
(2006) CLT 1154 (Suppl Crl) : (2006) 1 OLR 169 Supp : (2006) OLR 1154 (Suppl Crl)

Orissa High Court

Case No: Government Appeal No. 20 of 1987

State of Orissa

APPELLANT

Vs

Mangal Hansda

RESPONDENT

Date of Decision: April 7, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307

Citation: (2006) CLT 1154 (Suppl Crl) : (2006) 1 OLR 169 Supp : (2006) OLR 1154 (Suppl Crl)

Hon'ble Judges: Pradip Mohanty, J

Bench: Single Bench

Advocate: Addl. Government Advocate, for the Appellant; A.K. Mishra, G.S. Panda, A.R. Mohanty and A.K. Mohanty, for the Respondent

Final Decision: Dismissed

Judgement

Pradip Mohanty, J.

This Government Appeal has been preferred against the judgment and order dated 23.1.1987 passed by the learned C.J.M.-cum-Asst. Sessions Judge, Mayurbhanj, Baripada in Sessions Trial Case No. 12/55 of 1986 acquitting the accused-Respondent of the charge u/s 307 I.P.C.

2. The case of the prosecution is that the Respondent after leaving his first two wives married Sunei Dei, who had also deserted her first husband Bikram, by putting the mark of vermilion on her forehead and both of them started living together. Madan Marandi, the brother of Sunei Dei, had come to the village of the Respondent to take his sister to his house. He also invited the Respondent who did not accept the invitation. On this, there was a quarrel between the Respondent and his wife Sunei Dei. However, Sunei Dei went to her parents' village with her brother. On the Akhyatrutiya day during night time, while the brother of Sunei was away from the village to witness the Uda Festivals and the inmates of the house were sleeping on the verandah of the house, the accused Respondent arrived there and gave katari blow to the front side neck of Sunei Dei. On the

shout raised by Sunei, the mother and another brother of Sunei wake up, saw the assailant Respondent and chased him, but could not succeed. Thereafter F.I.R. was lodged and the victim Sunei Dei was sent for medical examination on police requisition. Ultimately charge sheet was submitted u/s 307 of I.P.C. against the accused-Respondent.

3. The plea of the accused-Respondent was one of complete denial.

4. In order to prove the case, the prosecution examined nine witnesses and adduced seven exhibits. The defence did not choose to examine any witness.

5. Considering the evidence and materials available on record, the learned C.J.M.-cum-Assistant Sessions Judge by the impugned judgment did not find the accused-Respondent guilty and acquitted him of the charge.

6. Learned Additional Government Advocate submits that P.W. 2, the other brother of Sunei Dei, who was aged about 13 years, at the relevant time, corroborates the testimony of P.W. 7 in all material particulars. There is also corroboration to the evidence of P.W. 7 by P.W. 4, who is her mother. Therefore, the prosecution has been able to bring home the charge to the accused-Respondent, and trial Court has committed grave error in recording a finding of acquittal.

7. Perused the evidence on record. According to P.Ws. 2, 4 and 7, they identified the accused-Respondent with the help of the hurricane lamp. The said lamp has not been seized by the police. According to P.Ws. 2 and 4, there was no opportunity to see the accused from his front and they had seen the assailant from his back. There is no evidence on record to show that on the fateful day/night, the accused had come from his village to the village of his wife. P.W. 7 has stated in her cross-examination that she did not meet the accused from the day she left his house with her brother till the date of occurrence. No independent witness like the adjacent neighbours of Madan marandi who could have revealed the real truth, has been examined by the prosecution. Though a co-villager, i.e., P.W. 3, has been examined, his evidence does not inspire confidence.

8. Considering the facts and circumstances of the case, this Court finds that the evidence against the Respondent is not sufficient to hold him guilty u/s 307 I.P.C. Accordingly, this Court does not feel inclined to interfere with the judgment and order passed by the trial Court.

9. In the result, the Government Appeal being devoid of any merit is dismissed.