

**ORISSA HIGH COURT: CUTTACK**

**CRLREV No. 566 of 2011**

(An application under Section 401 of Cr.P.C. against the judgment passed on 23.04.2011 by the learned Adhoc Additional District and Sessions Judge (Fast Track Court), Jajpur)

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**Niranjan Sahoo**

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**Petitioner**

**-Versus-**

**State of Odisha**

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**Opp. Party**

**Advocate(s) appeared in this case:-**

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|----------------|---|--------------------------------------------------|
| For Petitioner | : | M/s. Bijayananda Dash &<br>B.P. Ojha, Advocates  |
| For Opp. Party | : | Mr. P.K. Maharaj,<br>Additional Standing Counsel |

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**CORAM**

**JUSTICE SASHIKANTA MISHRA**

**ORDER**

**08<sup>th</sup> April, 2022**

**SASHIKANTA MISHRA, J.** The petitioner, who is the accused in S.T. Case No. 772 of 2001 of the Court of learned C.J.M. - cum- Asst. Sessions Judge, Jajpur, has preferred this revision seeking to challenge the judgment passed on

23.04.2011 by the learned Adhoc Additional District and Sessions Judge (Fast Track Court), Jajpur in Criminal Appeal No. 11 of 2003, whereby, the judgment passed by the learned C.J.M. -cum- Asst. Sessions Judge, Jajpur in S.T. Case No. 772 of 2001 was confirmed, but the sentence was modified. Learned trial Court had convicted the accused petitioner for the offence under Section 323 and sentenced him to undergo S.I. for six months and to pay a fine of Rs.2000/-, in default, to undergo further S.I. for one month. The petitioner carried the matter in appeal, whereby, the sentence was modified to S.I. for three months with fine of Rs.1,000/- to be paid to the informant as compensation, in default, to undergo S.I. for one month.

2. The facts of the case are that one Kunja Bihari Sahoo lodged FIR on 04.02.1999 before the IIC of Binjharpur Police Station alleging that on the same day at about 7 a.m. there was a quarrel between his wife and Basantilata Sahoo and his daughter Kunilata Sahoo over a dispute relating to a thatched house. The accused, who

happens to be his elder brother, abused him (the younger brought) in filthy language and threatened to set his dwelling house to fire and when the informant wanted to report the matter before the local gentries, the accused assaulted him by means of a *mugura* and an iron rod causing injury on his head. Basing on such report, Binjharpur P.S. Case No. 29 of 1999 was registered under Sections 341/506/307/34 of IPC and investigation was taken up. Upon completion of investigation, charge sheet was submitted under the aforementioned sections.

In course of trial, the prosecution examined six witnesses including the informant as P.W.-4. One witness was examined from the side of the defence. After considering the evidence adduced in trial, learned trial Court held that the offence under Section 307 is not made out but the offence under Section 323 is clearly made out and accordingly convicted the accused and sentenced him as aforesaid.

In appeal, learned Adhoc Additional District and Sessions Judge (Fast Track Court), Jaipur also scanned

the evidence and held that the prosecution case of assault by the accused on the informant by means of *mugura and* iron rod is clearly established. Moreover, the defence plea of false implication is not made out. However, considering the fact that the occurrence had taken place way back in the year 1999, the learned Court below while confirming the order of conviction, modified the sentence as already stated hereinbefore.

Feeling further aggrieved, the accused petitioner has preferred the present revision.

3. Heard Mr. B. Dash, learned counsel for the petitioner and Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State.

4. Assailing the impugned judgment, Mr. Dash would contend that the learned trial Court committed error in disregarding the fact that several material witnesses who had seen the occurrence were not cited as witnesses in the charge sheet nor examined in the Court during trial. Further the fact that all the witnesses being close-relations of the informant are interested witnesses,

was also overruled by the trial Court as well as lower appellate Court.

