SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Manas Kumar Das Vs. State of Orissa

Manas Kumar Das Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/529264

Court : Orissa

Decided On : Apr-06-2002

Reported in : 93(2002)CLT594

Judge : P. Ray and ;A.S. Naidu, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 124 of 1996

Appellant : Manas Kumar Das

Respondent : State of Orissa

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : A.C. Mohanty, ;S.C. Mohapatra and ;C.N. Rout, Advs.

Disposition : Appeal partly allowed

Judgement :

A.S. Naidu, J.

1. The order of conviction under Section 302, Indian Penal Code (for short 'I.P.C.') and the sentence to undergo rigorous imprisonment for life, passed by the learned Second Additional Sessions Judge, Cuttack in S.T. Case No. 4 of 1995, is impugned in this appeal by the sole appellant.

2. On the basis of an F.I.R. lodged before the Officer-in-charge, Tirtol Police Station on May 21, 1994, P.S. Case No. 141(33)/94 was registered initially under Sections 342/307/34 I.P.C. against the appellant and three others, namely, Babaji Das, Maheswar Das and Sara Bewa, for causing grievous hurt to one Babaji Bhoi. Since the victim later on succumbed to the injuries, the case was converted to one under Sections 342/302 read with 34 I.P.C. and charge-sheet was submitted.

3. Bereft of unnecessary details, the short facts as narrated in the F.I.R. which are relevant for appreciation of the case, are as follows:

The F.I.R. was lodged by Laxmidhar Bhoi (P.W. 3) inter alia, alleging that on 21 st May, 1994 in the afternoon at about 3.00 P.M. accused Babaji Das, Manas Das (appellant), Maheswar Das and Sara Bewa dragged Babaji Bhoi, son of Sadhu Bhoi, tied him with a rope to a cocoanut tree situated on the viflage road and assaulted him. Hearing the cries of the victim Babaji Bhoi, the informant and other villagers, namely, Hadibandhu (P.W. 7), Ashok, Binay (P.W. 8) Gurucharan (P.W. 5) rushed to the spot. All of them saw the accused persons mercilessly assaulting Babaji Bhol with a bamboo Paria (Lathi). The villagers intervened and carried the victim to Manijanga Government Hospital for treatment. After admitting Babaji Bhoi in the hospital, Laxmidhar (informant - P.W. 3) went to the Tirtol Police Station and lodged the F.I.R. (Ext. 3) on 21st May, 1994.

4. Prosecution case is, while giving first-aid the condition of the victim deteriorated and the medical officer referred him to S.C.B. Medical College Hospital, Cuttack whare the victim succumbed to the injuries at about 6.00 A.M. on 22nd May, 1994. Out of the four accused persons, Mahesh Das and Sara Bewa absconded and the sessions trial so far as those two accused persons were concerned was slit up and proceeded only against accused Manas Das and Babaji Das.

5. To substantiate the case, prosecution examined as many as ten witnesses and exhibited fourteen documents. Eight material objects, namely, bamboo Paria (Lathi), shirt, coir rope in which the victim was tied, sample earth, blood stained earth, etc. were marked. Out of the witnesses, P.Ws. 3, 7 and 8 are said to be the eye-witnesses, whereas P.W. 4 is the post-occurrence witness. All of them were neighbours of the deceased as well as the accused persons. Out of the

occurrence witnesses, P.W. 8, later on turned hostile.

6. The plea of the defence was one of complete denial. The further plea is that the deceased was lunatic.

7. P.W. 2 is the doctor who conducted post-mortem over the deadbody of the deceased on 22nd May, 1994. The post-mortem report (Ext. 2) reveals the following external injuries :

'(i) Abrasion 1 cm. x 1 cm. on the upper border of left zygome situated 1 cm. below lateral angle of left eye;

(ii) Stitched would 2.5 cm. long with two nylon stitches situated on the mid-line of forehead adjacent to the frontal hair margin in anterior posterior direction, 8 cms. above the bridge of the nose;

(iii) Abraded contusion 4 cms. x 0.75 cm. situated on a contused area of 5 cm. x 2.5 cm. on the frontal region 12 cms. above the bridge of the nose, behind injury No. (ii);

(iv) Lacerated wound 3 cm. x 0.8 cm. x scalp deep situated on the left side mastoid area behind the left ear;

(v) Abrasion 5 cm. x 4 cm. on the front of left shoulder;

(vi) Lenior abrasion 9 cm. x 0.5 cm. situated on the left lateral side of the neck along the line of lower border of mandible 2 cm. below it;

(vii) A curve abrasion 4 cm. x 0.5 cm. on the left lateral aspect of the neck in its middle 5 cm. above the clavicle;

(viii) Two abrasions each measuring 3 cm. x 1.5 cm. and 1 cm. x 1 cm. on left costal arch at the level of 9th and 10th ribs along the anterior axillary line;

(ix) Contusion, reddish violet colour, of 7 cm. x 4 cm. on the centre of which there was a lenior abrasion of 4 cm. long situated on the left side chest, 9 cm. below the left nipple;

(x) Small pressure abrasion of 1 cm. x 1 cm. situated on the left radial styloid;

(xi) Multiple small pressure abrasions each measuring 1 cm. x 1 cm. situated on the right forearm, 10 cm. above the wrist.'

