussions made above, the inevitable conclusion will be that the prosecution has failed to prove beyond reasonable doubt with cogent and convincing evidence, that the appellant No. 1 voluntarily caused hurt to the informant by a dangerous weapon and that the appellants 2 and 3 voluntarily

caused hurt to the informant. Therefore, conviction of the appellant No. 1 Under Section 324, I.P.C. and conviction of appellant Nos. 2 and 3 Under Section 323, I.P.C. and the sentences passed thereunder against them are set aside and all the appellants are acquitted of the charge.

Accordingly the appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com