

Sukra Sahu and Another Vs. State of Orissa

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Court : Orissa

Decided On : Oct-31-2000

Reported in : 91(2001)CLT469; 2001(I)OLR154

Judge : R.K. Patra, A.C.J. and ;Ch. P.K. Misra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 147, 148, 149, 302 and 326

Appeal No. : Criminal Appeal No. 173 of 1996

Appellant : Sukra Sahu and Another

Respondent : State of Orissa

Advocate for Def. : Shri Pradipta Mohanty, Addl. G.A.

Advocate for Pet/Ap. : D. Sarangi and ;S.K. Pradhan, Advs.

Disposition : Appeal partly allowed

Judgement :

R.K. Patra, A. C. J.

1. This appeal is directed against the judgment dated 29-5-1995 of the Additional Sessions Judge, Jeypore in Sessions Case No. 22 of 1994 by which the two appellants Sukra Sahu and Nanda Sahu have been convicted under sections 302/149, I. P. C. and sentenced to undergo rigorous imprisonment for life each.

They have also been convicted under sections 147/148, I. P. C, and each of them has been sentenced to undergo rigorous imprisonment for six months. The sentences are to run concurrently.

2. Altogether sixteen accused persons including the two appellants were placed on trial to face charges under sections 147/148/302/149. I. P. C. and the learned Addl. Sessions Judge while acquitting the other accused persons has found the two appellants guilty of the aforesaid charges and convicted them as mentioned above,

3. Case of the prosecution is that Ghenu Muduli's (p.w.1) father Mangala had five brothers. Deceased Budu was the son of one of the brothers of Mangala. They were all residents of Mauza Kanchana. There was litigation between the Muduli family on one side and the appellants and others belonging to village Sahuput on the other over land locally known as 'Chuan Beda'. About 12 years prior to the occurrence, Muduli family succeeded in the litigation and got delivery of possession of the aforesaid land and since then they have been in possession of the same. In the year in question, they had raised Umuria Chudi variety of paddy on the disputed land. In the morning of 26-10-1993, p. w. 1 and his family members including deceased Budu along with 13 labourers after cutting the paddy from the disputed land were carrying the paddy-sheaves bundles to their thrashing floor. While doing so, near the field of accused Jogi Sahu (since acquitted) all the accused persons being armed with lathis, tangia and knives challenged deceased Budu as to why paddy from their land was being taken away. At that time appellant Sukra Sahu assaulted on the head of deceased Budu with a lathi. Appellant Nanda Sahu gave knife blows on his face and other accused persons assaulted him with lathis. On account of such assault, the deceased sustained bleeding injuries and fell down at the spot and died instantaneously. Appellant Sukra dragged the dead-body and threw the same under a mango tree nearby. Thereafter all the accused persons fled away from the spot. P. w. 1. rushed to the police station and lodged the F. I. R. on the basis of which investigation was taken up and, as indicated above, the appellants and fourteen others were placed on trial.

4. The defence plea is one of denial of complicity in the crime. It is also their case that appellant Sukra Sahu, grandfather of appellant Nanda Sahu and accused Jogi (since acquitted) were the owners in possession of the disputed land and they had raised paddy thereon during the year of occurrence. As p. w. 1, the deceased Budu and their family members forcibly cut and removed paddy from the disputed land, 'Gondgol' took place between the appellant Sukra and the deceased.

5. Prosecution examined eight witnesses to prove the charges. P. ws. 1, 2 and 3 were examined as eye witnesses. The learned trial Judge disbelieved the evidence of p. w. 3. P. w. 4 is the doctor who conducted post-mortem examination on the dead-body of the deceased Budu. P. w. 8 is the Investigating Officer. The learned trial Judge relying on the evidence of p. ws. 1 and 2 in paragraph 8 of the judgment doubted the presence of all the accused persons except the appellants at the time of occurrence. He also held that the other accused persons did not commit any overt act or assaulted the deceased and, accordingly, he recorded the order of acquittal in their favour. Having recorded such categorical finding, he further held that 'from the above analysis of the evidence of p. ws. 1 and 2, it is clear that more than five persons including appellants had assembled at the spot being armed with knife and lathis to assault deceased Budu and in prosecution of the common object of such assembly, appellant Sukra Sahu assaulted on the head of the deceased by means of a lathi and accused Nanda Sahu assaulted on the left side face of the deceased by means of a knife and caused his death. The correctness of the aforesaid finding will be discussed at appropriate time.

6. There is no dispute that deceased Budu had a homicidal death, P. w. 4, the doctor who conducted autopsy on the dead-body of the deceased noted the following external injuries

- i. Laceration 16 c. ms. X 3 c. m. X 1.5 c. m. exposing the bone, placed obliquely and crossing the sagittal suture towards left frontal area in front of brow.
- ii. Laceration 3 c. m. X 1.5 c. m. over the left eye brow.
- iii. Perforated injury-outer opening triangular edges, clean out 3.5 c. m. X 3 c. m. X 1.6 c. m. below the lower eye lid of the left side medial to the zygomatic process

having depth 5.5 c. m. towards the infra temporal fossa.

iv. Perforation over left lower cheek piercing through and through outer opening was of the size of 2 c. m. X 1.5 c. m. X 5 c. m. placed about 3.5 c. m. down and lateral to the left angle of the mouth. Inner opening of the injury was of the size 1.5 c. m. X 5 c. m. X 5

c. m. placed inside cheek buccal mucous membrane communicated to outer opening by about 3.5 c. m. tunnel.

v. Abrasion 7.5 c. m. X 3.5 c. m. over the left lateral forehead.

vi. Bruise 6 c. m. X 5 c. m. over the left fronto-parietal region of scalp about 6 c. m. above the left mastoid process.

vii. Laceration 1 c. m. X 5 c. m. X 5 c. m. over anti tragus of the left ear.

viii. Abrasions multiple and small over an area of 5.7 c.m. X 5.5 c. m. over the right scapular region

ix. Multiple small abrasions over an area of 4 c.m. X 2.5 c.m. over right upper arm in the back.

