

Nirakar Pradhan Vs. State of Orissa

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Court : Orissa

Decided On : May-13-1997

Reported in : (1997)84CALLT496; 1997(II)OLR22

Judge : S.N. Phukan, C.J. and ;A. Pasayat, J.

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

Appeal No. : Criminal Appeal No. 124 of 1992

Appellant : Nirakar Pradhan

Respondent : State of Orissa

Advocate for Def. : R.K. Mohanty, Addl. Government Adv.

Advocate for Pet/Ap. : S.K. Mishra, Adv.

Judgement :

S.N. Phukan, C.J.

1. This appeal is directed against the Judgment and order dated 29.2.1992 passed by the learned Sessions Judge, Dhenkanal, in Sessions Trial No. 5-D of 1989. Accused-appellant Nirakar was booked under Section 302, IPC and his father accused Nimai under Section 27 of the Indian Arms Act. The learned Sessions Judge found the accused-appellant guilty of the charge, convicted him thereunder and sentenced him to undergo rigorous imprisonment for life. His father, accused

Nimai, was, however, found not guilty of the charge and was acquitted. In this appeal, the accused-appellant has challenged the order of his conviction and sentence.

2. Briefly stated, the story of the prosecution, as disclosed in the First Information Report as well as the evidence on record, is that on 13.10.1988, the cattle of the accused persons damaged the paddy crop of the deceased Nirakar Pradhan. Therefore the deceased went to the house of the accused persons and demanded compensation. There was a tussle between the parties in the house of the accused persons. It is alleged that the accused-appellant Nirakar, instigated by his father accused Nimai, brought out a gun from inside their house and shot at the deceased causing bullet injuries on the left side of his chest. It is also alleged that accused-appellant Nirakar with the butt of the gun hit the wife of the deceased, namely Balabati Pradhan (P.W. 3), who had accompanied the deceased to the house of the accused persons. On hearing the sound of gunfire informant Bisei Pradhan (P.W. 5), the brother of the deceased, went to the place of occurrence where P.W. 3 informed him about the incident. Therefore P.W. 5 reported the matter to the Officer-in-charge of Talcher Police Station. During investigation, police arrested accused-appellant Nirakar on 14.8.1988. According to the prosecution case, the appellant, while in police custody, led the police to the recovery of the gun from the backside of the house of P.W. 10. On completion of investigation, charge-sheet was submitted.

3. The accused persons, pleaded not guilty. In their statements recorded under Section 313, Cr.P.C. which have also been reported by the evidence of defence witnesses, they took the further plea that the deceased and the members of his family came to their house and demanded compensation for the damage caused to the paddy crop. There was a push and pull in course of which the gun fired accidentally causing the death of the deceased.

4. Prosecution examined as many as twelve witnesses. Two witnesses were examined by the defence.

5. P.W. 12, Dr. Subash Chandra Jena, conducted autopsy on the dead-body and found as many as eleven injuries which are as follows :

- (1) Thickening 2' x 1 1/2' in mid axillary line over 9th and 10th ribs on left side. 8 small holes present out of 5 holes 3' to 4' depth.
- (2) Tattooing 4' above the upper margin, 3' below margin 2' interior to margin and 4' behind the margin of the blackening area.
- (3) In mid-axillary line on left side, fracture on 9th and 10th ribs.
- (4) On 9th rib 1' left to mid-sternal line one pellet is present.
- (5) Left side lower part of the pleura two small holes present. Cavity contains altered blood.
- (6) Left lung congested. Two small holes on lower part of the chest cavity. Cavity contains altered blood. Five pellets found.
- (7) On pericardium 8 small holes on left side containing altered blood.
- (8) In heart 8 small holes on left side heart is contracted.
- (9) On peritoneum 3 small holes on left side continuing from skin. Cavity containing some small amount of altered blood.
- (10) On stomach 10 small holes, upper part of greater curvature. Pasty food material was found. Two pellets found.
- (11) On liver--Liver congested, 3 small holes through and through on left lobe of liver. Two pellets present.

