

Pratap Behera Vs. State of Orissa

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Court : Orissa

Decided On : Apr-05-2002

Reported in : 93(2002)CLT813; [2005(104)FLR179]; 2002(II)OLR74

Judge : B. Panigrahi and ;P.K. Misra, JJ.

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

Appeal No. : Jail Criminal Appeal No. 95 of 1995

Appellant : Pratap Behera

Respondent : State of Orissa

Advocate for Def. : G.K. Mohanty, Addl. Govt. Adv.

Advocate for Pet/Ap. : P. Misra, Adv.

Disposition : Appeal partly allowed

Judgement :

B. Panigrahi, J.

1. This appeal challenges the legality, validity and propriety of the order of conviction of the appellant under Section 302 of the Indian Penal Code (in short, 'IPC') and sentence of imprisonment for life passed by the learned Additional Sessions Judge, Bhubaneswar, in Sessions Trial No. 4/97 of 1994. Additional

Sessions Judge, Bhubaneswar.

2. The factual matrix leading to this appeal is as follows :

P.W. 1, Gouranga Behera who was the brother-in-law of the deceased Kandhia alias Gandharb Nayak, lodged a report at Sahidnagar Police Station stating that his brother-in-law Kandhia @ Gandharb Nayak was staying with his family at Shantipali. He was earning his livelihood as a rickshaw puller and sometimes by playing monkey. On 2.9.1993 at about 4.00 P.M. the appellant Pratap passed some unsavory comments against Kanchan, the wife of the informant, to which she protested, whereupon the appellant is said to have threatened to assault her. There was some quarrel on the following day, i.e., 3.9.1993, at about 5.00 P.M. The appellant Pratap came armed with a knife and picked up quarrel with Dhruba Guni, another brother-in-law of the deceased. At this juncture, the deceased Kandhia @ Gandharb Nayak intervened and challenged the high-handed action of the appellant. So, he became annoyed and at the spur of the moment plunged a knife blow in the left side chest of Kandhia @ Gandharb Nayak causing severe bleeding injury. No sooner did Gandharb fall down on the ground with bleeding injury than the appellant fled away with the knife from the scene of occurrence. It is said that Gandharb succumbed to the injury and died instantaneously. On the basis of the FIR, investigation started, in course of which the Sub-Inspector of Police examined the informant, visited the spot and examined witnesses. Inquest was held on the dead body of the deceased Kandhia @ Gandharb Nayak and it was sent for post - mortem examination. The knife stained with blood was seized from the possession of the appellant, who was arrested and forwarded to jail custody. The knife and the wearing apparels of the deceased as also the appellant were sent for chemical examination and serological test. After completion of investigation, charge-sheet was placed against the sole accused.

3. The appellant took the plea of innocence and claimed to have been falsely implicated in this case.

4. In order to substantiate the charge against the appellant, the prosecution examined 10 witnesses, out of whom P.W. 1 was the informant, P.W. 2 Dhruba Guni, the brother-in-law of the deceased, P.W. 4, the sister of the deceased, P.W.

5 the widow of the deceased, P.W. 6 an eye-witness to the occurrence, also a witness to the seizure, P.Ws. 7, 8 were the witnesses to the occurrence, P.W. 9 the I.O. and P.W. 10 the doctor who conducted post - mortem examination over the dead body of Gandharb. The trial Court after careful consideration of the evidence on record, convicted the appellant under Section 302 IPC and sentenced him to undergo R.I. for life. That is why, the present appeal has been filed in this Court.

5. Let us first examine whether the death of the deceased was homicidal. In this connection, P.W. 10, the doctor who conducted post - mortem examination over the dead body, has opined that the deceased suffered a homicidal death, which was due to shock and haemorrhage arising out of the injuries to the vital organs like heart and lungs. The injuries were ante - mortem and sufficient in ordinary course to cause death. From his evidence, it further transpires that the injuries on the deceased can be possible by a pointed weapon like knife. Therefore, there can be no room for doubt that the deceased met a homicidal death.