According to him all the injuries were ante-mortem in nature and death was caused due to shock and haemorrhage on account of the aforesaid injuries. With reference to the weapon of offence, he opined that external injury Nos. (iii) and (iv) were possible by the knife M. O. I and other external injuries were possible by assault with lathi.

7. In the backdrop of the aforesaid medical evidence, let us now proceed to examine the evidence of p. ws. 1 and 2, the two eye witnesses, to find out if the appellants participated in the commission of the crime. As already mentioned, p. w. 1 is the cousin of the deceased Budu. He stated that after their success in the litigation, they had got delivery of possession of 'Chuan Beda' land and they have been in cultivating possession of the same. In the year of occurrence, they had raised Umuriachudi variety of paddy on the disputed land. According to him, while they were carrying paddy-sheave bundles to their thrashing floor near the land of

accused Jogi Sahu, the accused persons including the appellants had assembled being armed with lathis, tangia and knife. As soon as the deceased Budu came hear them, appellant Sukra immediately dealt a lathi blow on his head and appellant Nanda stabbed a knife on his left side cheek. The deceased sustained bleeding injury and fell down on the ground. Thereafter all other accused persons assaulted him. The deceased succumbed to the injuries at the spot. He stated that after the assault, the accused persons ran away. He went the local police station and lodged F. I. R.. P. w. 2 is the widow of the deceased Budu. In her evidence she clearly stated that while they were carrying paddy - sheave bundles to their thrashing floor on the way they met the accused persons who had assembled near Jogi Sahu's land. They were all armed with lathis, axe and knife. At that time appellant Sukra gave a lathi blow on the head of her husband and appellant Nanda assaulted her husband with a knife. When other accused persons surrounded her husband, she could not mark other assault on him. Both p. ws. 1 and 2 were cross-examined at length but nothing was brought out to discredit their testimony.

8. The crucial question that falls for consideration is what offence did the two appellants commit when 14 others (one of them having died in course of trial) have been acquitted of the charges under sections 147/148/302/149, I. P. C. In other words, whether the conviction of the two appellants under sections 147/148/302/149, I. P. C. is a maintainable in law. The cleat and specific charge framed in the case was that the 16 named accused persons including the appellants were members of an unlawful assembly on the date of occurrence and in prosecution of the common object of such assembly, namely, in assaulting and killing Budu Muduli, committed offence of rioting and assaulted and killed Budu Muduli punishable under sections 147/148/302/ 149, I. P. C. . In fact, the charge refers to the commission of offence of unlawful assembly by the two appellants alongwith 14 named co-accused and with no other persons. The trial, in fact, proceeded on that basis. It is not the case of the prosecution nor any evidence adduced to show that the offence was committed by the two appellants along with any other unnamed persons. The learned Additional Sessions Judge having given the benefit of doubt to the remaining accused persons and acquitted them in absence of proof of their involvement has clearly misdirected himself in law in

invoking section 149, I. P.C. inasmuch as the two appellants cannot be held to have formed an unlawful assembly with any common object within the meaning of section 141, I. P. C. . Therefore, the appellants cannot be convicted invoking section 149, I. P. C. , The appellants, however, would be responsible for the offence, if any, committed by them in their individual capacity without regard to the participation of others (see Amar Singh v. State of Punjab, A. I. R. 1987 S. C. 826 and K. Nagamalteswara Rao v. State of Andhra Pradesh, A. I. R. 1991 S. C. 1075).

9. From the evidence of the doctor, it may be seen that the deceased had injuries on his left cheek (vide external injury No. (iv). The doctor has clarified that the said injury could be caused by a knife. It is in the evidence that it was appellant Nanda who gave knife blow on left side cheek of the deceased. It is the case of the prosecution that it was appellant Sukra who dealt a lathi blow on the head of the deceased. The deceased had abrasions and lacerations on the fore-head and on frontal area. In view of the clear, categorical and consistent evidence, we have no hesitation to hold that it was appellant Sukra Sahu who gave lathi blow on the head of the deceased and appellant Nanda Sahu gave knife blow on the cheek of the deceased. There is no positive evidence that any individual injury sustained by the deceased was fatal. In the circumstances, while setting aside the conviction of the appellants under sections 147, 148 and 302/149, I. P. C., we convict appellant Sukra Sahu under section 324 I. P. C. and sentence him to undergo rigorous imprisonment for three years and appellant Nanda Sabu under section 326, I. P. C. and sentence him to undergo rigorous imprisonment for a period of five years.

10. In the result, the appeal is allowed in part. The appellants may be set at liberty forthwith if in the meantime they have suffered the imprisonment now awarded.

Ch. P. K. Misra, J.

11. I agree.

12. Appeal partly allowed.

