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Cr1.A.No. 449 OF 2000

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ITEM No.105

COURT No. 6

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. 449 of 2000@@
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Kali Nayak @ Mukhi

Appellant

VERSUS

State of Orissa

Respondent

(With appln.(s) for permission to place addl. documents on record
and office report)

Date : 03/10/2002 This appeal was called on for hearing today

CORAM :

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. Anukul Chandra Pradhan,Adv.
Mr. Shiv Sagar Tiwari,Adv.

For Respondent(s) Mr. Janaranjan Das,Adv.
Mr. G. Biswal,Adv.
Mr. S. Mishra,Adv.

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

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
Heard learned counsel for the parties from 3.05 p.m.
to 3.30 p.m.

The criminal appeal is dismissed.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 449 of 2000@@
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Kali Nayak @ Mukhi ...Appellant (s)

Versus~

State of OrissaRespondent (s)

O R D E R@@
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....L.....I.....T.....T.....T.....T.....T.....T.....T.....J

.SP2

The appeal arises out of the judgement of the Orissa High Court in confirmation of the common judgement passed by the learned Sessions Judge, Bhubaneshwar.

Three accused persons faced trial for having committed offence under Section 302/34 of the Indian Penal Code by intentionally causing death of one Surendra Nayak (the deceased). The contextual facts depicts that the deceased was serving as a sweeper in the S.C.B. Medical College, Cuttack and was residing at Kedarpali at Bhubaneshwar in the house of his mother in-law, Labanya Bewa, along with his wife, Rama Dei (PW-1). The accused used to go daily to Cuttack to attend to his work from Bhubaneshwar. On 4th May, 1989, he left his house to catch the morning train for going to Cuttack. Since ...2/-

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the deceased had to carry the clothes of his wife and since the same were left at home, PW-1 carried them and ran after the deceased to hand over the same to him. While standing on the road looking at her husband, PW-1, being the wife, suddenly found that her husband, who was then proceeding to Bhubaneshwar Railway Station, being attacked by accused Bapi Nayak, Braja Nayak and Kalia Nayak with a 'Bhalla', a 'Katari, and a 'sword'. Her husband was running for life on road and on seeing, PW-1 immediately rushed inside the house and called the mother out. It is at this stage, the mother and the daughter witnessed that the accused persons were coming out of Hotel Venus-Inn with weapons in hands stained with blood. Entering inside the hotel, they found marks of blood stains on the steps of the hotel and following the marks of blood, they went upstairs and found the deceased lying dead on the roof in a pool of blood. It is on this incident the accused persons were tried under Section 302/34 I.P.C., as noticed above, and stand convicted with punishment for imprisonment of life.

Against the order of conviction, however, the accused persons moved the High Court. The High Court also, upon proper scrutiny and analysis of evidence, recorded its concurrence with the order of the learned Sessions Judge and retained the punishment. It is this order which has been ...3/-

challenged by one of the accused persons in the appeal before this Court by the grant of special leave.

Learned counsel appearing in support of the appeal has been rather strenuous in his submission that while there is no compliance of the ingredients of Section 34 of the Indian Penal Code, the question of conviction in the case would not arise. On the wake of the evidence on record, in particular with that of PWs.1,4 and 7, question of any credence being given to the submissions of the learned counsel would not arise. We are, thus, unable to record our concurrence therewith. The learned counsel further emphasised that PW-4 has been a chance witness and since there is no direct evidence available, there are missing links in the chain of events warranting an order of acquittal, so far as the appellant is concerned. The High Court has considered the issue in rather great detail in paragraph (7) of the judgment, which reads as below:

.....L.....T.....T.....T.....T.....T.....T.....J
.SP1

"7. In the case at hand evidence of PWs.1, 4 & 7 provide the complete link. P.W.1 had seen the starting point of the assault and when she came back along with her mother (p.w.7), she found blood marks up to the roof where the deceased was found lying dead. Prior to that the accused persons were seen coming from the hotel with their weapons stained with blood. P.W.4 came in an intermediate stage. He has seen the accused Bapi making assault from the back side of the deceased while he was running

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towards hotel. Gap between the time p.w.1 left mid-way and came back with her mother to see the accused persons leaving the hotel, almost immediately prior to their finding the dead body is so small that there is not even a shadow of doubt that none else than the accused persons caused the injuries which resulted in the death of the deceased. The question of any other person interposing in between does not arise. The prosecution has established complete chain of circumstances which rules out beyond any shadow of doubt involvement of any other person and the inevitable conclusion as has been rightly done by the learned trial judge is that accused persons were authors of the crime."

....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

On perusal thereof and having heard the submissions of the parties, we do feel it inclined to lend our concurrence with the observations and the judgment of the High Court and the matter, thus, does not warrant any interference.

The appeal, therefore, fails and is dismissed.

.SP1

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(U.C. Banerjee)@@
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.....J.@@
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(B.N. Agrawal)@@
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New Delhi,
October 03, 2002.