

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRREV NO.393 OF 2000

(From the judgment and order of conviction dated 18th December, 1991 passed by learned Asst. Sessions Judge, Udala in S.T. Case No.20/201 of 1991)

Chinta Marandi @ Chintamani Marandi

... **Petitioner**

-versus-

State of Orissa

... **Opposite Party**

Advocates appeared in the case through hybrid mode:

For Petitioner

: Mr. S.D. Das, Sr. Advocate

-versus-

For Opposite Party

: Mr.P.Tripathy
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

14.7.2022.

Sashikanta Mishra, J. The Petitioner was convicted for the offence under Section 307 of I.P.C. by the learned Asst. Sessions Judge, Udala in S.T. Case No.20/101 of 1991 vide judgment passed on 18th December, 1991 and was sentenced to undergo R.I. for a period of five years and to pay fine of Rs.2000/-, in default, to undergo further R.I. for a period of three months. The said judgment of conviction and sentence passed by the trial court was confirmed in appeal by the learned Sessions Judge, Mayurbhanj in Criminal Appeal No.1/1992 as per judgment passed on 9th May, 2000. Challenging the aforementioned judgments, the Petitioner has filed the present Revision.

2. The prosecution case, briefly stated, is that there was a land dispute between one Bhagaban Marandi, his brother Soren Marandi and the present Petitioner. On 21st April, 1991 at about 1.00 A.M. while the said Bhagaban Marandi was asleep on a cot in an open house attached to his residential house, the Petitioner and his brother Soren Marandi entered into the house and assaulted him by means of a knife on his neck. A scuffle ensued, during which Bhagaban Marandi caught hold of the knife, but the Petitioner snatched away the knife and fled away from the spot. As a result of the assault, the informant sustained bleeding injury on his neck and

his right hand middle finger for which he was treated as an indoor patient in Udala Hospital. Thereafter, one Bhada Prasad Marandi lodged F.I.R. leading to registration of the case. Upon completion of investigation charge sheet was submitted against the Petitioner and his brother Soren Marandi under Section 307/34 of I.P.C.

The accused took the plea of denial.

Prosecution, in order to prove its case examined twelve witnesses including the injured-Bhagaban Marandi as P.W.1 and the treating Doctor as P.W.7. The knife was marked M.O.IV, which had been seized on the basis of the disclosure statement made by the Petitioner under Section 27 of the Indian Evidence Act. Considering the evidence on record, the trial court held that the charge against Soren Marandi is not proved as there was no evidence that he had played any role in commission of the offence. Therefore, while acquitting Soren Marandi from the charge, the trial court held that the injury having been proved to be on the vital part of the body coupled with evidence of prior dispute suggesting a motive for the accused to kill the injured, the Petitioner was convicted and sentenced as aforesaid.

The Petitioner carried the matter in appeal. The lower appellate court independently scanned the evidence on record and found no reason to interfere. The findings of the trial court along with the order of conviction and sentence was thus confirmed.

3. Heard Mr. S.D.Das, learned Senior counsel for the Petitioner and Mr. P. Tripathy, learned Addl. Standing Counsel for the State.

4. Assailing the impugned judgments, learned Senior counsel has contended that both the courts below have not taken note of the Station Diary Entry made by the ASI marked Ext.A from the side of the defence wherein the name of the Petitioner has not been mentioned. This, therefore, proves that the Petitioner was falsely implicated. It is further contended that the fact that the co-accused was acquitted for want of evidence, also suggests that a false case was foisted because of previous enmity. It is alternatively submitted that the incident took place more than 30 years back. The Petitioner is presently aged nearly 60 years. He has no criminal antecedent and, therefore, instead of directing him to serve the remaining part of the sentence in prison, he should be released as per the provisions of the P.O. Act.