6. It is to be next considered as to how far the prosecution was able to substantiate the charge of causing death to the deceased Gandharb by the appellant. It is no doubt true that P.W. 1 had turned hostile and did not support the prosecution story. But, his evidence so far as lodging of the F.I.R. at the police station is concerned cannot be ignored. Immediately after the occurrence, he lodged the F.I.R. and set the criminal law into motion. P.W. 2 was the brother-in-law, who supported the version of the prosecution and claimed to be an eye witness. From his evidence, it is established that the appellant inflicted a knife blow on the left side chest of the deceased, as a result of which he collapsed immediately. P.W. 3's evidence does not support the prosecution since he resiled from his previous statement. P.Ws. 4 and 5 were also present at the scene of occurrence, who corroborated the statement of P.W. 2, P.Ws. 6, 7 and 8 similarly have also testified to have seen the appellant inflicting the knife blow on the left side of the chest of the deceased. Therefore, all the eye witnesses consistently stated that the appellant plunged the knife on the left side chest of the deceased. It is further transpired from their evidence that after causing such injury, the appellant left the spot with the weapon of offence. From the evidence of P.W. 9, it

has been established that the appellant was nabbed at Cuttack Railway Station and he disclosed the fact of concealing the knife which was allegedly used as the weapon of offence for causing the death of Gandharb.

7. The wearing apparels of the deceased and also the accused were seized and all the incriminating materials were sent for chemical examination and serological test. The Serologist's report confirmed that the wearing apparels of the appellant and the knife as well contained human blood of 'O' group which tallied with the blood group of the deceased. Therefore, these incriminating circumstances establish that it was the appellant alone who had caused the murderous blow on the left side chest of the deceased as a reason whereof he immediately sank down.

8. Mrs. P. Mishra, the State Defence Counsel has submitted that the evidence of the eye-witnesses does not inspire belief in as much as they are all related to the deceased and it is quite natural that they would support the prosecution case. We are unable to accept this submission in as much as other ocular statements are there to support the prosecution case. The incident had taken place just near the house of the deceased. P.W. 5, the wife of the deceased was in her house. She was a natural witness to the occurrence. Her statement also received corroboration from the ocular testimony of other witnesses like P.W. 2 and also from the post - mortem report. In the inquest report, the name of the appellant had been mentioned as the assailant of Kandhia. Therefore, the cumulative effect of all the circumstances shall unerringly and conclusively lead to the culpability of the appellant.

9. A contention has been raised that the accused in the fits of anger being provoked by the words used by the deceased inflicted the single blow which resulted in the death of Kandhia. We find that immediately preceding the incident, there was an altercation between the appellant and Dhruba Guni (P.W. 2), the brother-in-law of the deceased. At that time, the appellant was armed with knife. There was no reason for the deceased to challenge the action of the appellant who was holding a weapon in his hand. The words used by the deceased must have agitated the appellant, who got infuriated and inflicted the single blow on the

left side chest of the deceased resulting in his death. Admittedly there was no premeditation or pre-plan to cause his death. The entire incident arose on sudden impulse. In this background, we are unable to agree with the conclusion of the trial Court that the appellant is guilty under Section 302 IPC for causing intentional death of Gandharb. In our considered opinion, the offence committed by the appellant is culpable homicide not amounting to murder, punishable under Section 304, Part-11, IPC. To take this view, we are buttressed by an earlier decision of this Court in Bana Bhuyan Sabar v. State, 1988(1) OLR 156, the facts of which quite fit in with those of the present case. That apart, looking to the social background of the deceased, the accused and the witnesses examined on behalf of the prosecution, we find that they all belong to labour class who on trivial ground get agitated and commit crime. In this background, when there was no intention of the appellant to cause the death of Gandharb and he inflicted the single blow on the spur of the moment, we hold him guilty for committing the offence punishable under Section 304, Part-II, IPC.

10. As regards sentence, it is found that the appellant has suffered imprisonment for more than 8 years. In order to meet the ends of justice, we sentence him to the period of imprisonment already undergone.

11. In the result, the appeal is allowed in part. The conviction of the appellant under Section 302, IPC is altered to that under Section 304, Part-II, IPC and he is sentenced to undergo imprisonment already suffered by him. He be released from jail custody and set at liberty forthwith, if his detention is not required in connection with any other case.

Ch. P.K. Misra, J.

12. I agree.