8. In his deposition P.W. 2 has categorically stated that apart from the nine external injuries, there were about eight internal injuries corresponding the external injuries and he opined that all the injuries were ante-mortem in nature and were caused by hard and blunt weapon and that the death was due to comma resulting from cranial cerebral injuries. On the basis of the evidence of P.W. 2 coupled with the post-mortem report (Ext. 2), the court below arrived at a categorical finding that the deceased met with a homicidal death. The said fact is also not denied by the defence and we have no hesitation to confirm the said finding.

9. On the basis of other evidence both oral and documentary, the Trial Court arrived at the conclusion that the prosecution was able to prove beyond all reasonable doubts that accused Manas Kumar Das was guilty under Sections 302 & 342, I.P.C. and convicted him thereunder for causing death of the deceased Babaji Bhoi by assaulting him on the head by means of M.O.I, bamboo Paria (Lathi). However, the court below disbelieved the prosecution case so far as the accused Babaji Das was concerned and arrived at the conclusion that the prosecution failed to establish the allegation that Babaji Das caught hold of the hands of deceased Babaji Bhoi during the assault and acquitted him. On the basis of the aforesaid finding, the learned Sessions Judge convicted Manas Das for the offence under Section 302, I.P.C. and sentenced him to undergo rigorous imprisonment for life and further sentenced him to undergo imprisonment for six months under Section 342, I.P.C. and directed the sentences to run concurrently.

10. Learned counsel for the appellant assaulted the judgment and order of conviction mainly on the ground that the learned Sessions Judge did not properly appreciate the evidence, both oral and documentary. It was forcefully submitted that non-examination of the scribe of the F.I.R., delay in lodging the same as well as delay in arresting the accused persons throw a cloud of suspicion on the prosecution story and the conclusions arrived at by the Court below are not

justified. It is submitted that the prosecution failed to prove beyond reasonable doubts that the appellant was the murder.

11. Heard Mr. Mohanty, learned counsel for the appellant, and the learned Government Advocate for the State at length. Being the final court of facts, we also carefully scanned the ocular and documentary evidence, for proper appreciation.

12. Admittedly the accused and deceased belonged to the same village and so also the occurrence witnesses. Out of the four accused persons, two absconded and after splitting up of Sessions Trial No. 39 of 1995, the trial proceeded only against two accused persons, namely, Manas Das (appellant) and Babaji Das. Out of the aforesaid two accused persons, Babaji Das has been acquitted by the court below and the State Government has not preferred any appeal against that part of the judgment. Thus the only person convicted in the case is the appellant.

13. Out of the three alleged eye-witnesses, namely, P.Ws. 3, 7 and 8, P.W. 3 is stated to have reached the spot first, followed by other two. In the F.I.R. P.W. 3 has narrated that when he arrived at the spot after hearing hullah, he found the accused persons dragging the deceased to the cocoanut tree situated on the road. Thereafter, the accused persons tied the hands of the deceased with a rope and assaulted mercilessly. However, in his deposition he stated that accused Babaji, Mahesh and Sara were holding the hands of the deceased from his back and accused Manas was assaulting him by means of a bamboo paria (Lathi). Thereafter they took the deceased Babaji Bhoi to the cocoanut tree standing in front of the house of one Baipati Das and tied him to the tree by means of coir rope. Thus there is discrepancy in the manner in which the deceased was assaulted. P.W. 4, another so-called eye-witness arrived almost simultaneously. He stated in his deposition that when he arrived at the spot he found the deceased lying injured on the ground. P.W. 4 has not seen the appellant assaulting the deceased. The same is the statement so far as P.W. 7, the other eye-witness, is concerned. He has further added that Manas threatened to assault him with a bamboo. This statement definitely is an after-thought. Surprisingly P.W. 7 admits that he has not told about the occurrence to any other person till he was examined

by the police. P.W. 8, the other eye-witness has been declared hostile. He was neither cross-examined nor any incriminating material was brought out from him. All other witnesses were post-occurrence witnesses.