5. Per contra, Mr. P.Tripathy, learned Addl. Standing Counsel for the State, contends that the essential ingredients of the offence under Section 307 of I.P.C. have been fully established. Further, the evidence regarding prior enmity shows that the Petitioner had a definite motive and intention to kill the injured. The injuries found on the body of the injured are fully consistent and compatible with the oral evidence of the injured. Thus, according to Mr. Tripathy there is absolutely no reason to interfere with the concurrent findings of fact at this stage. As regards the contention regarding release of the Petitioner under P.O. Act, it is submitted by Mr. Tripathy that since minimum sentence has been imposed, there is no necessity of releasing him as per the P.O. Act.

6. Before proceeding to examine the merits of the rival contentions as noted above, it is felt proper to go through the evidence independently. P.W.9 is the injured. He has clearly and consistently deposed about the incident. It is seen that he was cross- examined extensively but nothing substantial was elicited which could cast even a semblance of doubt with regard to the veracity of his testimony. Though it was suggested that the version of P.W.9 has not been corroborated, the same is not acceptable for the reason that the prosecution case is clear to the effect that the incident took

place at the dead of the night when the injured was sleeping and so also were the other family members. So, it is but natural that there would not be any eye witnesses. P.W.9 has stated that accused Chinta Marandi assaulted him by a knife on his neck causing bleeding injuries for which he woke up and caught hold of the knife which was held by the accused to prevent further assault and in the process his right hand middle finger was cut. The doctor, who was examined as P.W.7, found the following injuries:-

(i) Lacerated injury of size 4.2 C.M. length x 1/2 c.m. X 1 c.m. on the cervical right side neck (lateral region).

(ii) Lacerated injury of size 1 c.m. x 1/2 c.m. X 1/4 C.M. on ring finger of right hand (interior portion).

Both the injuries were simple in nature, might have been caused by sharp cutting weapon and aged within 8 hours.

7. The above is consistent with the statement of the injured. That apart, the doctor has clearly stated that the injuries might have been caused by a sharp cutting weapon. The knife (M.O.IV) being shown to him, he stated that if the sharp side would have pierced deeply on the neck, it would have caused the death of the injured. In so far as the knife is concerned, it is in the evidence of the I.O.

(P.W.11) that while in custody the Petitioner led him to the place of concealment of the knife and also gave recovery of the same. Thus, the evidence of P.Ws.9, 7 and 11 (to the extent noted above) by itself is adequate to prove the occurrence.

8. Coming to the contentions raised before this Court, it is contended that the courts below ought to have taken note of the fact that there was a Station Diary Entry made by the S.I. wherein the name of the Petitioner does not find place. A perusal of the document marked Ext.A reveals that the same relates to issuance of injury report. It is not understood as to how the same can help the defence. Further, the particular entry being relatable to issuance of injury report, the name of the accused is not necessary to be mentioned. The next ground urged by learned Senior counsel is that one of the co-accused person being acquitted for want of evidence falsifies the prosecution case. This is also not an acceptable argument because the evidence against the present accused being clear, consistent and trustworthy, lack of evidence against a co-accused is of no consequence. Obviously lack of evidence against the co-accused cannot wipe away the positive evidence adduced against the present accused.

Therefore, none of the grounds urged by the Petitioner, as noted above, are valid to persuade this Court to take a different view than what was taken by the trial court and confirmed by the lower appellate court.

9. As regards the submission for releasing the Petitioner as per the provisions of the P.O. Act, it is seen that the occurrence undoubtedly took place more than 30 years back. The Petitioner was a young man at that point of time, but is now aged nearly 60 years. No criminal antecedents are reported against him. Therefore, in the considered view of this Court, ends of justice would be best served if the Petitioner is released as per the provision of Section 4 of the P.O. Act instead of serving the remaining part of the sentence in jail.

10. In the result, the Criminal Revision is allowed in part. The order of conviction passed by the trial court and confirmed by the lower appellate court is hereby maintained. The sentence imposed by the trial court is, however, modified to the extent that the Petitioner shall be released as per provisions of Section 4 of the P.O. Act. For the above purpose the Petitioner shall appear before the trial court on 12th August, 2022, failing which the trial court

shall pass necessary orders requiring him to serve the remaining part of the sentence as originally imposed.

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(Sashikanta Mishra)
Judge

Ashok Kumar Behera





