

Jamu Majhi Vs. the State

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Court : Orissa

Decided On : Nov-24-1988

Reported in : 68(1989)CLT58; 1989CriLJ753

Judge : R.C. Patnaik and ;S.C. Mohapatra, JJ.

Appellant : Jamu Majhi

Respondent : The State

Judgement :

R.C. Patnaik, J.

1. Having been convicted under Section 302 of the Penal Code for having intentionally killed his agnetic uncle Guti Majhi and sentenced to undergo R.I. for life, the appellant has moved this Court in appeal.

2. The appellant had mortgaged his land to Guti for four years. After lapse of three years, the appellant however did not allow Guti to enjoy the land but mortgaged the same with another person. Guti thereupon insisted that the appellant should either return the money or allow him to enjoy the land for one more year. On account of this there ensued frequent quarrels between them. On 7-6-1982, Guti had been to the weekly market at Sumerpadar and indulged in a drinking bout and got drunk, returning to the village he went to the house of the appellant and demanded of him to return the money or permit him to possess the land for one

more year. The appellant refused to concede either, whereupon, it is alleged, Guti abused the appellant in filthy language. This led the appellant to hit the deceased, Guti, on the head and the neck, with a stick. Guti fell down and was carried to his home by his brother, P. W. 1 and mother, P.W. 2. Panchayati was held the next morning where, it is alleged, the appellant confessed to have assaulted Guti with lathi when he was abused in filthy language. Guti was carried to the hospital but on the way he breathed his last. F.I.R. was lodged by P.W. 1 at Thuamul-Rampur police station in the district of Kalahandi. On completion of investigation, the appellant was placed on trial for commission of the murder of Guti.

3. The prosecution examined ten witnesses in all. Of them, P.Ws. 1 to 4 are the eye-witnesses. Extra-judicial confession was alleged to have been made before P.Ws. 3, 7 and 8. The others are the doctor and Investigating Officer.

4. The plea of the appellant was a total denial of the allegations.

5. Relying upon the direct testimony of the witnesses and the extra-judicial confession, the trial Judge found the appellant guilty of murder and convicted and sentenced him, as aforesaid.

6. The counsel for the appellant assailed the evidence of the witnesses on whose direct testimony as to the occurrence, conviction has been rested. It is argued that the witnesses being related were interested and, therefore, the trial Judge was wrong in basing his conviction on such interested and partisan witnesses without corroboration from independent source. The extra-judicial confession was assailed as having been made in presence of a Gramarakhi.

7. The trial Judge has with care and circumspection bearing in mind the law applicable to evidence of persons related to the deceased scrutinised the evidence. P.Ws. 1, 2 and 4 are related to the deceased as brother, mother and wife. Each of them has categorically implicated the appellant as the assailant. Reading their evidence we find no infirmity though there is discrepancy as to whether it was a moon-lit night or otherwise. It can be safely inferred having regard to the relationship between the deceased and the appellant that identification of the assailant was possible with reference to the physical features and manner of

movement of the appellant. P.Ws. 1 to 4 are the appellant's close relations also and having regard to the distance from which they observed in the star-lit night, their evidence of identification of the assailant cannot be doubted. P.Ws. 1, 2 and 4 being so closely related to Guti, their likely conduct would be to implicate the real assailant and not allow the real assailant to escape. It is well settled that interested evidence is not necessarily unreliable evidence. All that is necessary is that it should be appraised with care. Besides, there is the evidence of an independent witness, i.e., P.W. 3. He came out of his house when he heard the quarrel between Guti and the appellant. He saw the appellant dealing blows on the head of the deceased. A finding can be reached that the appellant was the assailant. There is however an extra-judicial confession made before P.Ws. 3, 7 and 8. The value to be attached to the confessional statement depends upon the outcome of the attack that the same was made in presence of the Gramarakhi, as deposed to by P.W. 1. P.Ws. 7 and 8 have, however, clarified the position. P.W. 7 has said that Sugrib Naik who was present in the Panchayat was the ex-Gramarakhi and the post of Gramarakhi was lying vacant at the time of the incident. To the same effect is the evidence of P.W. 8. We have, therefore, no hesitation in holding that the person alleged to be the Gramarakhi by P.W. 1 was the ex-Gramarakhi. Therefore, the extra-judicial confession before P.Ws. 3, 7 and 8 is not inadmissible. This aspect, however, is not of much importance having regard to the cogent and credible evidence of the eye-witnesses. P.Ws. 1 to 4. If at all, the extra-judicial confession lends assurance.

