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Cr1.A.No. 312-313 OF 2003

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 312-313 OF 2003

SURA BARAJ
.....APPELLANT (S)

.....

VERSUS

STATE OF ORISSA & ANR.
DENT (S)

.....RESPON

WITH

CRL.APPEAL NO.1016-1017/2003
CRL.APPEAL NO.1020-1021/2003

O R D E R

This batch of appeals has been preferred by thirteen appellants who were tried with two others by the First Additional Sessions Judge, Cuttack in Sessions Trial No. 5 of 1986. They were variously charged of having committed offences punishable under Sections 147, 148, 452, 427, 302/149, 302/34, 307/149, 324/34, 302/109, 307, 326/149, 326/34, 324/149, 324 Indian Penal Code (hereinafter referred to as 'IPC'). The trial court by its judgment and order dated October 31, 1986, acquitted all of them holding that the prosecution had failed to prove its case beyond reasonable doubt. On appeal being preferred by the State, the High Court by the impugned judgment and order, allowed the appeal and sentenced the appellants to various terms of imprisonment. The appellant Sura Baraj has been found guilty of the offence under Sections 302, 324/149 and 427/34 of the Indian Penal Code. He has been sentenced to life imprisonment under Section 302 IPC and to other lesser terms for the remaining offences. The appellant Sura Parida has been found guilty of the offence under Section 307, 326, 427/34 IPC and has been sentenced to undergo seven years rigorous imprisonment under Section 307 and two years rigorous imprisonment for the remaining offences. Similarly, the appellant Dharani Baraj has been found guilty of the offences under Section 326, 323, 427/34 IPC and sentenced to maximum sentence of two years Rigorous Imprisonment under Section 326 IPC. The appellants Darasani Baraj, Narahari Baraj and Chandermani Baraj have been found guilty of the offences under Section 324, 427/149 IPC and sentenced to six months rigorous imprisonment. Darsani Baraj has also been found guilty under Section 323 IPC. The remaining appellants have been found guilty under Section 427 IPC and sentenced to three months rigorous imprisonment.

The case of the prosecution is that PW-1 along with PWs 2, 3 & 4 went out to tend buffaloes and came back in the evening when they were told that their vegetable crops had been destroyed by the accused. This happened on 12.8.1984. They went and challenged the accused persons and there was exchange of hot words between them, but at the intervention of PW-8, the parties dispersed. At about 6 to 6.30 P.M., the above occurrence took place. Thereafter, at about 8.00 P.M., according to the prosecution, all the accused persons variously armed with Tenta, Kata, Ballam, Churi, Lathi etc. came to the house of PW-4 Gangadhar Parida and entered his house. They dragged out PW-4 Gangadhar Parida and his son Bijay Kumar Parida (PW-2). They were assaulted by several accused with their respective weapons. On hearing their alarm, the deceased Darsani Barik came to the place of occurrence along with Dhaneswar Barik (PW-3). It is the case of the prosecution that the appellant Sura Baraj assaulted the deceased with a Ballam on the abdomen and a result of which his intestines came out. The appellants Dharani Baraj and Sura Parida also assaulted the deceased with Tenta and Ballam on his shoulders while Naba Parida kept on instigating them to kill. Sura Parida assaulted Dhaneswar Barik on the left side of his abdomen with Tenta as a result of which his intestines also came out. Darsani Baraj, Sura Baraj and Dharani Baraj assaulted PW-3 on different parts of his body while Naba Parida gave a knife blow on his hand. Dura Parida (PW-5) who is the wife of PW-4 was also assaulted. One Satan Parida is also said to have been assaulted but she has not been exa

mined as a witness. The case of the prosecution is that the accused persons ran away when PW-8 and other villagers came to their rescue. The deceased and the injured were carried to the public health centre at Aul but the deceased was declared dead.

