

Harihar Dehury Vs. the State

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Court : Orissa

Decided On : Mar-30-1984

Reported in : 1984(I)OLR417

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 86, 300 and 302

Appeal No. : Jail Criminal Appeal No. 24 of 1981

Appellant : Harihar Dehury

Respondent : The State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : D. Nayak, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Mohanti, J.

1. The appellant has been convicted under Section 302. I. P. C. sentenced to undergo imprisonment for life for having intentionally caused the death of one Balaram Giri of village Vejidihi under Kanjipani Police Station in the district of Keonjhar. The incident took place on 26.12.1979 around 8 P.M.

2. The prosecution case runs thus:

On the date of Occurrence the villagers including the deceased and the appellant held a feast and drank Handia (country liquor) near a canal locally known as 'PACHARI NALA' and returned home in the evening. There was some Handia left and on return to the village it was taken in the house of the appellant, but the deceased did not take part in it. At about 8 P.M. the appellant came to the house of the deceased armed, with a Bhalla shouting to kill him. At that time the deceased was present on the village path in front of his house. P. W. 2 Purnami Dei who is the elder brother's wife of the deceased heard the shouts of the appellant and tried to take the deceased to his house, but the appellant rushed towards them moving his Bhalla and dealt three successive blows on the head. Left side of the face and the left scapular region of the deceased. P. W. 3 Tangiti Bewa, the wife of the deceased came to the spot and intervened while the appellant and the deceased were struggling over the Bhalla. The Bhalla struck her body and caused injuries. The appellant left the spot after the Bhalla was taken away from him by the deceased. The deceased was carried to his house where he became senseless. He could not be taken to the hospital on 27.12.1976, as none came forward to help P. W. 3 on 28. 12. 79, the deceased was carried to the headquarters hospital at Keonjhar where he was treated as an indoor patient. He succumbed to the injuries at 4 P.M. on the same day.

F. I. R. was lodged by P. W. 1 Benudhar Giri, an agnatic nephew of the deceased at Kanjipani Police Station on 28. 12. 1979 at 2 P.M. implicating the appellant as the assailant of the deceased. The Officer-in-charge of the Police Station registered a case under Section 324 I. P. C. and proceeded to the spot at 3 P.M, after deputing the A. S. I to the headquarters hospital at Keonjhar. On 29. 12. 79, he got information that the deceased had died in the hospital. Then he registered a case under Section 302. I. P. C. In course of investigation, he examined the witnesses and arrested the appellant on 30. 12. 79. After usual investigation, he submitted charge-sheet against the appellant under Section 302, I. P. C.

3. During the trial, the appellant abjured his guilt and alleged that this case was foisted against him out of land dispute.

4. The trial, court found the prosecution evidence reliable and convicted and sentenced the appellant as aforesaid. The order of conviction is based mainly on the ocular evidence of P. W. 2, the circumstantial evidence of P. W. 3 and the retracted extra judicial confession of the appellant before P. Ws. 4 and 5.

5. Mr. Nayak, the learned counsel appearing for the appellant assailed the conviction on the ground that the evidence adduced by the prosecution is not reliable and argued that even accepting the prosecution case in its face value the case against the appellant falls under Section 304. Part II, I. P. C. and not under Section 302, I. P. C.

6. The medical evidence fully establishes that the deceased met with homicidal death. The doctor (P. W. 8.) who performed the post-mortem examination over the dead body of the deceased on 29.12.79 found injuries on the left side of the face, on the occipital region and over the scapular region and opined that the injuries were ante-mortem in nature and could be caused by a sharp cutting weapon like Bhalla (M.O.I). On internal examination of the injuries on the left side of the face, he found that the muscles, small vessels, parotid gland and parotid duct were cut. The surrounding tissues were congested and oedematous. Internal examination of the injury on the left occipital region revealed of depressed fracture of the occipital bone. The fractured fragment perforated the sigmoid sinus(Venous) and membranes covering the posterior part of brain. There was haemorrhage due to rupture of sigmoid sinus and small area of brain was lacerated. In the doctor's opinion, the injuries on the left side of the face and the occipital region were grievous and the injury on the scapular region was simple. The injury on the occipital region was simple. The injury on the occipital region proved fatal and was sufficient in the ordinary course of nature to cause death. In cross-examination the doctor stated that even if medical aid had been given immediately after infliction of the injuries there was no possibility of survival as the sigmoid sinus and a portion of the brain had been lacerated.

