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Crl.A.No. 1175-1176 OF 2003
ITEM NO. 107
COURT No. 8

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NOS. 1175-1176/2003

Mita @ Bibhuti Bhushan Senapati

Appellant(s)

Versus

State of Orissa

Respondent(s)
(with office report)

DATE : 20/07/2004 This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)
Ms. Madhu Moolchandani, Adv.

For Respondent(s)
Mr. Janaranjan Das, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. Moushumi Gaholt, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

Appeals fail and the same are dismissed in terms of the signed order.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1175-1176 OF 2003

Mita @ Bibhuti Bhushan Senapati

..
Appellant(s)

Versus

State of Orissa

..
Respondent(s)

O R D E R

Heard learned counsel for the parties.

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.

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

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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.

Accordingly, appeals fail and the same are dismissed.

.....J[B.N. AGRAWAL]

.....J [H.K. SEMA]

NEW DELHI,
JULY 20, 2004.