The First Information Report was lodged by PW-1, son of the deceased, at about 12.25 A.M. on 13.8.1984. The case was investigated by the Investigating Officer and after holding inquest on the dead body and examining other witnesses, a charge-sheet was submitted against all the fifteen accused persons.

The case of the prosecution is primarily supported by the evidence of PW-1, son of the deceased, and PWs 2, 3 and 4 who claim to be eye-witnesses and are in fact injured witnesses. PW-5, wife of PW-4, also claimed to be an injured eye-witness while PW-6 (Parabati Barik) claimed to be an eye-witness. The trial court took the view that there was existing enmity between the two groups. It examined the evidence of PW-1 who though claimed to be an eye-witness at the trial, the statements made by him in the FIR did not support his claim of being an eye-witness. Thus the FIR did not corroborate his testimony in the court. The trial court doubted the prosecution version that PW-2 and 4 were dragged out from inside the house to the outer verandah. It further doubted the testimony of PWs 2, 3 and 4 on the ground that many details which they had deposed at the trial were not stated by them in the course of investigation. We may, at this stage, notice that no contradiction as such has been pointed out by the defence between their statements recorded in the course of investigation and their deposition in the court. What was pointed out was that many details had not been stated in the course of investigation as was apparent from the statements recorded under Section 161 Cr.P.C.

It was also noticed by the trial court that the prosecution witnesses particularly PW-2, 3 and 4 had sought to improve their case at the trial by furnishing all details relating to the occurrence in which one person died and four others were injured. It did not accept the evidence of PW-1 as being the evidence of an eye-witness. It doubted the testimony of PWs 5 and 6 because PW-5 was examined for the first time seven to eight days after the occurrence and PW-6 did not identify her assailants in the court. We may, at this stage, clarify that it is not that PW-6 wrongly identified her assailants. As it appears from the record she refused to look at the accused persons because she was so terrified by their looks that she could not look at them. The observations of the trial court also establish the fact that she was trembling in the witness-dock and refused to look at the accused in the dock. However, we find no reason to take a different view so far as PWs 1, 5 and 6 are concerned, and their evidence may be kept out of consideration.

The question still remains as to whether the High Court was justified in relying upon the testimony of PWs 2, 3 and 4 who were injured witnesses and, therefore, their presence could not be doubted. We have perused the judgment of the trial court and of the High Court, and we find that the trial court disbelieved these witnesses for reasons which are really not acceptable. There appears to be no reason why the consistent testimony of these witnesses should not be accepted. The mere fact that some details had not been stated by them in their statement under Section 161 Cr.P.C. is not enough to discard their testimony, particularly when their presence at the place of occurrence is established beyond reasonable doubt by the serious injuries suffered by them in the course of the same incident. We are not impressed by the reason given by the trial court that at 8.00 P.M., there could not be sufficient light for the witnesses to identify their assailants. This is not a case where the assailants were not known to the victims. They are co-villagers and even according to the case of the defence, they existed long-standing enmity between them. In such circumstances, the trial court was not justified in observing that it was not possible for the witnesses to identify the assailants.

The next reason given by the trial court was that PW-2 and 4 did not state about their being dragged out of the house in their statement under Section 161 Cr.P.C and, therefore, their deposition in the court that they were dragged out of their house and assaulted on the outer Verandah of their house cannot be accepted. In our view, even if what is observed by the trial court is taken to be true, the fact that they were dragged or not dragged outside their house is not very material and would not make any difference to the case of the prosecution. They are injured witnesses and the assault on them is proved by their own evidence. The trial court observed that the verandah which was only five cubits in width could not accommodate all the fifteen accused. This again is of no consequence because when PW-3 stated that he saw the accused standing in the outer Verandah of the house, the statement must be understood to mean that some of them were standing on the outer verandah. These reasons, in any case, did not create a dent in the case of the prosecution, and these reasons really did not justify the acquittal of the accused. We are inclined to agree with the view of the High Court that the prosecution has proved its case at least against some of the appellants before us.