According to the doctor, cause of death was the internal hemorrhage and shock due to pellets fired from the gun. Ext. 15 is the post-mortem report. He has further stated that all the injuries were ante-mortem. The pellets recovered from the dead body were handed over to the officer-in-charge of the Police Station and were seized as per the seizure list, Ext. 7. From the evidence of the doctor, we have no hesitation to hold that the deceased met a homicidal death due to gun-shot.

6. P.Ws 3, 4 and 8, namely, Basanta Kumar Gochhayat, Abhi Gochhayat and Balabati Pradhan, are the eye-witnesses to the occurrence. P.W. 8 is the wife of

the deceased.

P.W. 3 has stated that the accused persons were entangled in a pull and push with the deceased. The accused-appellant brought out a gun and fired at the deceased. The bullet hit the left side chest of the deceased. In cross-examination it has been brought out from him that the family members of the deceased came to the spot, but they were threatened by the accused-appellant.

P.W. 4 has stated that he found both the accused persons along with the wife of the accused Nimai on one hand and accused Birabai and his wife on the other, engaged in a push and pull. Accused Nimai asked his son accused-appellant Nirakar to bring out the gun from his house, which the latter did and fired a shot at the deceased. The bullet hit the left side chest of the deceased.

P.W. 8 is the wife of the deceased. She has stated that the cattle of the accused persons had damaged their paddy crop two times and on the third occasion, when they again grazed in their paddy field, her husband, the deceased, demanded compensation from the accused persons. At that time accused Nimai along with his wife Nidrabati came to their court-yard and threatened them. Nidrabati abused them in filthy language. Thereafter her husband, the deceased, went to the house of the accused persons and she also accompanied. She has further stated that accused-appellant Nirakar and his mother Nidrabati gave pushes to her husband. Thereafter accused Nimai and his other son came out of their house being armed with lathis. At that point of time, accused-appellant Nirakar was asked by his father accused Nimai to bring out the gun. Nirakar brought out the gun and fired at the deceased which hit the left side chest of the deceased as a result of which he fell down. Thereafter, P.W. 8 reported the matter to P.W. 5. In cross-examination she has pleaded ignorance as to whether on the date of occurrence her husband along with others had assaulted Nidrabati, the wife of accused Nimai and caused injuries to her.

These eye-witnesses were cross-examined at length. But nothing could be brought out from them to disbelieve their version. It is true that P.W. 8 is related to the deceased being his wife. But, merely because of this relation, her statement on oath cannot be disbelieved. That apart, she was a natural witness inasmuch as she

had gone to the place of occurrence with her husband, who had gone there to demand compensation from the accused persons for the damage caused to their paddy crop by the cattle of the accused persons. So, her evidence can be relied upon. Taking the evidence of the eye-witness as a whole, we have no hesitation to hold that the accused-appellant Nirakar brought out the gun from his house and fired at the deceased, as a result of which the latter died.

7. P.W. 11 is the Investigating Officer. He has stated in cross-examination that the dead-body of the deceased was lying on the corridor of the house of accused Nimai by the side of the road.

8. In the statement recorded under Section 313, Cr.P.C. to a question put to him as to whether the deceased along with his wife had gone to his house and demanded compensation for the damaged crop, accused Nimai admitted this fact and stated that they had come to his house with an intention to assault. To a question as to whether he had got anything more to say, accused-appellant Nirakar replied that the gun fired accidentally and that he did not deliberately open fire at the deceased. That apart, the two witnesses examined by the defence, namely, Sridhar Behera (D.W. 1) and Nidrabati Pradhan (D.W. 2) have stated that the deceased, his wife and the brother of the deceased went to the house of the accused persons to demand compensation for the damaged crop and a quarrel and assault ensued in course of which D.W. 2, the wife of accused Nimai and mother of the accused-appellant Nirakar sustained injuries. As such, the defence version supports the prosecution story to the extent that the deceased and his wife went to the house of the accused persons to demand compensation for the damaged crop and that there was a push and pull and the deceased died due to the gun-shot injury.

