

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 1014 of 2006

An application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the order dated 13.10.2006 passed by Addl. Sessions Judge, Sambalpur in Criminal Appeal No.10/3 of 2004/05.

AFR Rohita Mirdha and others Petitioners

-Versus-

State of Orissa Opp. Party

Advocate(s) appeared in this case:-

For Petitioners : M/s. P.K. Jena, N. Panda and
D.P. Mohapatra, Advocates

For Opp. Party : Mr. S.K. Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
5th April, 2022

SASHIKANTA MISHRA, J.

In the present revision, the petitioners question the correctness of judgment dated 13.10.2006 passed by the learned Additional Sessions Judge, Sambalpur in

Criminal Appeal No. 10/3 of 2004/05, whereby, the said appeal was dismissed and, in the process, the judgment dated 26.06.2004 passed by the learned Asst. Sessions Judge, Sambalpur in S.T. Case No. 277/60 of 2002 was confirmed. As per the said judgment, the learned Asst. Sessions Judge convicted the accused petitioners under Sections 323/325/34 of IPC and sentenced them each to undergo R.I. for two years and to pay a fine of Rs.500/-, in default, to undergo R.I. for three months each for the offence under Section 325 of IPC and to undergo R.I. for six months each under Section 323 IPC with both the sentences to run concurrently.

2. The prosecution case, briefly stated, is that on 04.08.2001 while Pabitra Mirdha, the uncle of the informant Gopinath Mirdha, was returning home after attending the call of nature at about 9 a.m., the three accused persons assaulted him by means of axe and lathi on the village road of Khetinali causing severe bleeding injuries on his person. Upon hearing about the incident, the informant rushed to the spot and reported the matter

at Charmal Police Station leading to registration of Charmal P.S. Case No. 47/2001 and investigation was taken up. Upon completion of investigation, charge sheet was submitted against the accused persons under Sections 307/323/325/34 of IPC. In course of trial, prosecution examined 13 witnesses, while the defence examined one witness from its side. After scanning the evidence on record particularly, the evidence of the injured, Pabitra Mirdha (P.W.-4), as supported by other witnesses, such as, P.W.-6, P.W.-5, P.W.-7 and P.W.-8 as also the evidence of the doctor, P.W.-10, the trial Court held that though the offence under Section 307 is not made out, yet the prosecution was successful in proving the charge under Sections 323/325/34 of IPC. On such findings, the trial Court convicted the accused petitioners and sentenced them as aforesaid.

Being aggrieved, the petitioners preferred the aforementioned Criminal Appeal, which was disposed of by learned Additional Sessions Judge, Sambalpur. It was urged before the lower appellate Court that the trial Court

should have disbelieved the prosecution allegation as the independent witnesses did not support its case. Moreover, there is material contradiction in the evidence of the informant as compared to P.Ws. 4, 5 and 6. Learned lower appellate Court after re-appraisal of the evidence on record held that there is no reason to disbelieve the version of the witnesses as the so-called contradictions and discrepancies pointed out by the defence are minor in nature. It was further held that the plea taken by the defence is palpably false. Holding thus, learned lower appellate Court found no reason to interfere and therefore, dismissed the appeal. Feeling further aggrieved, the accused petitioners have approached this Court in the present revision.

3. Heard Mr. P.K. Jena, learned counsel appearing for the petitioners and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

4. Mr. P.K. Jena contended that in the absence of any independent corroboration, the evidence of P.Ws. 3, 4, 5 and 6 lacks credibility, more so as they are all related

to the injured and therefore, both the Courts below committed error in relying upon such evidence. It is further contended that the defence plea was plausible but was rejected without any justified reason. It is finally argued by Mr. Jena that even otherwise the Courts below should have extended the benefit of Probation of Offenders Act to the petitioners considering the social background and their age.

5. Per contra, Mr. S.K. Mishra has supported the judgments of the Courts below by contending that the same are based on clear, cogent and consistent evidence. He further argues that law does not always require corroboration from independent sources, particularly when the evidence of witnesses is found to be trustworthy. As regards the defence plea, it is contended that the same is on the face of it difficult to believe. On the question of sentence, it is contended by Mr. Mishra that since minimum sentence has been imposed, there is no justification for extending the provisions of P.O. Act to the petitioners.

