

Narayan Badi and ors. Vs. State

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Court : Orissa

Decided On : Jan-22-1996

Reported in : 82(1996)CLT181; 1996CriLJ1901

Judge : R.K. Dash, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Rev. No. 279 of 1994

Appellant : Narayan Badi and ors.

Respondent : State

Advocate for Def. : Additional Standing Counsel

Advocate for Pet/Ap. : M. Pujari and ;S.K. Pradhan, Advs.

Disposition : Petition dismissed

Judgement :

R.K. Dash, J.

1. Petitioners (hereinafter referred to as 'the accused persons') faced trial in G. R. Case No. 705 of 1992, in the Court of the Judicial Magistrate First Class, Sambalpur. Upon trial they being found guilty were convicted under Section 323, I.

P. C. and sentenced to undergo simple imprisonment for thirty days. Feeling aggrieved, they preferred appeal and the learned Additional Sessions Judge upon hearing, continued trial Court's judgment and dismissed the appeal. Hence this revision.

2. The prosecution allegation as borne out from the record is that on 16-7-1992, at about 7.00 a.m. the injured Anantaram Suna (P. W. 3) while returning from the river after taking bath found the accused persons putting fence encroaching upon the public road. When he asked as to why they were doing so, they being infuriated assaulted him with an axe and stones causing injuries. He was removed to Buria Hospital where he underwent treatment. A report of the incident was lodged in the Buria Police Station by Santha Charan Suna, (P. W, 2) whereupon a case was registered and investigated into by P. W. 7 and on completion of investigation charge-sheet was laid against the accused persons to stand their trial.

3. When examined under Section 313 Cr. P. C. the accused persons denied the prosecution allegations and pleaded innocence.

4. During trial, prosecution examined seven witnesses. Learned Magistrate mainly relying on the evidence of the injured. P. W. 3 and the doctor, P. W. 1 convicted and sentenced the accused persons as hereinbefore stated. On appeal, the learned appellate Court on reappraisal of the evidence accepted the trial Court's finding and dismissed the appeal.

5. Learned counsel for the accused persons has urged that P. W. 3 being an interested witness, his evidence should not be accepted on its face value to uphold the order of conviction without there being any independent corroboration. He further contended that the evidence of the said witness is discrepant in so far as the nature of 'injury is concerned, in as much as he would say that he had been assaulted with sharp side of the axe whereas doctor, P. W. 1 did not find any cut injury on his person and in view of such discrepancy in the evidence the prosecution case should be viewed with suspicion.

6. P. W. 3, is the injured witness. Narrating the day's incident he stated that Narayan Badi dealt a blow with an axe and other accused persons threw stones at him. He was although cross-examined at length, but nothing substantial could be elicited to impeach his credibility. His evidence as aforesaid finds sufficient corroboration from the evidence of the doctor, P. W. 1 who on examination found as many as eleven injuries. True it is, when cross-examined P. W. 3, stated that the edge portion of the axe had been used to cause injury, although the doctor did not notice any cut injury on his person, but that by itself is not sufficient to discard his testimony. Such discrepancy in the evidence in my opinion being minor does not affect the truth of the prosecution case and, therefore, over much importance should not be given to the same to out-weigh the sworn testimony of injured witness, P. W. 3. On a scrutiny of the evidence it appears that P. W. 3, is a witness of truth who had no axe to grind against the accused persons. His statement of his having been assaulted by the sharp side of the axe is nothing but mere exaggeration. As is well said, human mind is an imperfect instrument which, in attempting to grasp fact unconsciously twists and turns them of ten. Even truthful witnesses have tendency to make incorrect statements and exaggerations quite sub consciously. It is, therefore, the duty of the Court to sift grain from the chaff, separate the truth from the falsehood and if after this has been done, there remains residuum a credible testimony, it should there on found its judgment. In the case in hand, both the Courts below on a through scrutiny have accepted and relied upon the evidence of P. W. 3 and I find no reason to take different view and upset their findings.

7. So far as sentence is concerned, I am of the view that since the incident occurred at the spur and without any premeditation coupled with the fact that the injuries sustained by P. W. 3 were minor and superficial, ends of justice would be better served if the accused persons are released under the Probation of Offenders Act.

8. In view of discussions made above, while upholding the conviction of the accused persons, the sentence of 30 days simple imprisonment awarded to them is set aside. Instead, they are ordered to be released under Section 3 of the Probation of offenders Act. The accused persons are, therefore, directed to appear

before the trial Court whereupon the Magistrate shall release them on probation after due admonition.

9. With the modification of sentence, the revision is dismissed.

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