Damu Santa Vs. the State

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Court : Orissa

Decided On : Sep-30-1981

Reported in : 53(1982)CLT470; 1982CriLJ1160

Judge : P.K. Mohanti and; B.K. Behera, JJ.

Appellant : Damu Santa

Respondent : The State

Judgement :

P.K. Mohanti, J.

1. The appellant along with four others stood charged Under Section 147, IPC for having formed themselves into unlawful assembly with the common object of causing the death of one Laxman Santa of village Katranguda under Tentulikhunti police Station in the district of Koraput and also under Sec 302 read with Section 149, IPC for having caused his death in prosecution of their common object. The appellant was separately charged Under Section 302, IPC After trial, the appellant was convicted Under Section 302, IPC and sentenced to undergo imprisonment for life and the other accused persons were acquitted of the charges framed against them.

2. Prosecution case wars that on 8-3-1978 morning P.W. 4 Dhana Santa and P.W. 5 Kamulu Santa who were the maternal uncles of the deceased went to his house

to see his ailing son. At about noon, the deceased accompanied by P. Ws, 4, 5 and his brother Suna Santa (P.W. 1) went t0 the bank of the river Murana for taking both. On the other side of the river some Sundhis were illicitly distilling liquor. At the request of the deceased, the party wentf to the other side of the river for taking liquor. The deceased purchased two bottles of liquor and partook of the same with his companions. The appellant Damu Santa was also taking liquor at that place in the company of other accused persons. When he saw the deceased and his companions taking liquor, he asked the deceased to give him some liquor. The deceased said that he could not give any liquor as he had no money. Then the appellant tauntingly remarked that the deceased might go with him and take any quantity of liquor he liked to consume. There was exchange of some hot words between the two. Then the appellant left the place with his companions. The deceased after taking liquor proceeded towards the other side of the river. He was followed by his brother P.W. 1 and his maternal uncles p. Ws. 4 and 5. As soon as the deceased reached the sandy bed of the river after crossing the stream the appellant and the other accused persons suddenly appeared there and attacked the deceased. The appellant dealt a blow on the head of the deceased bv means of a piece of split-wood as a resuit of which he fell down. The other accused persons gave him kicks and fist blows. Then all the accused persons ran away and a little later the deceased died at the spot.

F. I. R. was lodged by P.W. 1 on the same day at about 8. p. m. at Tentulikhunti police station which is 20 kilometres away from the spot. After due investigation, the police submitted charge-sheet against the appellant and the other accused persons as aforesaid.

3. At the trial, the appellant and the other accused persons denied the charges and pleaded innocence.

4. In order to establish the charges, prosecution examined eleven witnesses of whom P. Ws. 1, 4 and 5 were said to be eye-witnesses to the occurrence. The accused persons examined two defence witnesses. On a consideration of the evidence adduced by both the parties, the learned Sessions Judge held the appellant guilty and inflicted the sentence as indicated above.

5. Mr. H. B. Swain, the learned Counsel appearing on behalf of the appellant contended that no reliance should be placed on the evidence of P. Ws, 1, 4 and 5 as they are interested witnesses being relations of the deceased and that their evidence having not been acted upon so far as the accused persons who have been acquitted are concerned, it could not be relied upon so far as the appellant is concerned. It was also contended that the evidence of P. Ws. 1, 4 and 5 is highly unreliable as they made contradictory statements regarding the number of blows alleged to have been inflicted by the appellant on the deceased.

6. There can be no doubt that the deceased died a homicidal death. Dr. Sachinandan Bose (P.W. 2) who conducted autopsy over the dead body of the deceased on 10-3-78 found the following external injuries:

(1) A lacerated wound I' x A' on the right side of the head 2' above the right ear.

(2) A bruise on the right elbow.

Internal examination revealed a depressed fracture measuring I' x 4' on the right parietal bone and a subdural extensive haematoma on the left side extending throughout the left side phere. In the doctor's opinion the injuries were ante-mortem in nature and might have been caused with a piece of wood like M. O. II, In his opinion, the death was due to shock and haemorrhage as a result of the injury to the brain. According to him the lacerated wound with the corresponding internal injuries were sufficient in the ordinary course of nature to cause death. Considering the doctor's evidence along with direct evidence of the eye-witnesses, we hold that the death of the deceased was homicidal.

7. The order of conviction is based mainly on the direct evidence of the eye-witnesses P. Ws. 1, 4 and 5 and some circumstantial evidence about recovery of a towel (M. O. I) belonging to the appellant from the spot. p. Ws. 1, 4 and 5 substantially supported the prosecution case as narrated above. P.W. 1 categorically stated that as soon as the deceased reached the sandy bed of the river after crossing the stream of water, the appellant came running with his companions and suddenly dealt a blow on the head of the deceased with a piece of split-wood, as a result of which he fell down and thereafter the other accused

persons dealt kicks and fist blows on him. He claimed to have witnessed the occurrence of assault from close quarters. According to him, the deceased was assaulted when he was five cubits ahead of him. His evidence shows that the deceased died at the spot soon after the assault and he reported the matter to P.W. 6 Makar Pradhan who is a member of the local Grama Panchayat. P.W. 6 testified that P.W. 1 went to him at about 1 p. m, on the date of incident and narrated the occurrence implicating the appellant as the assailant of the deceased. He went to the spot along with P.W. 1 and found that the deceased was lying dead with bleeding injury on his head on the sandy bed of the river and p. Ws. 4 and 5 were keeping watch over the dead body. Then he went with P, W, 1 to the police station where F. I. R. was lodged by the latter. In the F. I. R. P.W. 1 has specifically stated that the appellant dealt a blow on the head of the deceased with a piece of split-wood. It was suggested to him in cross-examination that there was previous enmity between the deceased and the father of the appellant, but he denied the suggestion and stated that it was for the first time on the date of occurrence that there was a quarrel between the ap~ pellant and the deceased. He identified M. O. II as the weapon of offence.