7. Now the question for consideration is whether the appellant-was the author of the injuries and if so what offence was committed by him. The sole eye witness to the incident is P. W. 2 Purnami Dei. She is the brother's wife of the deceased. Her

house is at a distance of about 25 cubits from the place of assault. She stated to have heard the appellant shouting to kill the deceased. She came out of the house and tried to take the deceased to his house, but the appellant rushed towards them brandishing the Bhalla, She stated to have seen the appellant dealing three successive blows on the head, left side of the face and the left side of the back of the deceased. She also stated that while the deceased and the appellant were struggling Over the Bhalla, the wife of the deceased came and intervened and the Bhalla struck her body and caused injuries. She indentified the Bhalla (M. O. I.) as the Weapon with which the appellant assaulted the deceased. In cross examination, she dented the suggestion that she had not disclosed before the Investigating Officer that she had seen the appellant dealing three blows with the Bhalla which hit the left cheek, head and back of the deceased. The 'Investigating Police Officer (P. W. 12) however stated during his cross-examination that P. W. 2 had not disclosed before him that the had seen the appellant giving three blows with a Bhalia which hit the left cheek, head and back of the deceased. The learned counsel for the appellant contended that P. W. 2 having omitted to disclose before the Investigating Officer that she had seen the assault by the appellant, her evidence in Court cannot be relied upon. We have carefully gone through the statements of P. W 2 recorded under Section 161 and 164 Cr. P. C. We find that she had consistently stated before the Investigating Officer and the Magistrate that she had seen the appellant giving three blows with a Bhalla on the left cheek, head and back of the deceased. Apparently the Investigating Officer P. W. 12 made a wrong statement without referring to the case-diary. When a police Officer is asked in cross-examination by the defence counsel whether a witness made a particular statement before him, he should refer to his case diary and peruse the statement of the witness recorded by him before giving any answer. It is also desirable that the Judge should also refer to the case-diary to find out whether the particular statement was made by the witness before the Investigating Officer.

We have given our thoughtful consideration to the evidence of P. W. 2. She unfolded the prosecution story in detail. She withstood the test of cross examination and emerged out with credit. The substratum of her evidence has throughout been consistent. We do not see any reason to discard her testimony.

8. P. W. 3 Tangiri Bewa is the widow of the deceased. She stated that after night meal her husband went out and heard a cry 'OH! FATHER I AM DYING', I AM BEING FINISHED.' Then she came out of the house and found the appellant and the deceased struggling over the Bhalla on the village path about 100 cubits away from her house. When she intervened the Bhalla struck off her left shoulder joint causing an injury. Then she saw the appellant leaving the place of assault. She further stated that her husband gave the Bhalla to her after taking it away from the hand of the appellant and she marked some stains of blood on it. It was contended before the trial court that due to darkness she could not have recognised the appellant. The trial court repelled the contention on cogent grounds. P. W. 3 had sustained injuries on her person as a result of the Bhalla hitting her body. The doctor P. W. 9 found injuries on her person. Presence of injuries on her person certifies her presence at the spot. In our opinion, the evidence of P. W.3 lends ample corroboration to the statement of P. W. 2.

9. P. W. 4 is a respectable person of the locality being a Ward Member of the village. P. W. 5 is a co-villager of the appellant and the deceased. Both the witnesses testified that the appellant confessed before them that he had inflicted injuries on the deceased with a Bhalla and further told them that if the deceased would survive the matter would be compromised. Nothing substantial has been brought out in their cross-examination so as to cast any doubt on their veracity.

10. On a careful consideration of the evidence of the above witnesses, we agree with the finding of the trial court that none else but the appellant caused the injuries on the deceased which resulted in his death.

11. The next "submission of the learned counsel for the appellant is that having regard to the provisions of Section 86 of the Indian Penal Code and in the absence of any evidence about motive or premeditation, the offence committed by the appellant would fall under Section 304 Part II, I.P.C. and under Section 302 I. P. C.

12. Section 86 of the Indian Penal code reads as follows:-

'86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be

liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.'

A leading authority on the application of this section is *Basdev v. State of Pepsu*: A. I. R. 1956 S. C. 411. Their Lordships quoted various decisions of the English courts and particularly the House of Lord's decision in *Director of Public Prosecutions v. Board*: 1920 A. C. 479 and laid down as follows:

'So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being If so, it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.'

13. In the present case, there is nothing on record on the basis of which it can be held that the appellant was so much under the influence of drink that he was beside his mind altogether at the time of occurrence so that he was incapacitated to form the requisite intention. P. W. 2 Purnami Dei stated that all the villagers including her husband and the deceased were fully drunk. Her evidence, however shows that the appellant being armed with a deadly weapon came to the spot shouting to kill the deceased and that when she was taking the deceased from the village path the appellant rushed towards them brandishing the Bhalla and dealt three successive blows on the deceased. It also appears from her evidence that the appellant struggled with the deceased over the Bhalla and after it was snatched away from his hand he took to his heels. All these facts, in our opinion go to show that the appellant was not so heavily drunk that he was incapable of forming the requisite intent which could bring his act within the ambit of Section 300, Indian Penal Code. The evidence of P. W. 2 clearly shows that the appellant dealt the blows on the vital part of the body of the deceased with a deadly weapon and according to the medical evidence the injuries were sufficient in the ordinary

course of nature to cause death. There is nothing to show that the appellant was unable to walk independently or to talk coherently. In our opinion, he knew the nature of the act which he was performing. The mere fact of intoxication of the appellant does not rebut the presumption that a man intends the natural consequences of his act. We accordingly hold that the charge under Section 302 I. P. C., was fully brought home to the appellant and there is no force in the contention of the learned counsel for the appellant.

14. In the result, the appeal is dismissed, the conviction and the sentence being confirmed.

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