9. We may state here that the rigour of the proof which lies on the accused is not the same as that on the prosecution. In a criminal trial, prosecution has to prove its case beyond all reasonable doubt and the defence has only to show that the case pleaded by it is a probable one. The witnesses examined by the defence are entitled to equal treatment with those examined by the prosecution and Courts ought not to disbelieve their testimony only out of their traditional instinctive

disbelief in defence witnesses (See AIR 1981 SC 911 : Dudh Nath Pandey v. State of U.P.). Moreover, even if witnesses are interested and related, their evidence should not be discarded but has to be scrutinised with caution [See (1979) 4 SCC483] : Babu and Ors. v. State of Uttar Pradesh).

10. D.W. 1, Sridhar Behera, has deposed that the cattle of the accused persons had damaged the paddy crop of the deceased. The deceased took accused Nimai to the paddy field by giving him pushes. D.W. 2 Nidrabati, wife of accused Nimai and mother of accused-appellant Nirakar, has deposed that the deceased with his brother Bisei (P.W. 5) and another person had taken her husband to the field where the paddy was damaged. Of course, she did not accompany her husband. She was abused in filthy language by the deceased by uttering the word 'Ghodagehi' (to be raped by horses). When she protested, the deceased called his two brothers and they all ran towards their house and assaulted her causing injuries. There was pull and push between the parties. She became unconscious. After regaining senses, she filed the First Information Report, Ext. A. She was examined by the doctor and the injury report has been marked as Ext. B. We find from Ext. A that it was lodged on the same day, but subsequent to the F.I.R. in the present case. From Ext. B, we find that D.W. 2 sustained injuries which cannot be said to be self-inflicted. Considering the evidence of D.Ws. 1 and 2 and Exts. A and B, the defence version of the story cannot be brushed aside.

11. In view of the enmity between the parties, there is always a tendency on the part of the prosecution witnesses to suppress facts in order to bring home the charge to the accused persons. Similarly, on the part of the defence witnesses, there is a tendency to exaggerate the case of the accused, persons. This has to be kept in mind. Moreover, in rural landscape in India, disputes regarding possession of agricultural land and destruction of crops, by cattle are parts of life. Crop being the only source of survival in rural life, its destruction leads to fierce fight.

From the evidence on record, as stated above, it is proved that the-occurrence took place in the house of the accused where the deceased his wife and others went to demand compensation for the damage caused to the paddy crop.

Therefore, the prosecution party can be termed as trespassers. Though the prosecution witnesses have stated that there was push and pull, we are of the opinion that it was more than that in view of the fact that D.W. 2 sustained injuries which has been supported by the medical report. D.W. 2 was also abused by the deceased and his party in filthy language. The language used is borne out from the F.I.R., Ext. A and her oral evidence. We are of the opinion that there were sufficient grounds both for her husband and two sons to be provoked. They had the right to private defence, more particularly when the deceased and party went to the house of the accused and assaulted D.W. 2. Question is, whether the accused persons exceeded their right of private defence.

12. From the seizure list, we find that only Lathi and the gun belonging to accused Nimai was seized. This gun was used for causing the death of the deceased. There is nothing to show that the deceased and his party went there with any other deadly weapon. Therefore, it is a clear case of exceeding the right of private defence. In this connection, we may refer to the decision of the apex Court in *Balmukund v. State of M.P.* 1981 SCC (Cri.) 851. In that case, the High Court of Madhya Pradesh held that the appellants had exceeded the right of private defence. Therefore, it altered the conviction under Section 302, IPC to one under Section 304, Part-II, IPC and awarded the sentence of rigorous imprisonment for ten years. The apex Court upheld the conviction but reduced the sentence to rigorous imprisonment for five years. Keeping the aforesaid decision in mind, we alter the conviction of the accused-appellant Nirakar to one under Section 304, Part-II, IPC. As regards sentence we are of the opinion that rigorous imprisonment for a period of five years would meet the ends of justice.

13. In the result, the appeal is allowed in part. The conviction of the accused-appellant Nirakar under Section 302, IPC is altered to one under Section 304, Part-II, IPC and he is sentenced to undergo rigorous imprisonment for five years. As the appellant is on bail, he shall surrender before the trial Court within a period of one month to serve out the sentence.

A. Pasayat, J.

14. I agree.

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