

Ganesh Sendha Vs. the State of Orissa

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Court : Orissa

Decided On : Mar-27-1984

Reported in : 1984(I)OLR412

Judge : Pathak, C.J. and ;P.K. Mohanti, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Jail Criminal Appeal No. 25 of 1981

Appellant : Ganesh Sendha

Respondent : The State of Orissa

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : I.C. Das, Adv.

Judgement :

Pathak, C.J.

1. The appellant Ganesh Sendha has been convicted under Section 302 I. P. C. by the Sessions Judge, for causing the death of his mother Gheti Sendha and sentenced to undergo R. I. for life.

2. This appeal has been filed from Jail. As the appellant was not represented by any Counsel we have engaged Mr. I. C. Dash, Advocate, to represent him at the

State expense;

3. The fact leading to the present appeal is a typical one that happens in the unsophisticated rural milieu where from a small spark, conflagration ensues.

4. The prosecution story is that on the date of occurrence between 8 and 9. 0' clock in the morning the deceased went to the village lane and asked the appellant as to why he was always frowning at her and told that if she had caused 'any loss to him, she would compensate the same. On hearing this the appellant was enraged and rushed to the deceased and gave a blow on her head on the blunt side of the axe, M. O. I., as a result of which the deceased fell down on the ground with bleeding injuries.

It is found from the facts that the appellant has been staying in a separate mess away from his parents for about 8 to 9 Years. At the time of the occurrence, the appellant's father P. W. 2 was away with his daughter in the jungle for collecting fuel wood when P. W. 4. the sister of the appellant came home, she could learn that the appellant had killed her mother. When P. W. 2 came from the jungle he was informed about the same. P. W. 2 went to the place of occurrence and thereafter proceeded along with P. Ws. 3 and 6 to the P. S. where he lodged the F. I. R. Ext. 7, After the information was recorded and P. W. 2's statement was taken by the Investigating Officer, P. W. 9. the appellant appeared at the P. S. with the Axe in hand and reported that he caused the death of his mother with the axe. The Axe was seized and the appellant was arrested.

On receipt of the F. I. R. the Police swung into action and investigated the case. During investigation inquest was held on the dead body and the dead body was sent for Post-mortem examination which was conducted by P. W. 7, Dr. P. K Singh. On conclusion of the investigation, the appellant was charge-sheeted and was put on trial.

5. The defence plea is one of complete denial.

6. During trial, eye witnesses including some official witnesses were examined for the prosecution. No witness has been examined on behalf of the defence. The

learned Trial Court on an appreciation of the evidence on record came to the finding that the appellant intentionally caused the death of the deceased and on that finding convicted and sentenced the appellant as aforesaid.

7. Mr. Dash the learned counsel appearing on behalf of the appellant submits that on a scrutiny of the evidence on record, the learned trial court should not have held that the appellant intentionally caused the death of the deceased. He further submits that even assuming that the appellant inflicted the injuries on the deceased, it was so done on the spur of the moment due to sudden quarrel and not with intention of causing the death of the deceased.

8. There is no dispute about the factum of the death of the deceased. This has been testified by the evidence of P. Ws, 1, 2, A. and 5 and the report of the Doctor P. W, 7 who held autopsy on the dead body.

P. W. 7 found the following injuries on the dead body on Post-mortem examination.

(i) Laceration of the scalp 1' x 1' x 1/2' x 1' left to the external occipital protuberance margins were irregular and contused.

(ii) Laceration of the scalp 1' above injury No. 1, size 1' x 1/2' x 1/2' x 1/2'.. margins was irregular and contused.

(iii) There was depressed fractures of the skull underlying the 2nd lacerated injury, size- 1' x 1/2'. The inner table was also fractured.

According to P. W. 7, all the injuries were antimortem in nature and that the death was as a result of shock and haemorrhage. He has further opined that all the injuries might have been caused by a heavy hand and blunt weapon,

9. The blaming truth of the prosecution story has been unfolded by the deposition of P. W. 1. He has stated that on the date of occurrence the deceased Ghety came and asked the appellant as to why he was quarrelling for nothing and told him, 'Tor Kana Khaigale je Sana Sana Hauchhu Jaha Khaidele, Mu Kahuchi Khyati Puran Debi'. (What of yours has been eaten that you are frowning like that I

will compensate your loss). It is found from his evidence that at this the appellant came with an Axe and gave a blow with the blunt side of the Axe on 'the left side of the deceased's head, as a result of which she fell down with bleeding injuries. The said blow was followed by another blow while the deceased was lying on the ground. He has stated that the occurrence took place near his cow-shed where he was present and that his cow-shed is at a distance of only 3-4 cubits from the place of occurrence. From his evidence it appears that he tried to dissuade the appellant when he came with an Axe for attacking the deceased to which the appellant did not pay any heed. This witness has been cross-examined at great length and nothing of substance has been elicited from him. In order to demolish his evidence it was suggested to him that the deceased rebuked the appellant by saying 'Guhakhia Bagei khai, Maruchu Je mo Sange Sabu Beje kali karuchu' (Eater of stool and filth, you are quarrelling always with me as you ate dying). The suggestion has been stoutly denied by the witness. However, he has admitted that he stated before the Investigating Officer, P. W. 9 that the deceased told the appellant, 'Kukuda Tora kira, Khaigali Je, Tu singi singi hauchu '(what was eaten away by the fowls that you are frowning) This witness is s neighbour of the appellant and an independent witness.

10. It is found that the assault ensued as a result of some accusation made by the deceased against the appellant quarrelling for nothing. This accusation by itself should not have been taken to be an occasion of grave and sudden provocation or to be excited in the normal circumstances. But we have got to consider that in a rural malign amongst the Tribal people, whether those words uttered by the deceased and addressed to the appellant were enough to excite the appellant so as to loss his self control. The fact that the appellant did not use the sharp side of the Axe but used only the blunt side goes to show that he did not have the intention as such to cause the death of his mother. However, he had the knowledge that when he was holding a deadly weapon like an Axe and striking on the head, a vital part of the body, such a act was likely to cause the death of the deceased. Further, the subsequent conduct of the appellant himself going to the Police Station and appearing there with the weapon of offence stating that he killed his mother with the said weapon shows that he was repentant That the mother died and that he did not have the intention to kill his mother. The fact that

the appellant went to the police station has been proved by the evidence of P.W. 2, his father, P. W. 5 Lokanath Majhi, who accompanied P. W. 2 for lodging the First Information Report and also the evidence of P. W. 9, the Investigating Officer. The fact that the appellant surrendered at the P. S. with the Axe may not be of much consequence for implicating the appellant in the offence, but it clearly shows his conduct.

11. The other witness P. Ws. 2, 4 and 5 are post occurrence witnesses and they do not have any personal knowledge about the occurrence.

12. On a proper scrutiny and scanning of the evidence of P. W. 1. who is the star witness for the prosecution, we find that this is a case where it cannot be held that the appellant killed his mother with pre-meditation and malice prepens. But the evidence clearly establishes that the appellant had the knowledge that his act was likely to cause the death of the deceased. Therefore, the offence of the appellant falls under Section 304, part II, I. P. C. and not under Section 302 I. P. C. Accordingly, we set aside the order of conviction of the appellant under Section 302, I. P. C. and the sentence passed against him there under. Instead, we hold him guilty of the offence under Section 304 Part-II, I. P. C., convict him there under and sentence him to R. I. for the period already undergone. He be set at liberty forthwith if his detention is not required in connection with some other case.

13. In the result the appeal is partly allowed as indicated above.