

(2024) 07 OHC CK 0004

Orissa High Court

Case No: Criminal Appeal No. 16 Of 2004

Kartik Mahakud

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: July 3, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 374(2)
- Indian Penal Code, 1860 - Section 34, 148, 149, 307, 326

Hon'ble Judges: D.Dash, J

Bench: Single Bench

Advocate: D.P. Dhal, G.N. Rout

Final Decision: Allowed

Judgement

D.Dash, J

1. The Appellants, by filing this Appeal, have called in question the judgment of conviction and order of sentence dated 12th January, 2004 passed by the learned Additional Sessions Judge, Boudh in S.T. No.23 of 2003 (S.T. No.68/2003 of D.C.) arising out of G.R. Case No.271 of 2002 corresponding to Baunsuni P.S. Case No.35 of 2002 pending on the file of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Boudh.

By the impugned judgment of conviction and order of sentence, these Appellants (accused persons) have been convicted for commission of the offence under sections 326/34 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly, they have been sentenced to undergo rigorous imprisonment for four (4) year and pay fine of Rs.5,000/- (Rupees Five Thousand) each in default to undergo rigorous imprisonment for six (6) months each for commission of the said offence.

It be stated here that with these Appellants, namely, Kartik Mahakud; Tankadhar Gurandi; Madhab Mahakud and Baisakhu Mahakud along with six others had faced the trial for commission of the offence under section 148/307 read with section 149 of the IPC. But, the Trial Court found those six accused persons not guilty of committing any of the offences and acquitted them of all the charges.

2. Prosecution Case:-

In the night of 06.09.2002 around 9.00 p.m., at Village- Dambargard, these accused persons including those six accused persons (since acquitted) being armed with Medha, Tangia etc. formed an unlawful assembly and in prosecution of the common object of said assembly, mercilessly assaulted one Gayadhar Naik

(P.W.2), who happens to be the brother of the Informant Giridhar, who has been examined as P.W.1 and another, namely, Sridhar Gaigoria (P.W.6) on account of previous grudge. It is stated that accused Kartik severely assaulted on the hand of Gayadhar by means of Tangia as a result of which there was amputation above writ level. It is also stated that when the Informant (P.W.1) and other villagers appeared and intervened, all the accused persons left the place.

An information to the above effect being given in writing to the Assistant Sub-Inspector (A.S.I.) of Police (P.W.7) attached to Baunsuni P.S., the criminal case was registered and the investigation commenced.

On completion of the investigation, the I.O. submitted the Final Form placing these four accused persons and those six others (since acquitted) to face the trial.

3. The Trial Court, upon examination of the evidence and their evaluation, has held that the prosecution has proved its case beyond reasonable doubt by leading clear, cogent and acceptable evidence against these four accused persons for having committed the offence under section 326/34 of the IPC while holding that it has failed to prove its case against other six accused persons.

4. The defence plea is that of complete denial and as would reveal from the tenor of cross-examination, it is stated by them that P.W.2 and other members of the family, having gone to the forest to illegally cut the trees, these accused persons and others protested to the same taking the lead and, therefore, this false case has been foisted against them.

5. In the Trial, the prosecution has examined seven witnesses whereas the defence has examined one. Besides leading the above evidence, the prosecution has also proved several documents, which have been admitted in evidence and marked Exts.1 to 4. The Trial Court, having gone through the said evidence, has accepted the same in so far as these accused persons committing the offence under section 326/34 of the IPC is

concerned and they have been sentenced as aforesaid.

6. Mr.D.P.Dhal, learned Senior Counsel for the Appellants (accused), inviting the attention of the Court to the deposition of P.Ws.2 and 6, placed as to how those are divergent on material particulars and also in respect of the roles said to have been played by each of the accused persons in the said incident. He submitted that on a bare comparison of the evidence of P.Ws.2 and 6, no consensus would arise as to which of the accused did what in the said incident. He further submitted that when co-accused persons against whom allegation had been levelled that they all had gone together with the accused persons and as the participation of those accused persons has been held to have not been proved; on the same set of evidence falling from the prosecution witnesses, as against these accused persons, the prosecution case cannot be said to have been established beyond reasonable doubt. He, therefore, urged for setting aside the judgment of conviction and order of sentence passed against these Appellants (accused persons).

7. Mr.G.N.Rout, learned Additional Standing Counsel for the Respondent-State submitted that barring some minor discrepancies in the evidence of P.Ws.2 & 6, no such glaring discrepancy/infirmity surfaces therein so as to disbelieve their version implicating these accused persons. He further submitted that there is no reason or justification to eschew the evidence of P.Ws.2 & 6 from the arena of consideration as they stand rock solid to one another more particularly as regards the happenings in the incident and the part played by these accused persons.

8. Keeping in view the submissions made, I have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.Ws.1 to P.W.7) and (D.W.1) and have perused the documents admitted in evidence and marked as Ext.1 to Ext.4.

9. The criminal law has been set into motion at the behest of P.W.1 as the Informant. He, in his evidence, has stated that all the villagers were guarding the jungle as per their turn since some miscreants were found to be felling trees inside the jungle and that about three months before the occurrence, there was quarrel between P.W.2 and accused Kartik and Sitaram. He states that hearing the quarrel between P.W.2 and P.W.6 had quarrel with the accused persons, meaning all. He further says that hearing hullah when he went to the spot, he saw accused Kartik dealing a tangia blow on the right hand of P.W.2 and others assaulted P.Ws.2 & 6 by thengas. He then during cross-examination says that when he went, he saw a huge gathering (100 to 150 villagers). P.W.2 states that accused Kartik, Tankadhara, Baisakhu and Madhab (these accused persons) gheraod him and accused Kartik cut his right hand by means of a Tangia whereafter other accused persons, namely, namely, Dasarathi, Sarthik, Koili, Dhutarastra, Alekha and Budha brutally assaulted by means of thenga. In addition to

this, it is the evidence of P.W.6 that he with P.W.2 and Tarini (not examined) had been to cut medha from the jungle when accused persons arrived there and assaulted them by Medha. He does not state as to which accused assaulted P.W.2 with what weapon. He says that P.W.2 told him and Tarini to cut Medha in the jungle and he was having tangia when miscreants came and assaulted. These evidence have been held by the Trial Court to be hazardous to fasten the criminal liability upon the acquitted accused persons, namely, Bhagirath, Dhurutarastra, Dasarathi, Sartik and Budha @ Brahamohan. Hoowever, the same has been held enough to find out the complicity of all the four accused persons. Furthermore, when all the accused persons stood charged for commission of the offence under section 148 of the IPC and for the substantive offence under section 307 of the IPC with the aid of section 149 of the IPC and the charge under section 148 as also substantive offence read with section 149 of the IPC as having committed being the member of all the unlawful assembly, has been held to have not been proved by the prosecution with the available evidence of P.Ws.1, 2 & 6, which have no consistency, these four accused persons selectively ought not to have been held liable for commission of the offence under section 326/34 of the IPC, moreso basing upon the evidence, which have already been held to be unreliable in part in so far as the involvement of other persons facing the trial are concerned. Therefore, the conviction of these accused persons under section 326/34 of the IPC cannot be sustained.

10. In the result, the Appeal is allowed. The judgment of conviction and order of sentence dated 12th January, 2004 passed by the learned Additional Sessions Judge, Boudh in S.T. No.23 of 2003 (S.T. No.68/2003 of D.C.) are hereby set aside.

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