

Madhusudan Satpathy and others

Vs

State of Orissa

Criminal Appeal No. 227 of 1980

(K. Jayachandra Reddy, R. C. Patnaik JJ)

29.01.1992

ORDER

1. The three appellants before us were tried along with four others by the Additional Sessions Judge for offences punishable under S. 302 read with Ss. 148 and 149, I.P.C. The case mainly rests on the evidence of eye-witnesses PWs. Nos. 1, 4, 5, 8 and 10. The trial Court rejected their evidence on the ground that apart from their version being in conflict with the medical evidence, the time of occurrence has not been correctly put forward and, therefore, the whole case becomes doubtful. The State preferred an appeal and Division Bench of the Orissa High Court disagreed with the finding of the trial Court in respect of these three appellants. The acquittal of the remaining accused was, however, confirmed.

2. The learned counsel submits that the High Court has not kept in view the well settled principles to be observed in reversing the order of acquittal and the evidence of the so-called eye-witnesses has been rejected by the trial Court which had also the advantage of watching their demeanour and that in these circumstances, the order of the High Court cannot be sustained.

3. According to the prosecution, the deceased Bharat Satpaty purchased a piece of land from one of the accused and Nrusingha Misra had also borrowed Rs. 1,000/- from him. In that connection there were some disputes and it created ill-feelings. On 16th June, 1976, the date of occurrence, it is alleged that the deceased came to the House of Madhua for receiving Payment. The deceased however, consented but told that he would go after answering call of nature. Meanwhile P.W. 1 who heard the deceased shouting in agony rushed there. He saw the deceased lying there and some of the accused giving bhala blows to him. According to the version of the eye-witnesses, the first appellant gave a Bhala blow on the right temporal region of his head and the second appellant gave a blow on the right side of his head with a wooden plank and the third appellant Nrusingha Charan Misra gave a blow on the bridge of the nose. The other accused are generally alleged to have given lathi blows. The report was given to the Police and the case was registered and after completion of the investigation charge-sheet was framed. It is already noted that the case mainly rests on the evidence of the eye-witnesses P.Ws. Nos. 1, 4, 5, 8 and 10. The High Court has considered their evidence in great details on the question of law namely the scope of an appeal against acquittal, the Division Bench has also referred to the relevant decisions and keeping in view of the settled principles, the High Court proceeded to discuss the evidence and ultimately found that they had no intention to cause death but they had intention to cause such injuries which were likely to cause death. The High Court convicted these accused under s. 304, Part I, I.P.C. read with S. 34 I.P.C. and sentenced them to undergo 6 years R.I. The medical evidence shows that there is only one injury on the head that proved to be fatal. The other injuries were found to be simple. Weapons used also were not deadly. Under these circumstances it is reasonable to hold that the appellants had only knowledge that the

injuries inflicted by them were likely to cause death. In this view of the matter we alter the conviction from S. 304, Part I, I. P.C. to one punishable under S. 304, Part II, I.P.C. and we reduce the sentence of each of the appellants from 6 years R I. to 3 years R.I.

4. The appeal is disposed of accordingly. Order accordingly.

</html