Orissa High Court
Sukra Oram vs State on 20 August, 1958
Equivalent citations: AIR 1959 Ori 21, 1959 CriLJ 213
Author: P Roa
Bench: P Rao
JUDGMENT P.V.B. Roa, J.

1. The appellant Sukra Oram was convicted by Shri B. K. Das, Assistant Sessions Judge, Sambalpur, under Section 307 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 100/-, in default to suffer a further period of three months' rigorous imprisonment.

2. According to the prosecution case, both the appellant and the victim Howri Oramin (P.W. 3) are co-villagers. They had been to Rourkela to earn their livelihood about two years prior to the occurrence and became intimate with each other which resulted in P.W. 3 becoming pregnant. They both returned to their village in the month of Magh of the year 1956. On 18-10-56, the victim (P.W. 3) left her father's house and met the appellant who successfully persuaded her to leave the village and accompany him elsewhere to earn their livelihood as he was ashamed to live in the village on account of her pregnancy.

The prosecution case is that both of them came to a lonely hut at Kalunga to spend there for the night and to catch train the next morning. At about midnight, the appellant got up, bound the hands of P.W. 3 by means of a torn Saree (M. O. II which was with P.W. 3, caught hold of her hair and with the help of the knife (M.O. I) inflicted several cut wounds on her neck, cheek and head and fled away. P.W. 3 fell down unconscious with bleeding injuries. In the morning she regained her consciousness, went to the village and reported the incident to her father (P.W. 1).

P.W. 1 took her then to the Kalunga out-post where a station diary entry was made at 8 A.M. by the Asssistant Sub-Inspector. She was then sent to the hospital and the officer-in-charge of the Police Station was also informed. The Assistant Sub-Inspector proceeded at once to the village for preliminary investigation. At 8 A.M. when the report was made to the police, he seized the blouse and Saree of the victim (M.Os. VI and V) under Ext. 3. He reached the hut where the occurrence took place at about 10 A.M., a distance between the cut-post and the hut being about nine miles, and seized the knife (M.O. I) and some blood-stained articles and at 11 A.M. he; seized from the house of the father of the appellant the clothes (M.Os. III and IV) under Ext. 5. P.W. 2, Dr. K. Mohanty examined P.W. 3 on 20-10-56.

There were as many as nine injuries on the person of P.W. 3. Injury No, 1 is an incised wound transversely placed cutting the trachea at the middle with air coming out 4" X 1/2" X cut into the trachea. Injuries Nos. 2 to 5 and 7 to 9 are incised wounds simple in nature and injury No. 6 consists of two scratches -- 1" in length crossed at left lower part of the cheek. According to the Medical Officer, injury No. 1 is grievous in nature. In his evidence P.W. 2 stated that injury No. 1 was on the trachea, a vital portion of the body and ordinarily it would cause the death of a man and it was surprising that the victim survived.

3. P.W. 3 is the only eye-witness to the occurrence, that is, the injuries inflicted On her by the accused. Her evidence is given in a very straight-forward manner and there is nothing to suspect the veracity of her evidence. M. O. I is the knife the blade being about 2" long and M. Os III and IV are the accused's clothes. P.W. 3 stated that M. O. I was used as a razor by the appellant and she was aware of that fact and she could identify it as she had seen it many time used by the appellant, M. Os. III and IV also were proved by P.W. 3 to belong to the appellant as she saw him wearing them many times.

These three material objects were sent to the Chemical Examiner and the report of the Chemical Examiner was that they were stained with human blood. P.W. 7 stated in his evidence that in the evening of the night of occurrence the appellant was in the field and P.W 3 went there to ease herself when the witness left the place. Taking these important factors, which transpired in evidence, into consideration the learned Assistant Sessions Judge came to the conclusion that the injuries on P.W. 3 were caused by the appellant.

4. Mr. Tripathy, the learned counsel appearing on behalf of the Government Advocate took me through the evidence in the case and in my opinion the learned Assistant Sessions Judge is right in holding that the injuries were caused by the appellant on the body of P.W. 3.

5. But it is to be considered whether the act of the appellant in causing the several injuries amounts to an offence under Section 307, I.P.C. All the injuries are clearly simple in nature except injury No. 1 which is grievous. Causing injuries, though with the intention of causing death but which do not result in death, does not come, in my opinion, under Section 307, I.P.C. Section 307, I.P.C. contemplates a case of an attempt to murder. Section 511, I.P.C. deals generally with attempts to commit offences.

But in three cases, namely attempt to commit murder and attempt to commit culpable homicide not amounting to murder as also attempt to commit suicide, three independent sections were enacted. Section 307 covers the case of an attempt to commit murder. The framers of the Code say why Section 307 was enacted separately. They say:

"These clauses appear to us absolutely necessary to the completeness of the Code.

We have provided, under the head of bodily hurt, for eases in which hurt is inflicted in an attempt to murder; under the head of assault, for assaults committed in attempting to murder under the head of criminal trespass, for some criminal trespasses committed in order to murder. But there will still remain many atrocious and deliberate attempts to murder which are not trespasses, which are not assaults and which cause no hurt. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in and perish there. Here A has committed no trespass, for the ground is his own and no assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have received a timely caution or may not have gone near the pit; but A's crime is evidently one which ought to be punished as severely as if he had laid hands on Z with the intention of cutting his throat."

I am of opinion that the conviction of the appellant under Section 307, I.P.C. is not correct. He is guilty of causing grievous hurt with a sharp-cutting instrument and is punishable under Section 326, I.P.C. I would, therefore, set aside the conviction and sentence passed on the appellant under Section 307, I.P.C., convict him under Section 326, I.P.C, and sentence him to undergo rigorous imprisonment for five years. With this modification the appeal is dismissed.