6. As it appears, the prosecution case that the accused persons assaulted the injured (P.W.-4) by means of lathi and axe is clearly proved from the testimony of the injured himself. The nature of injuries sustained by him are proved by the doctor (P.W.-10), who clearly opined that the same was possible to be caused by any hard and blunt object. True, there is some confusion with regard to presence of eyewitnesses at the spot of occurrence. The informant says that he had seen the occurrence as it took place in front of his house, but the same appears to be an improvement from his initial version in the FIR to the effect that when he came to the spot, he saw the injured lying in an injured condition. The same has also been taken in contradiction in cross-examination. In so far as P.W.-5 is concerned, she is the wife of the injured and she also states to have seen the occurrence. There is some contradiction in her evidence too, but overall, she has stood firm in her testimony. Coming to P.W.-6, who appears to be an independent witness, it is her version that on hearing hulla she had come out from her house

and saw all the accused were chasing Pabitra Mirdha and they assaulted him in front of the house of Karmu and left the place after causing bleeding injuries. Now, if the version of the injured himself is considered, it is seen that he clearly deposed that while he was going to a nala to attend the call of nature, all the accused persons chased him and he ran towards his house and suddenly the accused Saheba came near him and dealt blow on his chest by a lathi and that he lost sense and fell down. After he regained sense in Burla Hospital his wife told that all the accused persons had assaulted him and that there were injuries on his head besides other parts of the body.

7. If, barring the minor discrepancies the above evidence is considered as a whole, the same comes out as truthful and convincing as nothing has been elicited in cross-examination to view the testimonies with doubt. As already stated, the injured sustained five injuries including three lacerated injuries and two abrasions, as proved by the doctor (P.W.-10). Thus, only because no other independent person came forward to support the

story does not necessarily mean that the same was false. Even considering the defence plea that the injured (P.W.-4) had himself chased the accused persons one day prior to the occurrence and fell down on the ground and the axe he was holding came in contact with his face causing the injuries, the same does not at all inspire confidence so as to be believed. The nature of injuries sustained by the injured are as follows:

- (1) Lacerated injury- 7 cm x 2 cm up to scalp depth over left parietal bone.
- (2) Lacerated injury- 3 cm x 1 ½ cm x 1 ½ cm on left infra orbital. Lacerated wound- 4 cm x 2 cm x 2 cm on the left side of the upper lip.
- (3) Abrasion – 2 cm x 1 cm over left third intercostal space.
- (4) Abrasion – 1 cm x 1cm on right deltoid region.

Though it was suggested to the doctor and he also admitted that these injuries can be possible by successive fall on hard and blunt substance, yet he also admitted that the injuries cannot be possible by infliction of one blow. Therefore, it is difficult to believe the defence version. That apart, it is also the defence plea that the

injured had attacked one Dharani Mirdha but strangely the same was not reported to the police and no explanation is offered for the same.

8. From an analysis of the evidence on record, this Court also finds that the charges are well proved. Contradictions and discrepancies in the evidence of the witnesses are not such as to prove fatal to the case of the prosecution. The Court is required to accept such evidence as is believable, clear, consistent and cogent. Moreover, the evidence is to be considered as whole without dissecting bits and parts from it. As has already been discussed hereinbefore, this Court finds that evidence of the main witnesses, namely P.Ws., 4, 5 and 7 are fully consistent and trustworthy. The defence plea, as already stated, is too improbable to be believed. Nothing has been brought on record to suggest as to why would the aforementioned witnesses lie about the incident or falsely implicate the accused persons and thereby, allow the actual offenders to escape. Therefore, this Court finds that the learned trial Court as well as the lower appellate

Court have committed no error much less any illegality in holding the accused petitioners guilty so as to warrant interference by this Court.

9. Coming to the sentence, it is argued by learned counsel for the petitioner that the occurrence took place way back in the year 2004. Nearly 18 years have passed by in the meantime. Petitioner no.1 is aged about 48 years, while petitioner no.2 is aged about 78 years and petitioner no.3 is aged about 73 years. Since the incident arose out of a prior dispute and the matter has since been settled with the injured in the village as submitted by learned counsel for the petitioners, it would be too harsh to send them to prison to serve the remaining part of the sentence at this belated stage.

10. The case record reveals that after being arrested, the petitioners have spent some days in custody. Undoubtedly, 18 years have passed in the meantime. Therefore, taking into consideration the social background of the petitioners and lack of any criminal antecedents to their names, this Court also feels that it

would be too harsh to send them to prison at this distance of time to serve the remaining part of the sentence. As such, it is deemed proper to extend the benefit of the P.O. Act to the petitioners.

11. In the result, the criminal revision is allowed in part. The impugned order of conviction is confirmed, but the sentence imposed is modified to the extent that the petitioners shall be released under the provisions of Section 4 of P.O. Act. The petitioners are directed to appear before the trial Court on 02.05.2022 for receiving further instructions, failing which, the trial Court shall pass necessary orders to take them into custody to serve the remaining part of their sentences.

12. The CRLREV is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 5th April, 2022/ A.K. Rana