

Brahman Dehury Vs. State

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Court : Orissa

Decided On : Apr-14-1988

Reported in : 1988CriLJ1568

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

Appellant : Brahman Dehury

Respondent : State

Advocate for Pet/Ap. : Mr. I.C. Das

Judgement :

L. Rath, J.

1. This is an appeal from jail by a convict sentenced to imprisonment for life under Section 302 IPC and to two months' R.I. under Section 323 IPC both directed to run concurrently on the charge of having killed one Panu Giri on 29-11-81 and of having injured his wife Turi Dei, P.W. 3.

2. The prosecution case is that in the evening of the day of occurrence which was a Sunday, P.Ws. 2 and 3 were sitting in the Mandaghar by the side of the fire and were warming themselves when the deceased came and sat beside them. Shortly thereafter the appellant came there and challenged the deceased as to why he had called him a thief and so saying picked up a half burnt wood (M.O.I.) from the

fire and assaulted the deceased on his head on account of which he fell down. The P.Ws. raised a hulla bringing the wife of the deceased P.W. 3 to the spot and while she was trying to lift her husband, the appellant gave a blow with M.O.I. on her head and fled away. The witnesses and the wife of the deceased also fled away. On the next day the deceased was found lying dead by P.W. 4 and other villagers and they were also informed by P.Ws. 1, 2 and 3 of his having been killed by the appellant. No information was lodged on Monday out of fear of the appellant but information was lodged in the police station on Tuesday by P.W. 1 who had gone to the police station accompanied by P.W. 2, one Ranga and the Choukidar. The police station is 77 K. Ms. away which had to be covered through jungles and hills and of which 62 K. Ms. are jeepable and 15 K. Ms. are to be covered on foot. Investigation was taken up after completion of which charge-sheet was submitted and the appellant was tried and convicted as earlier mentioned.

3. Mr. I.C. Das, learned Counsel for the appellant has taken us through the evidence in detail. P.Ws. 1 and 2 are the eye-witnesses to the occurrence and have consistently deposed to the facts stated earlier. Nothing has been brought out in cross-examination to discredit their statements. Besides the evidence of the medical officer conducting the post-mortem examination, P.W. 6 also corroborates the evidence disclosing ante-mortem lacerated injury (size - 3' x 2' x brain deep) over the right mastoid area of scalp behind the right ear through which brain matter was coming out. On dissection comminuted fracture of the right temporal bone of the skull corresponding to the external injury was found with bone pieces discovered inside the brain and brain matter was coming out through the wounds. The meninges and brain were congested. In the opinion of the doctor, the nature of the injuries were such as to cause instantaneous death and could have been caused by M.O.I. From such evidence there could be no doubt that the appellant was the author of the assault on the deceased leading to his death.

4. It does not however appear that the appellant had nourished any intention to cause the death of the deceased. It is the evidence of P.W. 1 that when the appellant had come and challenged the deceased as to why he said him to be a thief, a quarrel took place between them and the appellant picked up M.O.I, and gave a blow to the deceased. The evidence of P.W. 2 is also that one blow had

been given to the deceased. There does not appear to be any pre-meditation or intention or design on the part of the appellant to murder the deceased for which a conviction under Section 302 IPC is not called for. It has been held in a large body of cases that where death occurs due to a single assault without there being any pre-design or pre-determination as a sudden and impulsive act, the offence more properly falls under Section 304 Part II than that of Section 302 IPC, vide (1987) 1 OLR 77, State of Orissa v. Prahallad Gadnayak. Thus in the facts and circumstances of the case I would set aside the conviction of the appellant under Section 302 IPC and modify the same to one under Section 304 Part II.

5. Mr. Das for the appellant has also further assailed the conviction of the appellant under Section 323 IPC urging that since the statements of P.Ws. 1 and 2 made it impossible for them to have witnessed the assault on P.W. 3, the conviction on this count should be quashed

6. Though as a fact it appears that P.Ws. 1 and 2 both have stated in their cross-examination that immediately after Panu had fallen down they had fled away and could not say as to who came subsequently, yet there is no reason as to why the evidence of P.W. 3 itself on the fact should be disbelieved. P.W. 3, even though she might be the wife of the deceased, would yet be competent witness regarding her own assault particularly when the injuries on her have been corroborated by the evidence of P.W. 5, the medical officer who examined her and found a lacerated wound on the scalp near the vertex and the age of the injury to be within seven days of the examination. The medical report corresponds the ocular statement of P.W. 3. The conviction under Section 323 IPC is therefore not liable to be interfered with.

7. In the result, the appeal is partly allowed and the conviction of the appellant under Section 302 IPC is set aside and is converted to one under Section 304 Part II and he is sentenced to imprisonment for the period already undergone considering the fact that the appellant is in custody since 6-12-81. The sentence of imprisonment having already undergone, the appellant be set at liberty forthwith.

G.B. Patnaik, J.

8. I agree.

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