

Narasingh Challan Vs. State

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Court : Orissa

Decided On : Jan-07-1997

Reported in : 83(1997)CLT522; 1997CriLJ2204; 1997(I)OLR243

Judge : A. Pasayat and ;A. Deb, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300 and 304

Appeal No. : Jail Criminal Appeal No. 151 of 1993

Appellant : Narasingh Challan

Respondent : State

Advocate for Def. : S.C. Satapathy, Addl. Standing Counsel

Advocate for Pet/Ap. : Dipali Mohapatra, Adv.

Judgement :

A. Pasayat , J.

1. In this appeal from jail Narasingh Challan (hereinafter referred to as the 'accused') calls in question legality of his conviction for offences punishable under Section 302 and 323 of the Indian Penal Code, 1860 (in short, 'IPC') and sentence of rigorous imprisonment for the former, as recorded and imposed by learned Addl. Sessions Judge, Jeypore.

2. Background facts and accusations which led to trial of the accused along with two others in a nutshell, are as follows :

Accused is the son of Sana Challan and Kamali Challan who faced trial with him and were acquitted. Mukunda Challan (hereinafter referred to as the 'deceased') and his neighbour Arjuna Challan (PW 4) took liquor in the house of the accused, on 14-7-1991 in the evening. Liquor was supplied by wife of the accused. After taking some liquor, deceased demanded more. Accused took exception to the words used while making such demand and entered into his house. When the deceased and PW 4 saw that accused had entered into the house in a hot mood, they returned to their respective houses. Some time after the aforesaid incident, accused and his parents came to the house of the deceased, being armed with bows, arrows, cycle chain and lathi and at that time deceased was sleeping on-the front verandah of his house. Accused shot two arrows which caused bleeding injury on the left hand belly of deceased. His mother pulled out the arrows. Deceased ran for a distance with bleeding injuries and in pain fell down dead. Accused and his father assaulted PW 4 by means of cycle chain and lathi, when he protested, seeing accused shooting arrows. Urdhab Challan (PW 6) who came to the spot on hearing the cries of deceased snatched away arrows, bow and cycle chain from the accused and gave the same to Narayan Challan (PW 10). Information was lodged at Mathili P. S. by the informant Burusu Challan, investigation was undertaken and on completion thereof, charge-sheet was submitted. Accused persons pleaded innocence.

3. Thirteen witnesses were examined to further prosecution version. PWs 1, 4 and 6 were stated to be the eye-witnesses to the occurrence. PWs 2 and 3 are the persons before whom accused made extra judicial confession about commission of offence. On consideration of materials on record, learned trial Judge found accused - appellant guilty while his parents were found to be innocent, and their acquittal was directed.

4. In support of the appeal Miss Dipali Mohapatra, learned counsel for accused-appellant submitted that evidence is sketchy, and PWs 4 and 6 are related to the deceased and therefore, their evidence ought to have been rejected. Alternatively,

it is submitted that an offence under Section 302, IPC is not made out. Learned counsel for State however, supported the judgment.

5. So far as acceptability of evidence of PWs 4 and 6 is concerned, they have stated about incident in graphic details and in spite of elaborate cross-examination, no noticeable infirmity therein is noticed. Merely because they are related to deceased, that cannot be a ground for desbelieving their statement. Relation or a friend normally would not falsely implicate a person thereby shielding the actual culprit. No foundation in a false implication has been established. There is no dispute that a person lost his life and another was injured. That being so, normal human behaviour would be to expose the real culprits and not to shield them. A relative instead of being a partisan witness is normally supposed to be impartial, and being real culprits to face trial, and not to let lopsé them to rope in innocent persons. Learned trial Judge has analysed the evidence elaborately and we find no deficiency in the analysis and/or reasoning.

6. The residual question is whether the case is covered under Section 302, IPC. It is seen that arrows were shot from a fairly long distance. It cannot be said that particular injury which proved fatal was intended.

7. In the scheme of the IPC, culpable homicide is genus, and 'murder' is the specie. All 'murder', is 'culpable homicide' but not vice versa. Speaking generally culpable homicide sans special characteristics of murder is 'culpable homicide' not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, IPC practically recognises three degrees of culpable homicide. The first is, what may be called, culpable of the first degree. This is the gravest form of 'culpable homicide' which is defined as 'murder' in Section 300. The second may be termed as 'culpable homicide of the second degree. This is punishable under the First Part of Section 304. Then there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under Second Part of Section 304. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for long. The

following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299 Section 300A person commits culpable Subject to certain exceptions homicide if the act by which is murder if the act by which the death the death is caused is done.. is done..... INTENTION(a)with the intention of (1)with the causing intention of causing death ; or death; or(b)with the intention of causing (2)with the intention of causing such bodily injury as is likely such bodily injury as the to cause death ; or offender knows to be likely to cause death of the person to whom the harm is caused ; or(3)with the intention of causing do bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death ; or KNOWLEDGE(c) with the knowledge that the (4) with the knowledge that the act is likely to cause death. act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.(underlining for emphasis).

8. In the circumstances clause Thirdly of Section 302 is not attracted to the facts of the case. However, requisite knowledge can be attributed to the accused. , Appropriate conviction would be Second Part of Section 304, IPC. Accordingly, conviction is altered and instead of conviction under Section 302, IPC, accused is convicted under Section 304 Part-II, IPC. Custodial sentence of eight years would meet ends of justice. It is noticed that no separate sentence has been imposed in respect of Section 323, IPC. That is not proper. Considering nature of injury, accused is sentenced to rigorous imprisonment for three months. Both the sentences are to run concurrently.

The appeal is disposed of accordingly.

A. Deb, J.

9. I agree.