

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA NO.306 OF 1990

(From the judgment dated 27th October, 1990 passed by learned 1st Addl. Sessions Judge, Cuttack in S.T. Nos.105 and 219 of 1990 convicting and sentencing the appellants.)

Chhabi Kandi and others ... Appellants

-versus-

State of Odisha ... Respondent

Advocates appeared in the case through hybrid mode:

**For Appellants : Mr. Debasnan Das, Advocate
(Amicus Curiae)**

-versus-

**For Respondent : Mr.P.Tripathy
Addl. Standing Counsel**

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
07.9.2022.**

Sashikanta Mishra,J. The Appellants call in question the order of conviction and sentence passed by the learned 1st Additional Sessions Judge, Cuttack in S.T. Case Nos.105 and 219 of 1990 as per judgment dated 27th October, 1990. As per the said judgment, the appellants

were convicted under Sections 148/323/149 of I.P.C. and were sentenced to undergo R.I. for one year for the offence under Section 148 I.P.C. and three months for the offence under Sections 323/149 of I.P.C. with both the sentences being directed to run concurrently.

2. The prosecution case, in brief, is that on 2nd September, 1989 at about 9.30 A.M. the appellants formed an unlawful assembly in front of the house of one Hari Kandi being armed with lathi, paniki and other weapons. Thereafter they committed the murder of the said Hari Kandi by assaulting him with the said weapons.

The accused-appellants took the plea of denial.

3. In course of trial, the prosecution examined seven witnesses and exhibited thirteen documents. No evidence, either oral or documentary was adduced from the side of the accused persons. Learned trial court after considering the oral evidence particularly, that of P.Ws.1 to 4 held that though the offence under Section 302 of I.P.C. was not made out yet, there was clear evidence that the accused persons had assaulted the deceased causing injuries on his

person. On such findings, learned trial court convicted the Appellants and sentenced them as already stated herein before.

4. Heard Mr. D. Das, learned Amicus Curiae and Mr. P. Tripathy, learned Addl. Standing Counsel for the State.

5. Mr. Das fairly submits that though several grounds have been urged in the memorandum of appeal to challenge the impugned judgment of conviction and sentence yet, the appeal was filed way back in the year 1990 and at this distance of time, he would urge the Court to only consider whether the benefit of P.O. Act can be granted to the Appellants. It is contended by Mr. Das that the occurrence took place more than 33 years and one of the accused-appellants (Appellant No.7) has expired in the mean time. All other Appellants are of advanced ages and are presently residing peacefully in their respective villages.

6. Mr. Tripathy, on the other hand, has contended that since minimum sentence has been imposed, the Court may not extend the benefit of P.O. Act to the Appellants.

7. I have considered the rival submissions and have also gone through the materials on record. Undoubtedly, the occurrence took

place nearly 33 years ago. No criminal antecedents are reported against the appellants and they are presently of advanced ages. Though they were charged for murder yet, they were ultimately acquitted for the offence under Sections 148/323 read with Section 149 of I.P.C. They were in custody for some time in course of trial.

8. Taking into consideration all the above facts, this Court of the considered view that ends of justice would be best served if the Appellants are released as per the provision of Section 4 of the P.O. Act instead of serving the remaining part of the sentence in jail.

9. In the result, the Criminal Appeal is allowed in part. The order of conviction passed by the trial court is hereby confirmed. The sentence imposed by the trial court is, however, modified to the extent that the Appellants shall be released as per provisions of Section 4 of the P.O. Act. For the above purpose, the Appellants are directed to appear before the court below on 10th October, 2022. It is made clear that if there is no appearance from the side of the Appellants on that date, the sentence as originally imposed shall operate.

10. This order be communicated to the court below, who shall inform the Appellants by serving notice on them.

11. Before parting with the case, this Court records its appreciation for the able assistance rendered by Sri Debasnan Das, Amicus Curiae in adjudication of this appeal.

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(*Sashikanta Mishra*)
Judge

Ashok Kumar Behera





