

Dhanei Majhi Vs. State

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Court : Orissa

Decided On : Apr-14-1988

Reported in : 1988CriLJ1566

Judge : G.B. Patnaik and; L. Rath, JJ.

Appellant : Dhanei Majhi

Respondent : State

Judgement :

L. Rath, J.

1. This is an appeal by a convict from Jail convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life. He had been prosecuted under Sections 302/323/34 LP.C. along with one Purna Majhi who has since been acquitted. A brief narration of the prosecution case is that on 27-1-1980 at 10 P.M. while P.W. 1 and her husband Bhada Majhi, the deceased, were returning to their house after consuming Handia (an intoxicant) in the house of P.W. 3, one Rangia Majhi dealt a stroke with a lathi on the back of the deceased as a result of which he fell down with his face upward. When P.W. 1 tried to intervene, Rangia also dealt two strokes on her, one on the left shoulder and the other on her buttocks. While the deceased had fallen down, the appellant stabbed a knife in his right chest causing profuse bleeding making him senseless and ran away after withdrawing the knife. The injured was removed to Udala hospital on the next day

morning at 8.15 A.M. but since his condition was serious, the doctor recorded his dying declaration on being requisitioned by the investigating officer, after which he was removed to Baripada hospital on the same day where he expired on 11-2-1980. The incident had been reported by P.W. 3 orally at the Kusalda Police Out Post at 2.30 P.M. on 28-1-1980 on the basis of which a station diary entry, Ext. 11. had been made and on the same day on the oral statement of P.W. 1, the A.S.I. of Kusalda Police Out Post, P.W. 3, recorded the F.I.R., Ext. 12, and P.W. 1 put her L.T.I, thereon after the contents were read over and explained to her. The appellant was arrested on 30-1-1980. The knife, M.O.I., was recovered in pursuance of the information of the appellant from inside a paddy bundle kept in his house. On completion of investigation, charge sheet was submitted. It is stated at the Bar that Rangia Majhi, who gave the first blow to the deceased, has been absconding and hence the trial proceeded only against the two accused persons.

2. The defence plea is one of complete denial.

3. As regards the nature of injuries sustained by the deceased, the statement of P.W. 5, the doctor who first examined him at Udala hospital on 28-1-1980, is that there was one stab injury in the front chest from which air was coming out during 'inspiration' which is probably a mistake for 'inhalation'.

4. From the evidence of P.W. 10, the medical officer conducting the post-mortem examination it appears that on dissection the lung of the deceased was found to have collapsed and ruptured at one point at its anterior surface and close to the anterior border. The whole of the lung cavity in the right side was full of dark fluid blood. The injuries were ante-mortem in nature and could have been caused by sharp cutting weapon like the knife M.O.I. and were sufficient in ordinary course of nature to cause death. There is hence no doubt that the death of the deceased was homicidal.

5. The charge against the appellant has been sought to be established through the evidence of the eye-witnesses P.Ws. 1, 2 and 3, the dying declaration of the deceased and the recovery of M.O.I. at the instance of the appellant. The learned Sessions Judge has accepted such evidence of the prosecution to find the appellant guilty though the evidence of one of the eye-witnesses, P.W. 1, has

been discarded.

6. The assault on the deceased has been vividly described by both P.Ws. 1 and 2. It is the evidence of P.W. 1 that the appellant is the cousin of the deceased and so also of Rangia She states that though there was no land dispute, yet one year back some dispute had arisen over some land. Her statement has been substantially corroborated by P.W. 2 and the only inconsistency pointed out by Mr. Nayak, learned Counsel appearing for the appellant is that the witness could not have seen the first assault by Rangia on the deceased since his own statement is that he reached the spot after the deceased had already fallen down. Such a minor discrepancy would in no way detract from the otherwise consistent version of P.W. 2 and hence the assault by the appellant on the deceased stands conclusively established through the witnesses.

7. Since the homicidal act of the appellant stands proved, it is not further necessary to dilate upon the value of the dying declaration or the evidence under Section 27 of the Evidence Act both of which have been challenged by Mr. Nayak, though it must be said that apparently no infirmity is found in the evidence relating to recovery of the knife merely because the statement of P.W. 3 was that the appellant had brought out the knife from the paddy bundle whereas the investigating officer P.W. 8 had stated that he himself had brought out the knife. What is admissible in evidence is the information leading to discovery given by the appellant while in custody and about such fact there is no inconsistency in the statements.

8. Mr. Nayak has lastly urged that the appellant being guilty of having dealt only one knife-blow and there being absence of any evidence as to any premeditation or intention on his part to kill the deceased, the offence would fall only under Section 304 Part II of I.P.C. and not under Section 302 and that the sentence should be imposed accordingly. The submission is not acceptable since there is no universal rule that where death occurs with a single blow with a knife at a vital part, the conviction could only be under Section 304 Part II and not under Section 302. The legal position is rather the reverse. Ordinarily the action would warrant a conviction under Section 302 I.P.C. unless it is shown that the blow was dealt in a

sudden impulse without any pre-plan or determination which fact would rule out any intention on the part of the accused to cause the death. It is only in the latter circumstance that courts have leaned in favour of the lesser charge being applied. In the present case, the facts are rather to the contrary. There is no sudden impulse which impelled the appellant to stab the deceased. The entire act committed more certainly is a product of design since the appellant was ambushed and was first attacked by a person on account of which he had fallen down with face upward without any power of resistance and at that time the appellant stabbed him in the chest. There are no extenuating circumstances to read down the offence committed. In these circumstances, the submission of Mr. Nayak, is liable to be rejected.

9. In the result, the appeal has no merit and is dismissed.

G.B. Patnaik, J.

10. I agree.