

Sonu Bhotra Vs. State of Orissa

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Court : Orissa

Decided On : Jan-04-2008

Reported in : 105(2008)CLT277; 2008(I)OLR544

Judge : P.K. Tripathy, J.

Appellant : Sonu Bhotra

Respondent : State of Orissa

Judgement :

P.K. Tripathy, J.

1. Accused has preferred this appeal from the Jail against the order of conviction under Section 304, Part-II, I.P.C. and sentence of rigorous imprisonment for ten years imposed by Learned Addl. Sessions Judge, Nabarangpur in Sessions Case No. 15 of 2000, arising out of G.R. Case No. 364 of 1998 of the Court of Judl. Magistrate First Class, Umerkote.

2. Prosecution case is that on 15.12.1998 in village Rengabhati, Bhanumati Bhotra alias Bhanu, the deceased and Jamuna Bhotra (P.W. 2) were engaged in catching fish in a paddy land in their village. Accused arrived there at about noontime and offered a medicine to be taken by the deceased. Latter refused to consume that medicine and then accused threw a stone, which hit on her left side ribs and she fell down. The deceased in injured condition was brought to the village and

thereafter she was taken to Addl. P.H.C., Raigarh, where Dr. Niranjan Padhi (P.W. 11) examined the injured and found one abrasion of the size of 2' x 2' x 1/2' of the left lateral side of lower chest. He found the injury to be simple and could have been caused by blunt weapon like stone, M.O.I. He proved the injury certificate, Ext. 8/2. Because of the poverty, the injured could not stay in the Addl. P.H.C. beyond the period of three days and returned to her htfuse with her husband (P.W. 1) and she died on 03.01.1999. Initially, the case was registered on 15.12.1998 under Section 294/323, I.P.C., which was converted to a case under Section, 302, I.P.C.

3. To substantiate the charge under Section 302, I.P.C. prosecution examined as many as 13 witnesses. Amongst them, as noted earlier, P.W. 2 is the solitary eye-witnesses to the occurrence and P.W. 11 is the doctor, who conducted autopsy on the dead body of the deceased and P.Ws. 12 and 13 are two Investigating Officers. Ext. 7 is the First Information Report, Ext. 9 is the spot map and Ext. 2 is the postmortem report, besides Ext. 8/2 being the Injury Certificate. Evidence of the other eye-witnesses is that all the co-villagers and the husband of the deceased and none of them was eye-witness to the occurrence. Defence did not adduce any evidence in support of the plea of denial.

4. Notwithstanding the fact that charge was framed for the offence under Section 302, I.P.C, Learned Addl. Sessions Judge did not determine as to whether, the death of the deceased was homicidal, on the other hand, referring to the evidence of P.Ws. 6 and 9, he simply recorded that death occurred because of the injury caused by the stone, M.O.I. In that respect, he also relied on the evidence of P.W. 2 to hold that accused caused that injury on the body of the deceased. Recording such findings, Learned Addl. Sessions Judge noted that since the deceased survived for some days after sustaining the injuries, therefore, the offences made out against the accused is culpable homicide not amounting to murder, punishable under Section 304, Part-II, I.P.C. Accordingly, he acquitted the accused from the charge under Section 302, I.P.C. and convicted him under Section 304, Part-II, I.P.C. The Trial Court awarded sentence of rigorous imprisonment for ten years.

5. In course of argument, Learned Counsel for the Appellant, without disputing to the evidence of P.Ws. 2, 6 and 11, argued that when P.W. 11 has categorically stated in his evidence that the injury was simple and when P.W. 6 in his examination-in-chief has unchallengedly stated that 'the aforesaid injury was not sufficient in ordinary course of nature to cause death', therefore, neither the deceased suffered homicidal death nor the accused is liable for the offence of culpable homicide under Section 304, Part-II, I.P.C. Learned Standing Counsel failed in his attempt to defend the order of conviction and ultimately concedes to the contention of the Appellant that a case of homicide is not proved against the accused, at the same time, he argues that it is apparent from the evidence of P.Ws. 1 and 2, notwithstanding the evidence of P.W. 11 that the deceased suffered a grievous hurt when the stone pelted by the accused hit on his ribs. In that respect, he argues for appreciation of the Court to the definition of the term 'grievous hurt' in Section 320, I.P.C.

Section 320, I.P.C. provides that

Grievous hurt- The following kinds of hurt only are designated as 'grievous':

First - Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear,

Fourthly - Privation of any member or joint,

Fifthly - Destruction or permanent impairing of the powers of any member or joint.

Sixthly - Permanent disfiguration of the head or face.

Seventhly - Fracture or dislocation of a bone or tooth,

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

6. Admittedly, on receiving the injury on 15.12.1998 till her death on 03.01.1999, the deceased remained immobile because of the injury. That evidence of P.W. 1 has not been challenged. Therefore, by the date of her death, the deceased was unable to follow her ordinary pursuit for a period of twenty days and under such circumstance, the injury caused by the accused comes within the definition of the term 'grievous hurt'. To that extent, the opinion evidence of P.W. 11 is not accepted.

7. Regard being had to the aforesaid facts, circumstance and submission, conviction and sentence of the Appellant for the offence under Section 304, Part-II, I.P.C. is set aside and he is found guilty of the offence under Section 325, I.P.C. The gravity of that offence resulted in death of the deceased. Therefore, the accused is sentenced to undergo rigorous imprisonment for five years for the offence under Section 325, I.P.C. The Jail Criminal Appeal is accordingly allowed in part.

8. Learned Counsel for the Appellant further states that petitioner has already spent the aforesaid period inside the jail both as an under trial prisoner and as a convict after pronouncement of the impugned Judgment. If that be so, he may be set at liberty forthwith, provided his detention in jail custody is not required in connection with any other case. Release order be issued immediately but accordingly.