

Ananda Moharana Vs. State

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Court : Orissa

Decided On : Nov-17-1995

Reported in : 1996(1)ALT(Cri)23; 1996CriLJ2654

Judge : R.K. Dash, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 294, 307, 324, 325 and 326

Appeal No. : Criminal Revision No. 340 of 1990

Appellant : Ananda Moharana

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : G.N. Mohapatra and ;S. Mohanty, Advs.

Disposition : Petition dismissed

Judgement :

R.K. Dash, J.

1. The petitioner (hereinafter referred to as 'the accused') stood charged under Section 307, I.P.C. in the Court of learned Assistant Sessions Judge, Nayagarh. Upon trial he was found guilty and convicted under Section 325, I.P.C. and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.

1,000/-, in default to undergo rigorous imprisonment for a further period of six months. The said order of conviction and sentence was challenged in Criminal Appeal No. 152 of 1988 before the learned Sessions Judge, Puri who on reappraisal of the evidence, concurred with the findings of the trial Court and dismissed the appeal. He, however, modified the conviction of the accused from Section 325 to 326, I.P.C. but maintained the sentence.

2. The prosecution case unfurled during trial may be succinctly stated thus:

The accused owed some money to Sukumari Dei (P.W. 3). When repayment was insisted upon, he took it offensive and threatened P.W. 3 with dire consequence. On 8-7-1986 at about 11.00 a.m. P.W. 3 was going to the village shop for making some purchase. Seeing her, the accused armed with a Katari (axe) chased and showered Katari blows causing injuries. To save her life she entered inside the house of one Ananda Sathua, but the accused followed her into the house. She then came out of the house through back door and while running for life, fell down on the ground. The accused thereafter dealt some more blows with that axe held by him. At this time P.W. 3's daughter-in-law Susama Das (P.W. 4) came to rescue her, but she too was assaulted. A report regarding the incident was lodged by Kailash Das (P.W. 1), son of P.W. 3 at Nayagarh Police Station whereupon a case under Sections 307, 324, 325 and 294, I.P.C. was registered and the above two injured persons were sent for medical examination. After usual investigation, charge-sheet was laid against the accused. Learned Assistant Sessions Judge framed charge under Section 307, I.P.C. and proceeded with the trial.

3. The prosecution in order to bring home the charge examined ten witnesses including the two injured and the Medical Officer. The learned trial Court mainly relying upon the evidence of P.Ws. 3 and 4 coupled with the medical evidence held the accused guilty under Section 325, I.P.C. and convicted and sentenced him as hereinbefore stated.

3A. Learned counsel, Mr. G.N. Mohapatra appearing for the accused has urged that the evidence of P.Ws. 3 and 4 bustles with contradictions and infirmities and if the same had been taken note of and considered, the accused would have been acquitted of the charge. Elaborating the submission he pointed out that P.W. 3 did

state in her chief-examination that she was chased and assaulted by the accused with an axe on different parts of her body, but when cross-examined she admitted to have not stated the same in detail to the police. Her statement in the Court being the subsequent development of the prosecution case both the trial Court as well as the appellate Court should have been slow to rely upon her testimony to record a finding of conviction. Mr. Mohapatra further submitted that ten years have elapsed since the date of incident and the accused has suffered a lot both mentally and financially and, therefore, lenient view may be taken regarding sentence, if the order of conviction is maintained.

4. Out of the ten witnesses examined by the prosecution, P.Ws. 3 and 6 are the injured witnesses, P.Ws. 1 and 2 are post-occurrence witnesses, P.Ws. 5, 6, 7 and 8 having not supported the prosecution case were declared hostile and P.W. 10 is the Investigating Officer. Narrating the incident that happened on the fateful day, P.W. 3 stated that the accused gave her successive blows with an axe causing severe injuries on her person. During cross-examination the defence elicited that she had not specifically stated to the Investigating Officer about infliction of blows on different parts of her body. Her previous statement to the police has been marked, Ext. B. For the limited purpose to ascertain as to if there is any contradiction in the two statements, I have gone through Ext. B and find that she has given a short narration of the incident implicating the accused in the assault. No doubt, she did not state in great detail as to the location of the injuries, but that by itself will not affect, her credibility since because as the law stands, statement of a witness recorded during investigation should be brief statement of the incident. In this context, I may usefully refer to the decision of the Apex Court in the case of *Matadin v. State of U.P.* (AIR 1979 SC 1234): (1979 Cri LJ 1027) where their Lordships have observed: the statements given by the witnesses before the Police are meant to be brief statements and could not take the plea of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a Court that the witnesses concerned are self-contained liars....

The aforesaid decision has been relied upon by a Division Bench of this Court in the case of *Namai Samal v. State of Orissa* (1986 (2) Crimes 344). In that case, an

eye-witness to the incident implicated the accused giving blow with a sword to the deceased. In the earlier statement to the police, he had only stated that the accused was holding the sword. It was, therefore, urged that since the subsequent statement of the witness is material contradiction, no reliance should be placed on his testimony. Repelling this submission, the Court held that omission as pointed out being not a material omission, did not amount to contradiction. In support of such view the Court relied upon the decisions in Matadin's case (supra) and also the case of Tahasildar Singh v. State of U.P. (AIR 1959 SC 1012): (1959 Cri LJ 1231). Applying the aforesaid principles, I would hold that there is no material contradiction in the evidence of P.W. 3 so as to doubt her veracity.

5. Besides the above, P.W. 3 sustained as many as 13 incised injuries of which five were grievous. Some of the injuries were on her neck and chest and her right thumb was amputated (see injury report, Ext. 1). Immediately she was removed to the hospital where she was admitted as in-patient and underwent treatment for about 20 days. The learned trial Court taking all these aspects into consideration and on discussion of the evidence was of the view that there was ring of truth in the version of P.W. 3 and consequently accepted and acted upon the same. The appellate Court also on further reappraisal of the evidence considered that she being a witness of truth, it would be safe to rely upon her testimony. When two courts below have placed implicit reliance on the evidence of the injured witness which finds sufficient corroboration from the evidence of the doctor (P.W. 9), I am not inclined to disturb the said findings in exercise of revisional power.

6. Now coming to the question of sentence, at the out set I would like to say that in view of the nature of injuries, seat of assault and the weapon used, a case under Section 307, I.P.C. had been clearly made out against the accused, but the learned Assistant Sessions Judge without assigning good reasons convicted the accused under Section 325, I.P.C. Further, if at all he was of the opinion that it was not a case under Section 307, he should have convicted the accused under Section 326 and not 325, I.P.C, the reason being that an axe (a cutting weapon) had been used to cause grievous injury. Mr. Mohapatra, learned counsel for the accused submitted that if conviction is maintained, a lenient view should be taken in so far sentence is concerned since ten years have elapsed from date of

institution of the case and during all these years, the accused has suffered a lot. In view of the nature and gravity of the offence and the manner of assault, I am not inclined to accept such contention and reduce the sentence awarded by the trial Court.

7. In the result, the Revision fails and the same is dismissed.

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