

Muna Jani Vs. State of Orissa

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Court : Orissa

Decided On : Jan-22-2003

Reported in : 2003CriLJ4392; 2003(I)OLR321

Judge : A.S. Naidu, J.

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

Appeal No. : Jail Criminal Appeal No. 75 of 1999

Appellant : Muna Jani

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.C. Das, Adv.

Judgement :

A.S. Naidu, J.

1. This Criminal Appeal is filed challenging the order dated 14th December, 1998 passed by the Chief Judicial Magistrate-cum-Asst. Sessions Judge, Nabarangpur convicting the appellant Under Section 307 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for five years in Sessions Case No. 27 of 1998.

2. Bereft of all the unnecessary details, the short facts apparent from the F.I.R. are that the house of the injured is in front of the house of the sister of the accused and there was a dispute between the wife of the injured and sister of the accused regarding the drying of paddy on the public road near the house. It is stated that the wife of the accused had spread paddy on the road to dry the same and Satyabhama, the sister of the accused, poured water on the same, as a result of which both of them started quarrelling with each other. Satyabhama threatened the wife of the informant, Laxmi Amanatya, that her brother Muna Jani would kill them. While the matter stood thus on 26-1-1998 at about 7 p.m. when the injured came out of his house, accused, Krishna Acharya along with accused, Muna Jani caught hold of him and it is alleged that Muna Jani took out a knife and stabbed him, thereby causing him grievous injury. On the basis of F.I.R. lodged on the 26th January, 1998, G. R. Case No. 33/1998 was initiated against four accused persons and after investigation, the said case was committed to the Court of Session and was registered as Sessions Case No. 27 of 1998.

3. To substantiate the case, prosecution examined as many as nine witnesses, out of whom P.W. 1 was the informant, P.W. 6 was the injured, P.W. 8 was the Investigating Officer, P.W. 5 was the Executive Magistrate, who recorded the dying declaration said to have been made by P.W. 6 (though P.W. 6 survived) and P.W. 2 was an independent witness, who turned hostile. P.Ws. 4 and 9 were the Medical Officers. All other witnesses were independent after-occurrence witnesses. The prosecution also exhibited the injury report and other documents.

4. The plea of the defence was of complete denial.

5. The learned Sessions Judge relying upon the oral evidence of P.W. 1, her husband, the injured, P.W. 6, the medical evidence of P.Ws. 4 and 9 and the injury reports issued by them, vide Exts. 1 and 4, as well as the post-occurrence witnesses, P.Ws. 2 and 3, acquitted the accused persons, namely, B. Balakrishna Acharya, Balaya Behera and Satyabhama Jani but convicted the accused, Muna Jani Under Section 307, I.P.C. and sentenced him to undergo rigorous imprisonment for five years.

6. The learned counsel for the petitioner strenuously argued that there is absolutely no independent witness to corroborate the statements made in the F.I.R. There is also no evidence/connecting the petitioner with the alleged crime. The learned counsel for the petitioner also made much of the fact that the weapon with which the petitioner was alleged to have stabbed the injured P.W. 6 was not seized, nor any person of the locality has been examined to corroborate the statement of P.W. 1, the wife of the informant, the only eye-witness and P.W. 6 is the injured. It is further submitted by the learned counsel for the petitioner that the alleged incident took place in a busy area and non-examination of independent witnesses is fatal to the prosecution case.

7. The learned counsel for the State, on the other hand, strenuously placed the evidence both oral and documentary and forcefully submitted that in view of the evidence of P.W. 1 and P.W. 6, which is corroborated by medical evidence of the two Doctors as well as the injury reports, the Sessions Judge has rightly held the petitioner guilty Under Section 307, I.P.C. and convicted him. It is submitted that the Sessions Judge has not committed any error apparent on the face of record nor is there any infirmity in the judgment inviting interference by this Court.

8. After hearing the learned counsel for both the parties and going through the evidence, both oral and documentary, I find that the evidence of P.W. 1 and P.W. 6 coupled with the evidence of the Doctors, P.Ws. 4 and 9, as well as the injury reports, Exts. 1 and 4, clearly establishes the crime. Though P.Ws. 1 and 6 were cross-examined in extenso by the defence, nothing much could be brought out to contradict their statements. On the basis of the aforesaid evidence, which finds support by the injury reports, the learned trial Court has rightly held the petitioner guilty and sentenced him as aforesaid. But then non-examination of any independent witness and non-seizure of the weapon of offence is definitely a lacuna on the part of the prosecution. Taking into consideration all these facts and in view of the most important fact that the petitioner has already undergone four years of rigorous imprisonment, as submitted by the learned counsel, I feel that the ends of justice would be served if the sentence of imprisonment of five years is reduced to four years.

9. Accordingly, the Jail Criminal Appeal is partly allowed. While upholding the findings and the order of conviction, I reduce the sentence imposed on the petitioner to the period of imprisonment already undergone by him.

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