Having gone through the appeal record, we are satisfied that no case under Section 427 read with Section 149 IPC is made out and we, therefore, acquit all the appellants of the charge under

r Section 427/149 IPC. The High Court has found the appellant Sura Parida and Dharani Baraj guilty of the offence under Section 326 IPC for having caused grievous hurt to the deceased. We have examined the medical evidence on record and find that apart from the fatal injury attributed to Sura Baraj, there is no other injury suffered by the deceased which could be said to be grievous though there are some incised wounds. We, therefore, set aside their conviction under Section 326/34 IPC and sentence them to six months R.I. under Section 324/34 IPC. Sura Parida has also been convicted under Section 307 IPC and sentenced to seven years RI. The evidence on record is consistent that he assaulted PW-3 with his ballam causing a grievous injury on the abdomen of PW-3 as a result of which his intestines came out. Fortunately, he was saved on account of medical treatment given to him. If he had died of that injury, Sura Parida would certainly have been held guilty under Section 302 IPC. We, therefore, see no reason to interfere with the order convicting Sura Parida for offence under Section 307 IPC. So far as Darasani Baraj is concerned, he has been found guilty under Section 323 IPC and sentenced to six months R.I. We find no reason to interfere with this finding.

Sura Baraj has been found guilty of the offence under Section 302 IPC and sentenced to undergo imprisonment for life. The evidence on record is consistent that he caused the fatal injury on the abdomen of the deceased with Ballam resulting in his death. The aforesaid appellant has also been found guilty under Section 324 IPC causing injuries to other witnesses and we find no reason to interfere with his conviction.

So far as the appellants Darasani Baraj, Narahari Baraj and Chandermani Baraj are concerned, their conviction under Section 324 read with Section 149 IPC cannot be sustained because there are only four persons who are said to have caused serious injuries with sharp cutting weapons. However, they can be held guilty of the offence under Section 324/34 IPC as that would not cause any prejudice in the facts and circumstances of the case. The occurrence took place in the year 1984. These appellants were acquitted of the charge under Section 324/149 by the trial court but on appeal, have been convicted by the High Court and sentenced to 6 months R.I. They have served out a part of their sentence.

In the facts and circumstances of the case, even though we find them guilty under Section 324/34 IPC, we sentence them to the period already undergone. The conviction of Darasani Baraj under Section 323 IPC is upheld but the sentence is reduced to the period already undergone.

In view of the above, the appeals are partly allowed. We are informed that the appellants Sura Baraj and Sura Parida are in custody. The remaining appellants have been released on bail by this Court. It is stated that the appellant Dharani Baraj has already served a sentence of 15 months R.I. Since, we have sentenced him to only six months R.I. under Section 324/34 IPC he has already served the sentence imposed. The bail bonds of the remaining appellants therefore stand discharged.

The appeals are accordingly partly allowed.

.....J.

(B.P. SINGH)

.....J.

(Dr. AR. LAKSHMANAN)

NEW DELHI;
APRIL 27, 2004

ITEM NO.101

COURT NO.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Criminal Appeal No.312-313/2003

SURA BARAJ

Appellant (s)

VERSUS

STATE OF ORISSA AND ANR.

Respondent (s)

(With office report)

With

CrI.A.No.1016-1017/2003

(With Appl.(s) for exemption from filing c/c of the impugned judgment and with office report)

CrI. A.No.1020-1021/2003

Date : 27/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P.SINGH

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)

Mr.Suchait Mohanty, Adv.

Mr. Ranjan Mukherjee, Adv.

For Respondent (s)

Mr. Janaranjan Das, Adv.

Mr. Swetaketu Mishra, Adv.

Ms. Maushumi Gahlot, Adv.

Mr. Radha Shyam Jena, Adv.

UPON hearing counsel, the Court made the following

O R D E R

The appeals are partly allowed in terms of the signed order

(Satish K. Yadav)

Court Master

(Kanwal Singh)

Court Master

(Signed order is placed on the file)