

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No. 120 of 2005

Nakula Bhoi

.... ***Appellant***
Mr.S.N. Sharma, Advocate

-Versus-

State of Odisha

.... ***Respondent***

Mr.J.Katikia,AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

Order No.

ORDER
24.09.2022

Dr.S.Muralidhar,CJ

6. 1. The appeal is directed against the judgment dated 14th February, 2005 passed by the learned Adhoc Additional Sessions Judge, Fast Track Court, Rourkela in S.T. Case No.205/49 of 2004 convicting the Appellant for the offence under Section 302 IPC and sentencing to undergo rigorous imprisonment (RI) for life and fine of Rs.2,000/- and in default to undergo RI for six months. The Appellant has also been convicted for the offence punishable under Section 307 IPC and sentenced to undergo RI for five years and to pay fine of Rs.2,000/- and in default to undergo RI for six months.
2. It is seen from the report submitted on 13th January, 2021 by the Jail Medical Officer, Circle Jail, Sambalpur that even while confined in the jail since 2005, the Appellant has been suffering

from schizophrenia. A report dated 13th January 2021 of Psychiatric Department, VIMSAR, Burla states that at present the Appellant does not have any psychiatric problem and is taking maintenance medicines and leading a normal life.

3. The case of the prosecution is that the Appellant was noticed having stabbed several people including his own maternal aunt with a knife at around 1 P.M. on 9th April, 2004 at the Karuabahal Market under Brahamanitarang Police Station in district Sundargarh. One of them namely the aunt of PW-1 Shyamsundar Singh named Etuwari Singh succumbed to her injuries.

4. There have been at least three eye witnesses to the incident. PW-1 who is the nephew of the deceased was present near the shop of Sukdev Singh and saw his own aunt Etuwari being stabbed by the Appellant on the chest with knife blows. When the Appellant attempted to attack PW-1, the later spooked his body and avoided the blow. Some boys of the nearby village threw stones at the Appellant pursuant to which he fell down.

5. PW-1 brought his aunt to Rourkela Government Hospital for treatment, but she was declared dead on arrival. PW-1 has also spoken about the Appellant attacking to Kunja Bihari Moharana (PW-6) also with a knife. In the cross-examination, nothing has been brought out to discredit this witness. Learned counsel for the Appellant sought to highlight the reply given by PW-1 in the cross examination that he was not asked anything after the FIR was lodged in order to suggest that perhaps the police did not

record his statement. The evidence of the Investigating Officer Sri Pradeep Kumar Pradhan (PW-21) does indicate that he did examine the witness. No suggestion was put to him that PW-1 was not examined by him.

6. The other important witness PW-6 who was himself injured. His cross-examination also did not yield much for the defence. He clearly identified the Appellant as being the person who dealt him a knife blow.

7. The third important witness PW-13, who was another eye witness. He saw the attack on both Kunja Behari Moharana as well as Etuwari Singh. It appears from the reply given by PW-13 and in his cross examination that the Appellant appeared to be mentally unsound. There appears to have been no particular motive behind the attack by the Appellant on complete strangers.

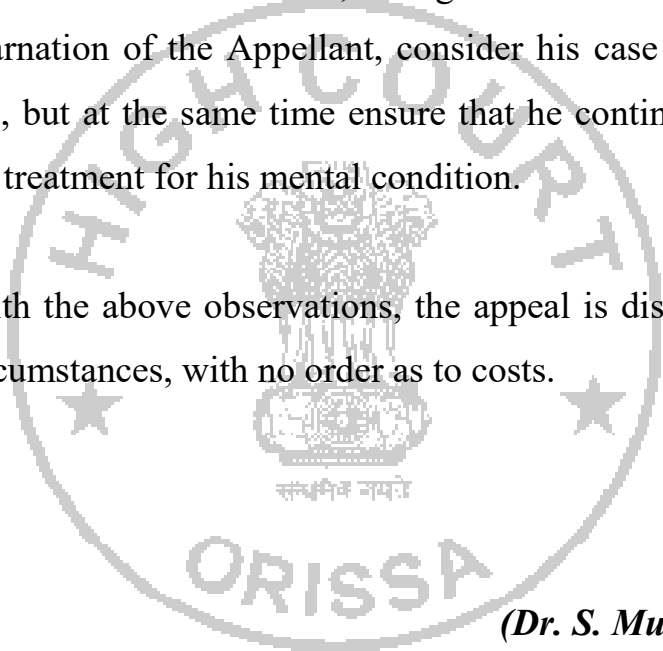
8. Learned counsel for the Appellant sought to argue that the non production of the knife that was purportedly recovered and the failure to place on record the report of the chemical examination of such knife, had considerably weakened the case of the prosecution.

9. The Court is unable to agree with the above submission. This being a case of direct evidence with one injured eye witness and two other witnesses clearly speaking about the assault by the Appellant on the deceased as well as others, the mere non production of knife that was recovered at the instance of the Gramarakhi, who was not examined, does not weaken the case of

the prosecution. In a case of circumstantial evidence this might have been relevant. However, since the evidence of the injured eye witness and other eye witnesses viz., PWs. 6, 1 and 13 have been clear and unambiguous, the Court is satisfied that the prosecution been able to prove the case against the Appellant beyond reasonable doubt.

10. While, therefore, not interfering with the impugned judgment of the trial Court, this Court would like to observe that perhaps the State Government should, taking into account the long years of incarceration of the Appellant, consider his case for premature release, but at the same time ensure that he continues to receive proper treatment for his mental condition.

11. With the above observations, the appeal is dismissed, but in the circumstances, with no order as to costs.

The seal of the Orissa High Court is a circular emblem. It features the State Emblem of India at the top center, which is a four-lion capital of an abacus. Below the emblem is the motto 'Satyameva Jayate' in Devanagari script. The word 'ORISSA' is written in large, bold, capital letters at the bottom. The words 'HIGH COURT' are written in a semi-circle at the top. Two stars are positioned on either side of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge