

Kumar Majhi Vs. State

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Court : Orissa

Decided On : Sep-21-1981

Reported in : 52(1981)CLT546; 1981CriLJ1787

Judge : P.K. Mohanti and ;B.N. Misra, J.

Appellant : Kumar Majhi

Respondent : State

Judgement :

P.K. Mohanti, J.

1. This appeal has been preferred against a judgment of the learned Additional Sessions Judge of Sundargarh convicting the appellant under Sections 392 and 307, I.P.C. and sentencing him to undergo imprisonment for life on each count.

2. prosecution case was that the appellant was in the habit of quarrelling with his wife and on the date of occurrence, that is. 12-2-76 at about 5 P.M. he picked in a quarrel in course of which he dealt blows with the handle of an axe causing several injuries to her on her person. When Samaru Mahakud, a close neighbour intervened the appellant dealt some axe blows on his head as a result of which he sustained several injuries and fell down. The appellant suddenly started running away, with his axe. While Samaru Mahakud, was being carried to the Hospital he died. F.I.R. was lodged by P. W. 2 Bairagi Mahakud at Bonai P. S. on the same

day at about 9.15 p. m. While the villagers were guarding the dead body of the deceased near the village school, the appellant went there and shot an arrow which struck P. W. 6 Hiradhar Sethi. After midnight the Investigating Officer reached the spot and arrested the appellant. While in custody, the appellant made a statement before the Investigating Officer leading to discovery of the axe from the thatch of a house. After due investigation the appellant was charge-sheeted under Sections 302 and 307, I.P.C.

3. At the trial, the appellant pleaded not guilty to the charge. His contention was that on the date of occurrence he had been to the house of a neighbour to attend a feast. During his absence the deceased entered into his house and attempted to commit rape on his wife and being resisted, he committed assault on her. The appellant reached the spot in course of the assault and caught hold of the axe held by the deceased. There was mutual fight and scuffle in course of which the deceased sustained fatal injuries on his head.

4. The trial court, on a consideration of the evidence led by the prosecution, believed the prosecution case and discarded the defence plea. On appeal, it is urged that the order of conviction is not borne out by any credible evidence and that even accepting the entire prosecution case to be true, no offence under Section 307 I.P.C. is made out

5. On 13-2-76 the doctor P. W. 1 examined p. W. 5 Kanti Dei. the wife of the appellant and found the following injuries on her person:

- (1) Contusion 3' x 2' on the roof of the left ear.
- (2) Contusion 3' x ½' on the back of the right forearm with fracture of the ulna.
- (3) Abrasion ¾' x ½' on the front of the right leg.
- (4) Contusion 3' x 1' in front of the left leg.
- (5) incised wound 2' x ¼' into skin deep on the right scapular region of the back.
- (6) linear incision 3' x skin deep on the back.

(7) Linear incision 3 1/2' and skin deep on the back.

In the doctor's opinion, injury No. (2) was grievous in nature. He also opined that injury Nos. (1) to (4) might have been caused by the blunt side of the handle of an axe and injury Nos. (5) to (7) by the sharp end of an axe.

6. The doctor P. W. 1 held postmortem examination over the dead body of the deceased and found the following external injuries.

(1) One oblique deep incised wound behind the left ear 4' x 1J' x 2' extending to the neck. The injury has involved the anterior part of the left sternomastoid muscle and involved large vessels behind it.

(2) Incised wound li' x ' into bone deep on the occipital region of the scalp.

(3) Incised wound ' x i' skin deep on the middle of the scalp.

In the doctor's opinion, all the injuries were ante-raortem in nature and were sufficient in the ordinary course of nature to cause death. He also opined that the injuries might have been caused by the sharp end of the axe M. O. I and that the death was due to shock and haemorrhage. According to him, three separate blows were necessary to cause the injuries. which were found on the dead body. The doctor's evidence leaves no room for doubt that the death of the deceased was homicidal.

7. In order to establish the charges, prosecution relied mainly on the evidence of P. Ws. 3, 4 and 5 who were said to be eye-witnesses to the occurrence. P. Ws. 4 and 5 are the son and wife respectively of the appellant. They did not support the prosecution case at the trial and went back upon their previous statements made before the police and the Magistrate during investigation of the case. p. W. 4 went to the extent of saying that he had not noticed any Injury on his mother and on the dead body of the deceased. P. W. 5. the wife of the appellant also went to the extent of saying that she was not assaulted by any body and that she was not examined by any doctor. These two witnesses discredited themselves by their own previous contradictory statements and were rightly disbelieved by the trial court.

8. P. W. 3 Rajani Mahakud is a natural witness being a close neighbour of the appellant. She is the widow of the deceased. She testified that on the date of occurrence at about 5 p. m. she heard the appellant and his wife quarrel with each other at their residence and that when the deceased intervened and asked the appellant not to commit any further assault the appellant dealt blows on the head of the deceased by means of an axe as a result of which he sustained bleeding injuries and fell down. She also stated that when she wanted to go to the rescue of her husband the appellant threatened to kill her. Then the appellant went away from the spot hurriedly taking the axe and a bow and arrows with him. She identified the axe (M. O. I) as the weapon of offence. She further stated that while the villagers were guarding the dead body the appellant went there and shot an arrow which hit the leg of P. W. 6.

Her evidence was criticised on the grounds that she did not disclose before the Investigating Officer that when she wanted to go to the rescue of her husband, the appellant threatened to kill her, that she did not also disclose that after the occurrence the appellant asked the villagers as to why they were guarding the dead body and assaulted Hira and that she could not say who came first to the place of occurrence after the assault was committed on her husband. In our opinion, these are matters of detail and not of substance. It appears that the I. O, visited the spot at 2 a. m. on the date of occurrence and examined P. W. 3. It is not shown that she did not implicate the appellant in the crime during her examination by the police. Omission of minor details does not, in our opinion, affect the trustworthiness of the witness on the salient features of the occurrence. Her evidence is quite consistent with the medical opinion about the cause, nature and location of the injuries and there is nothing inherently improbable in her evidence. There is no material on the record to show that the witness had any axe to grind against the appellant. She had nothing to gain by giving a wrong description of the occurrence in which her husband met with death. The argument that P. W. 3 is an interested witness being the widow of the deceased does not carry any weight unless the credit of the witness can be said to have been shaken in cross-examination. There is no apparent reason why she would omit the name of the real assailant and substitute in his place the name of the appellant. The trial court, on a careful appraisal of the evidence of P. W. 8 believed the prosecution

case and we see no cogent ground to take a different view.

9. It is in evidence that the appellant while under police custody gave information leading to discovery of the weapon of offence. It has also come in evidence that the wearing apparels of the appellant which were seized at the time of his arrest were stained with human blood. Subsequent conduct of the appellant in challenging the villagers as to why they were guarding the dead body and shooting an arrow at P. W. 6 is highly incriminating. The defence plea of the appellant has not been substantiated by any evidence. The Plea that the deceased sustained the fatal injuries accidentally sounds improbable.

10. The appellant appears to have inflicted three incised wounds with a deadly weapon on a vulnerable part of the body of the deceased. His intention to cause death is therefore apparent. We accordingly, held that the conviction under Section 302. I. P- C. and the sentence of imprisonment for life are Justified. .

11. To constitute an offence under 307, I.P.C. the intention or knowledge must be such as is necessary to constitute murder. Without this, there can be no attempt to murder. The intention is to be gathered from the nature of the weapon used and the parts of the body where the injuries are inflicted. In the instant case, the appellant did not inflict any injury on any vital part of the body of P- W. 5. According to P. W. 3. the appellant used the handle of the axe in committing the assault on P- W. 5. There is nothing to show that the appellant was inspired by the intention to commit the murder of his wife. In our opinion, only an offence under 328, I.P.C. has been made out. We would; accordingly, set aside the conviction under Section 307. I.P.C. and the sentence of imprisonment for life awarded for that offence and convict the appellant under Section 325, I P- C. and award a sentence of B. I. for two years. The sentences awarded for both the offences shall run concurrently.

12. Subject to the above modification, His appeal stands dismissed.

B.N. Misra, J.

13. I agree.

