

SUPREME COURT OF INDIA

Mita @ Bibhuti Bhushan Senapati

Vs.

State of Orissa

Crl.A.No.1175-1176 of 2003

(B. N. Agarwal and H. K. Sema JJ.)

20.07.2004

ORDER

1. Heard learned counsel for the parties.

2. The sole appellant along with three others was charged under Section 302 read with 34 of the Penal Code and they were acquitted of all the charges by trial Court. The High Court, on appeal by the State of Orissa as well as revision filed by the private complainant, maintained acquittal of two other accused whereas reversed the same in relation to the appellant as well as Bharat Jena who have been convicted under Section 302 read with Section 34 of the Penal Code and sentenced to undergo imprisonment for life. So far Bharat Jena is concerned, it appears that he did not prefer any appeal and the present appeal by special leave has been filed by the appellant alone.

3. Having heard the parties and perused the impugned judgment, we are of the view that order of acquittal rendered by trial Court suffered from perversity, as such, High Court was quite justified in interfering with the same. The prosecution case that the appellant assaulted the deceased with a sword is supported by the evidence of P.W. 1 who claimed to be an eye-witness to the occurrence and was accompanying the deceased. This witness has consistently supported the prosecution case disclosed in the First Information Report, his subsequent statement made before the police as well as in Court and no infirmity could be pointed out to dis-believe his sworn testimony. That apart, his evidence is corroborated by P.W. 7 who is nobody else than father of the deceased, as P.W. 1 immediately gave information to P.W. 7 about the occurrence and thereupon law was set in motion by lodging the First Information Report by P.W. 7. Apart from the ocular evidence, the prosecution case of inflicting sword blow is corroborated by medical evidence as Doctor has found that the injuries were caused by sword. This being the position, we are of the view that prosecution has succeeded in proving its case beyond reasonable doubts and the High Court has not committed any error in reversing the order of acquittal and convicting the appellant.

4. Accordingly, appeals fail and the same are dismissed.