

Arjuna Pradhan and Another

Vs

State of Orissa

Criminal Appeal No. 390 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

07.02.1979

JUDGMENT

FAZAL ALI, J. –

1. The appellants have been convicted under Section 304-II read with Section 149 and sentenced to three years' rigorous imprisonment. This appeal by special leave is directed against the judgment of the Orissa High Court which affirmed the conviction and sentences passed by the Sessions Judge.
2. We have gone through the judgment of the High Court as also that of the Sessions Judge and we have also heard the learned counsel for the parties.
3. Mrs. Sunada Bhandare appearing in support of the appeal, however, submitted that the case of appellant 2 Laxman Pradhan merits serious consideration because there is no legal evidence to show that he inflicted any lathi blow to the deceased. It was submitted that on the finding of the High Court that the appellants had exceeded the right of private defence of property, the charge under Section 149 which was based on the common object to assault must necessarily fail. In that view of the matter unless there was specific evidence against appellant 2 Laxman Pradhan that he had assaulted the deceased, he cannot be convicted under Section 323. In our opinion, the contention raised by Mrs. Bhandare regarding Laxman Pradhan is well founded and must prevail. The High Court has clearly affirmed the finding of the trial Court at page 71 of the paper-book that the tank which was the subject-matter of the dispute was actually in possession of the appellants and that it was the prosecution party which started the trouble. The High Court however found that the appellant exceeded the right of private defence of property. On this finding it is manifest that the charge under Section 149 as framed must fail. There is no evidence led by the prosecution to show that Laxman Pradhan had assaulted the deceased and in absence of any such evidence Laxman Pradhan cannot be convicted for individual assault. In view of our finding that the charge under Section 149 fails, the appellant I also cannot be convicted under Section 304-II/149 and his conviction is therefore altered from one under Section 304-II/149 to that under Section 323 as there is clear evidence that he had assaulted the deceased with Bhusa. Thus, we allow the appeal of Laxman Pradhan in toto, and acquit him of the charges framed against him. He will be discharged from his bail bond. The appeal of Arjuna Pradhan is allowed in part in that his conviction is altered from 304-II/149 to that under Section 323 and sentence reduced to one year. He shall surrender and serve out the remaining portion of the sentence.

</html