8. P. Ws. 4 and 5 are residents of a different locality and there is absolutely no evidence to show that they bore any ill-will towards the appellant. Rather it appears from their evidence that they are cousins of the appellant's father. They claimed to have seen the assault while they were about to cross the stream of water. They stated that when the deceased and P.W. 1 reached the sandy bed of the river the appellant rushed towards the deceased and dealt two blows with a piece of split-wood on the right side of his head as a result of which he fell down at .the spot and thereafter the other accused persons dealt fist blows and kicks on him. Their presence at the spot immediately after the occurrence is deposed to by P.W. 6 who is an independent and disinterested witness. In the F. I. R. they were named as eye-witness to the occurrence of assault. There is nothing inherently improbable in their evidence.

9. It is in the evidence of p. Ws. 1, 4 and 5 that the appellant had left his towel M. O. I at the spot while running away after committing assault. They have identified the towel as the one which the appellant was wearing on his head on the date of

occurrence. The towel was lying near the dead body when it was seized by the police in presence of P.W. 6. The appellant denied ownership of the towel. We see no reason to disbelieve the evidence of P. Ws. 1. 4 and 5 that the appellant left it at the spot while running away after the assault.

10. The evidence of P. Ws. 1, 4 and 5 cannot be discarded merely on the ground of their relationship with the deceased, p. Ws. 4 and 5 are also related to the appellant and there is no apparent reason why they would be disposed to implicate him falsely in a serious crime. Their evidence on the material aspects of the case is clear and convincing. They corroborate each other mutually and substantially. The fact that a part of their evidence regarding participation of the other accused persons has been disbelieved is no ground to reject their entire evidence. Much capital is sought to be made of the discrepancies in their evidence about the number of injuries. According to P.W. 1, the appellant inflicted a single blow while according to P. Ws. 4 and 5 two blows were inflicted. Every witness on the scene of occurrence cannot give an identical account of what happened and variations are bound to exist especially with the lapse of time when the evidence was given after a long period after the date of occurrence. As indicated earlier, P.W. 1 witnessed the occurrence from close quarters, but P. Ws. 4 and 5 were at some distance. At any rate, the evidence of the witnesses does not in any sense make the prosecution version improbable. The medical evidence substantially corroborates the evidence of the eye-witnesses and the F. I. R. which was lodged a few hours after the occurrence is of considerable corroborative value, p. Ws. 1, 4 and 5 cannot be regarded as interested witnesses merely on account of their relationship with the deceased. The term 'interested'1 postulates that the person concerned must have some direct interest in seeing that the accused is some how or other convicted either because he had some grudge against the accused or for some other reason. In our opinion, it is proved beyond any shadow of doubt that it was in the manner spoken to by P. Ws. 1, 4 and 5 that the occurrence took place. The evidence of D. Ws. 1 and 2 does not rebut the direct evidence of the eye-witnesses.

11. Now the question arises what of once in law has the appellant committed. The learned Additional Government Advocate contended that the offence clearly

comes within the ambit of Clause 'Thirdly' of Section 300, I.P.C. The learned Counsel for the appellant on the other hand contended that the appellant having inflicted a solitary blow he cannot be attributed with the knowledge that the injury was likely to cause death. According to him, the offence committed by the appellant amounted to culpable homicide not amounting to murder punishable Under Section 304, Part II. IPC In our opinion, merely because the appellant dealt at single blow would not mitigate the offence and make him guilty of the offence of culpable homicide not amounting to murder punishable Under Section 304, Part II, IPC If a man deliberately deals a blow on the head with a heavy weapon so as to cause fracture of skull-bones he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The intention must be gathered from the kind of weapon used, the part of the body on which the blow was dealt, the amount of force applied and the circumstances attendant upon the death. Under Clause 'Thirdly' of Section 300. I.P.C., culpable homicide is murder if the following conditions are satisfied, (a) that the act which causes death is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In : 1958 CriLJ818 Virsa Singh v. State of Punjab their Lordships clarified the legal position as to the applicability of Section 300 'Thirdly'. In the present case, the normal inference is that the appellant intended to strike the deceased on the head. The head injury as found by the doctor is itself sufficient in the ordinary course of nature to cause death. No evidence or explanation was given as to why the appellant struck the head of the deceased with a heavy weapon. There is nothing to show that the injury was caused accidentally or negligently. The mere fact that the appellant was drinking liquor before the occurrence took place does not minimise the nature of the offence particularly in view of the evidence that he ran to the other side of the river to fetch a piece of split-wood and gave a severe blow with it to the deceased. In the absence of any evidence or reasonable explanation that the appellant did not intend to cause the injury or to indicate that his act was a regrettable accident and that he intended otherwise, it would not be possible to hold that he did not intend to inflict the injury. He appears to have dealt the blow on a vital part of the body with a heavy weapon with sufficient force causing

fracture of skull bone. We are, therefore, satisfied that the case directly comes under Clause 'Thirdly' of Section 300. I.P.C.

12. The appeal fails and is dismissed.

Behera, J.

13. I agree.