

SUPREME COURT OF INDIA

Pramod Kumar Mantri

Vs.

State of Orissa

(K. Ramaswamy and G.T. Nanavati JJ.)

27.01.1997

ORDER

Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

By order dated November 8, 1996 the petition was dismissed as against the first petitioner, Bhikari Behera and notice was ordered in respect of the remaining two petitioners, namely, Pramod Kumar Mantri, Bhagirathi Rout.

The case of the prosecution is that on May 28, 1988 at about 10.00 a.m., all the three accused armed with Thengas entered into the house of deceased Bauribandhu. A-1 had hit him on the head twice and threw his down. Thereafter, the three accused had dragged the deceased outside the house. When wife and son of the deceased raised alarm, they ran away from the place. FIR was lodged at

about 11.30 A.M. and thereafter investigation was conducted. The appellants and two others have been charged under Section 302 read with under Section 149 I.P.C. The Courts below convicted the appellants for an offence punishable under Section 302 read with Section 34 I.P.C. As regards the assault by the appellants, there is no corroborating evidence by the doctor as to dragging of the deceased by the accused. Even the evidence of the eye-witnesses is discrepant on material particulars. Accused Nos. 2 and 3 were standing behind PW-2.

If really all the three accused had entered into the house all of them would have attacked the deceased. That is not the case of the prosecution. Under these circumstances, the prosecution cannot be said to have proved beyond reasonable doubt that the appellants shared the common intention with A-1 to kill the deceased. Even the evidence of PW-1 that they entered the house and dragged the deceased is not reliable since the admission in the cross-examination is that there was no blood stain outside the house. Had the dragging really been there, there would be trail of blood.

The appeals are accordingly allowed. The conviction and sentence of the appellants Nos. 2 and 3 for an offence under Section 304, Part II, IPC stand set aside.