5. Per contra, Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State contends that it is for the prosecution to decide the person or persons to be examined to prove its case. If the accused was prejudiced by non-examination of any witness, he could have moved the Court seeking permission to examine them from his side. As regards the other ground it is argued by Mr. Maharaj that only because the witnesses are related to the injured victim, does not mean that they were lying or that their evidence has no value.

6. From the evidence on record, it transpires that the informant being examined as P.W.-4 has vividly described the occurrence. Nothing has been elicited from him in cross-examination to disbelieve or discredit his testimony, rather, in cross-examination, the details of the assault have been brought out from his mouth. The exact site of bodily injuries has also been elicited from his mouth. Not a single suggestion has been given to him that that he had

falsely entangled the accused in the case due to prior enmity. The version of P.W.-4 finds ample support from the other witnesses, such as, P.W.-3 and P.W.-6. Further, the fact of the informant sustaining bodily injuries has been clearly proved by the doctor, who was examined as P.W.-5. It is claimed that there were some eye-witnesses to the occurrence but they were not cited as witnesses in the charge sheet, which caused prejudice to the accused. This argument is unacceptable for the reason that it has not been suggested to any of the witnesses that the so called left out persons had witnessed the occurrence and that it had taken place in a manner different from that described by the informant. That apart, it is for the prosecution to prove its case by citing such persons as witnesses, who according to it, have seen the occurrence or can prove the occurrence by their testimony. Even otherwise, if the accused felt prejudiced by non-examination of such persons, or according to it, examination of such persons would have falsified the prosecution case, then it was always open to him to call them as witnesses to depose on

his behalf by making appropriate application before the trial Court. Not having done so, it is not open to the accused to raise such plea at this stage. The contention advanced by Mr. Dash is therefore, not acceptable.

7. The other grounds urged to the effect that the witnesses being closely related to the informant cannot be believed, is also not acceptable. As already stated, the testimony of the injured (P.W.-4) comes out as clear, consistent, credible and free from any doubts. Only because his statement finds support from the evidence of his wife, who was examined as P.W.-3, and no other independent person come forward to support their versions does not mean that both of them were lying. It is well settled that in a case of assault resulting in bodily injuries, the injured victim is not expected to falsely implicate a person who had not caused the injuries and thereby allow the actual offender or offenders to escape

8. Thus, the grounds urged by the petitioner to question the correctness of the impugned order are not valid or tenable so as to persuade this Court to interfere

therewith. On an independent assessment of the evidence and materials on record, this Court is also of the same view as the trial Court as well as the lower appellate Court. Therefore, no inference on such score is warranted.

9. It is alternately submitted by Mr. Dash that the occurrence took place in the year 1999, which is nearly 23 years back. The petitioner is presently aged about 72 years. Further, he has no criminal antecedents and after the occurrence, the petitioner and the informant have been residing peacefully in the village. Mr. Dash therefore submits that it would be too harsh at this stage to commit the petitioner to prison to serve the remaining part of the sentence.

10. In response, Mr. P.K. Maharaj contends that since minimum sentence has been imposed, the same does not warrant any interference.

11. Considering the submissions made by Mr. Dash with regard to the age of the petitioner and other factors, this Court is of the considered view that it would be too harsh to commit the petitioner to prison to serve the

remaining part of the sentence at this distance of time, rather, ends of justice would be best served if the petitioner is granted benefits of the provisions of the Probation of Offenders Act. 1958.

12. In the result, the revision is allowed in part. The order of conviction passed by the learned trial Court is confirmed, but the sentence is modified to the extent that the petitioner shall be released as per provisions of Section 4 of P.O. Act. For such purpose, the petitioner is directed to appear before the trial Court on 9<sup>th</sup> May, 2022 to receive further instructions. In the event the petitioner does not appear on the date fixed, necessary orders shall be passed by the trial Court to commit him to prison to serve the remaining part of the sentence.

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**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack**  
**The 8th April, 2022/ A.K. Rana**