8. The next question is what offence was committed by the appellant on the facts and in the circumstances of the case. It has been argued by the counsel for the appellant that the case would be governed by either the first exception to Section 300 or the 4th. The appellant is an adivasi. Having regard to the frame of mind, temperament, the adivasis are prone to lose self-control on slightest provocation.

9. The law on this subject was succinctly laid down in the decision of the Supreme Court in Nanavati's case : AIR 1962 SC605 , where their Lordships observed:. No abstract standard of reasonableness . can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of

the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision; it is for the court to decide in each case, having regard to the relevant circumstances....

The adivasis, it has been held by a Division Bench of this Court in *Sada Singh Sabar v. State* CrI. Appeal No. 106 of 1967, decided on 7-3-1969, are a class, comparatively more volatile and more prone to lose their self-control on slightest provocation.

10. The principles laid down by the Supreme Court in *Nanavati's case* 1962 (1) Cri LJ 521 (supra) are as under:

The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control;

2. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to Section 300 of the I.P.C;

3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence; and

4. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.' (At page 630 of AIR) : (at p 546 of Cri LJ para 35).

11. In the past there used to be quarrel between the appellant and Guti. On the date of occurrence he approached the appellant drunk and abused him in filthy language. Having regard to the emotional framework of the appellant, it cannot be said that he was not subjected to grave and sudden provocation. There was no time to cool off. He reacted immediately with the stick that was in his hand. There was no preparation; there was no prior deliberation. The reaction was as sudden

as the provocation. We are, therefore, of the view that on the facts and in the circumstances, first Exception to Section 300 of the I.P.C. was attracted and the act would amount not to murder but culpable homicide not amounting to murder.

12. Even assuming that the act of the appellant did not come within the first Exception to Section 300, can it be said on the facts and in the circumstances having regard to the weapon used and the nature of the blow given and the injury caused that the act of the appellant came within the first and third exceptions of Section 300 or is the answer in the negative? When he was abused by Gutti in filthy language, the appellant reacted immediately and gave the blows on the spur. There was no time to think. It is in the prosecution evidence that some blows were given on the neck also. The doctor found three external injuries - one abrasion on the forehead, the other on the right hand and the third one caused a haematoma on the head which was the fatal injury. There was laceration of the brain and the skull was fractured But there is no positive prosecution evidence as to how many blows were given. One witness has said that two blows were given on the head. But the nature of the offence should not depend upon whether one blow or two blows were given on the spur. What is obvious is that there was no malice, no pre-meditation, no deliberation, The case would not come within the first limb of Section 300 nor in our opinion would it come within the 3rd exception. It cannot be said that the appellant intended to cause bodily injury which was sufficient in ordinary course of nature to cause the death. To bring the case within the 3rd Exception, it must be proved that each of the injuries in ordinary course of nature was sufficient to cause death, namely, the injury found to be present was the injury that was intended to be inflicted. Looking at the totality of evidence, it cannot be said that when appellant struck Gutti with the stick, he intended to cause such bodily injury as was in the ordinary course of nature sufficient to cause the death. No doubt, the stick was used with certain amount of force because there was cerebral haemorrhage and the skull was fractured. But the inference need not necessarily be that he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause the death. He could only be attributed the knowledge that it was likely to cause the death.

In Willie (William) Slaney v. State of Madhya Pradesh : 1956 CriLJ291 , in course of sudden quarrel leading to an exchange of abuses, the accused gave a solitary blow on the head with a hockey stick in the heat of the moment. The act was held to amount to culpable homicide not amounting to murder punishable under Section 304, Part II.

In Jagrup Singh v. State of Haryana : 1981 CriLJ1136 , the accused struck with a gandhala, a common agricultural implement consisting of a flat, rectangular iron strip, three sides of which are blunt, embedded in a wooden handle. It was held that death occasioned by the secondary blow on the head did not come within clause thirdly of Section 300. It was further held therein that inasmuch as the accused had assaulted with the blunt side in the heat of the moment in course of the sudden quarrel, the case was covered by Exception 4 of Section 300. We are also so inclined. The case would also be covered by Exception IV of Section 300 and the conviction of the appellant under Section 302 cannot be sustained from any angle as considered above. We therefore, set aside the conviction of the appellant under Section 302 and the sentence imposed thereunder and convict him under Section 304 Part II and sentence him to undergo rigorous imprisonment for five years.

13. In the result, the appeal is allowed in part.

S.C. Mohapatra, J.

14. I agree.

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