

**Fakir Sa Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/532917](http://sooperkanoon.com/532917)

**Court :** Orissa

**Decided On :** Jan-11-2008

**Reported in :** 2008CriLJ2715

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

**Appellant :** Fakir Sa

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. J.R. Behera

**Judgement :**

ORDER

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

1. Heard argument from the parties, hearing is concluded and the judgment is as follows.

2. Order of conviction against the appellant by learned Sessions Judge, Balangir in Sessions Case No. 7 of 1990 is under challenge. Appellant was charged for the offence under Section 307, IPC on the allegation that he caused hurt on P.W. 7 Bilas Meher and her husband P.W. 2 Budhadeb Meher. For causing such hurt appellant allegedly used a sword. M.O.-I. P.W. 1, the adoptive father of P.W. 2 besides others were the eye-witnesses to the occurrence. P.W. 8 granted Injury

Certificates, marked Exts. 4/2 and 5/2. Accused took different defence plea, viz. (i) plea of complete denial and false accusation: (ii) having possessed an imbalance mind, tendency of mental ill health and therefore he was unable to know the act committed by him. In furtherance of his defence, appellant examined two witnesses, i.e. D.Ws. 1 and 2, and both of them stated in their evidence that by the date of occurrence appellant was having perfect brain and no mental illness was there.

3. On assessment of such evidence on record, learned Sessions Judge found that the occurrence of assault by the appellant on P.Ws. 2 and 7 with the use of sword M.O.I is proved by the prosecution beyond all reasonable doubt. Since the injuries were simple in nature and there was no evidence worth the name that the appellant attempted to commit murder of any of the injured persons, learned Sessions Judge acquitted the accused-appellant from the charge under Section 307, IPC but found him guilty under Section 324, IPC. After hearing the appellant on the question of sentence, learned Sessions Judge imposed sentence of R.I. for six months with a direction to set off the period already spent as under-trial prisoner.

4. After arguing for sometime and placing the evidence on record, Mr. J.R. Behera, learned Counsel for the appellant fairly concedes that there is no discrepancy in the evidence of the injured and the eye-witnesses so as to take any benefit by the accused. On the other hand he fairly states that taking into consideration the background of the fact that by the date of occurrence appellant was an unemployed youth after leaving Defence Service and therefore, there may be some reduction in the sentence. He also states that in the meantime 18 years have elapsed. Learned Standing Counsel, on verification of record, states that appellant has spent 97 (ninety seven) days in jail custody as under-trial prisoner. He, however, does not concede to minimization of the sentence.

5. Regard being had to all the aforesaid facts and submission and lapse of considerable period between the date of occurrence and the date of this judgment, the sentence imposed by learned Sessions Judge, Balangir is modified and reduced, and accordingly for his conviction under Section 324, IPC appellant is

awarded sentence of rigorous imprisonment for a period of three months with a direction to set off the period under detention as under-trial prisoner. Accordingly, the Criminal Appeal is dismissed with modification in sentence.

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