14. The most important aspect which strikes our mind, is the statement made by the informant (P.W. 4) in his deposition. The relevant portion reads thus :

'I have read upto 9th standard. I have scribed the F.I.R. (Ext. 3). Again says-Ext. 3 was scribed by one Pradip Parija of our village as per my instructions and I signed on it after going through the contents thereof. The F.I.R. I had scribed was destroyed by me as I could not write it correctly.'

15. Surprisingly, Pradip Parija who is stated to have scribed the F.I.R. has not been examined. The F.I.R. was sent to the court two days after, which also, raises a doubt regarding veracity of the facts narrated therein.

16. Perusal of the F.I.R. (Ext. 3) reveals that P.W. 3 has signed the same. Further P.W. 3 in his deposition has clearly stated that the appellant assaulted the deceased with a Bamboo Paria (Lathi). This statement is not shaken in any way in the cross-examination. The discrepancies between the facts stated in the F.I.R. and the deposition made in court are not to that extent so as to disbelieve the statement made in Court. All other three eyewitnesses have also unambiguously stated that the four accused persons were present at the spot where the injured was found tied to a cocoanut tree. Thus the evidence leads to the irresistible conclusion that the appellant took part in the assault.

17. P.W. 4 admitted in his deposition that Babaji Bhoi the deceased was a mad person. The said fact also gets corroboration from the evidence of other witnesses. A cumulative reading of the evidence of the witnesses further reveals that deceased Babaji Bhoi, who was not of sound mind, misbehaved with Sara Bewa, the mother of the appellant and being enraged by the said act, the appellant and others assaulted him.

18. The appellant is a Scheduled Caste person belonging to the lower strata of the society. It is well settled that the people of the said category are bad tempered and

inflammable in nature. There is no evidence regarding existence of any mens rea for committing such an offence. In course of hearing, learned counsel for the parties brought to our notice that the other two accused persons, namely, Mahesh Das and Sara Bewa, who were separately tried in S.T. No. 66/97 have been acquitted on the ground that the prosecution failed to establish the case against them beyond all reasonable doubts. We called for the lower court record of the said case and found the submission to be correct. Further no appeal has been preferred by the State Government against the said order of acquittal and the same has attained finality.

19. On scrutiny of the material facts, it is found that out of four accused persons, all have been acquitted excepting the appellant. The evidence on record clearly reveals that the appellant had in fact assaulted the deceased. Such evidence cannot be discarded. The manner in which the appellant assaulted the deceased, however, varies from F.I.R. to the evidence of the informant as well as other eye-witnesses. After going through the entire evidence, we are satisfied that on being enraged by the fact that the deceased whowas mentally not sound and a lunatic, insulted the mother of the appellant Sara Bewa, all of a sudden the appellant lost his balance of mind and being enraged, assaulted the deceased with a bamboo paria, which is usually used for giving support to the roof in the villages. There is no iota of evidence which indicates that the accused-appellant had any prior intention to assault the deceased or murder him.

20. In the instant case, appreciation of evidence clearly reveals that there was no common object of the accused persons to cause the death of the deceased. The prosecution evidence probabilises the fact that the occurrence was sudden and un-anticipated which was triggered by the misbehaviour of the deceased to the mother of the appellant.

21. Keeping in view the facts and circumstances of the case, we feel that absence of existence of common object to commit the murder and pre-meditation plays a key role, and is the deciding, factor. The evidence further reveals that, in fact, the deceased had misbehaved the mother of the appellant which annoyed the appellant and others, and in a heat of passion, the appellant assaulted the

deceased. The allegation as regards different roles played by the other three accused persons has been disbelieved by the learned Additional Sessions Judge and all of them have been acquitted. A cumulative assessment of all these facts leads us to take the view that, though the appellant committed the offence, the same was without pre-meditation and was due to sudden provocation, in a heat of passion upon the misbehaviour of the deceased towards the mother of the appellant, and thus the case is covered by Exception 4 of Section 300 I.P.O. and according to us, punishable under Section 304, Part-l of l.P.C.

22. We, therefore, set aside the order of conviction of the appellant under Sections 302 and 342 l.P.C. passed by the Court below and instead convict him under Section 304, Part-l of l.P.C. for commission of the offence of culpable homicide not amounting to murder. Admittedly the appellant is in custody since 1994. We, therefore, sentence him to rigorous imprisonment already undergone by him. We further direct that if the detention of the appellant in custody is not required in connection with any other case, he be set at liberty forthwith.

Appeal is accordingly allowed in part.

P. Ray, J.

23. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com