

Parsuram Dhal Vs. State

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Court : Orissa

Decided On : Apr-27-2007

Reported in : 2007(II)OLR146

Judge : A.S. Naidu, J.

Appellant : Parsuram Dhal

Respondent : State

Judgement :

A.S. Naidu, J.

1. The judgment and order dated 5th August, 1987 passed by the Sessions Judge, Balasore in S.T. No. 52 of 1987 convicting the appellant of the charge under Section 304 Part II of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for five years is assailed in this appeal.

2. Bereft of unnecessary details, the facts of the case are that there was prior dispute among the informant family and the family of the appellant over demarcation of the boundary among their adjoining homestead lands and raising offence. On 22.11.1986 morning deceased Bairagi had called P.W. 2 Bansidhar Dandapat the head of village of the parties who discussed with the family members of deceased and appellant at an open space in front of the house of the deceased and decided that by putting a rope from the point of a 'Siju' tree upto the

end of a wall, the parties might put the demarcating fence. While he was about to return from that place, at that juncture of time the appellant picked up a bamboo piece that was lying nearby and dealt a blow with that on the head of Bairagi. Bairagi having fallen down and become senseless with bleeding injuries P.W. 2 lifted him to the outer verandah of his house and a doctor was sent for. On the advice of the doctor, Bairagi was shifted to Basta P.H.C. The medical officer of that P.H.C. advised removal of Bairagi to the Balasore Headquarters Hospital, his condition being serious. At Balasore Headquarters Hospital Bairagi retained as an indoor patient for about 12/13 days and he expired on 3.12.1986. On the basis of oral FIR lodged by P.W. 1, the wife of Bairagi, at the Basta Police Station, which was reduced to writing, the criminal action was set in motion.

The defence of the appellant was a complete denial of the occurrence.

3. To substantiate its case prosecution got as many as ten witnesses examined besides exhibiting twenty documents. The widow of the deceased was examined as P.W. 1, Bansidhar Dandapat was examined as P.W. 2 and one Murali Dandapat was examined as P.W. 7 who were said to be the eye-witnesses to the occurrence. The medical Officer of the Basta P.H.C. who had given first aid to the deceased was examined as P.W. 3. The Lady Assistant Surgeon of Balasore Headquarters Hospital who had conducted post mortem on the body of Bairagi was examined as P.W. 4. P.W. 5 was the A.S.I, of Police who had held inquest over the dead body. P.W. 6 was the Radiographer who had taken X-rays of the deceased. P.W. 8 was a specialist in Radiology. P.W. 9 was the investigating officer who had taken charge of the investigation and P.W. 10 was the OIC of Basta Police Station where the FIR had been registered. After discussing the evidence in extenso, the Sessions Court came to the finding that the death in question had occurred due to fracture of skull of the deceased which had resulted intra-cranial haemorrhage and coma. The said Court also came to the conclusion that the prosecution had successfully proved its case beyond all reasonable doubts that the appellant had dealt a fatal blow on the deceased. But then, observing that there was no pre-plan or intention of the appellant to murder the deceased which aspect the prosecution had not established, the Sessions Court convicted and sentenced him as aforesaid.

4. Learned Counsel for the appellant forcefully submitted that there was no pre-meditation of the appellant to murder the deceased and that the appellant had dealt with only one blow on the deceased at the spur of moment and though the injury caused on deceased was not that grievous, because of delay and lack of proper treatment he succumbed. He argued that it is a case where the appellant may be acquitted of the charge as prosecution had totally failed to prove any mens rea.

5. The submission of the learned Counsel for the appellant are strongly repudiated by the learned Counsel for the State. He submitted that there were three eye-witnesses to the occurrence. The medical evidence also clearly established that the deceased died due to assault given on him by the appellant. Learned Counsel for the State further submitted that there was dispute about boundary between the land of the family of the deceased and that of the appellant for quite some time past and the appellant who was in fact waiting for an opportunity dealt a fatal blow on the deceased and he succumbed to the injuries caused by that. He stated that it is a fit case where the finding of the Sessions Court may not be interfered with.

6. I have heard learned Counsel for the parties at length and perused the evidence available on record, both oral and documentary. The occurrence was of the year 1986. Twenty-one years have passed in the meanwhile. The evidence of P.Ws 1, 2, 3 and that of other witnesses clearly reveals that a dispute was pre-existing with regard to demarcation of the joint family properties. The evidence further reveals that the appellant had dealt with only one blow on the head of the deceased soon after the Bhadralog called to decide the dispute had left the place. That itself Reveals that there was no intention of the appellant to kill the deceased nor was there any mens rea.

7. Law is well settled that intention or knowledge is very much necessary to render the killing culpable homicide. The burden lies on the prosecution to establish such intention or knowledge and it can be done by proof of circumstances and the act or omission. The existence of intention is not to be inferred unless it follows as a natural and probable consequence from the act. In absence of intention or knowledge, the offence committed may be the offence of causing grievous hurt or

simple hurt as the case may be. When injuries have been followed by death and the question is what offence has been committed, it is not to be concluded by any backward reasoning as to the presumable intention or knowledge from the mere fact that the injury caused did, in fact, result in death. What has to be seen is what degree of injury the accused actually intended or what he knew as to the probable consequence of such injury See Lokanath Behera v. State, reported in 1984 Cri. LJ 833.

8. In the case at hand, as would be apparent from the evidence of the eye-witnesses, long standing dispute with regard to demarcation of boundary and raising of fence was pre-existing between the families of the deceased and the appellant. On the date of occurrence a Bhadralog was called to decide the same. Evidence is there to reveal that earlier also the matter was earlier referred to Panchayati of the village and a survey-knowing Amin was deployed to measure the lands of the parties. But then for reasons best known, the deceased did not agree and called further meeting of the Panchayati. P.W. 2 who was one of the members of the Panchayati being called to house of the parties on the date of occurrence, had taken a decision without any actual measurement of the lands. That was the reason to enrage the appellant and deal a blow picking up a bamboo piece that was lying nearby. The appellant dealt the blow at the spur of moment. Had there been any intention of the appellant to kill the deceased, nothing prevented him from giving successive blows. The blow was dealt all of a sudden and in a fit of anger.

9. That apart, as would be evident from the evidence, the deceased remained as an indoor patient in hospital for a period of about 12/13 days when he died which fact also proves that the injury on the deceased was not that grievous to cause instantaneous death. This Court therefore feels that it is a fit case where the appellant may be convicted of the charge for having voluntarily caused hurt to the deceased punishable under Section 325 of the Indian Penal Code instead of Section 304 Part II of the said Code, and holds accordingly.

10. Now coming to the question of sentence, considering that the appellant was a young man of twenty-one years at the time of the occurrence and by way he is

more than forty years old, and further being enraged by the decision of the Bhadralog as aforesaid and in a fit of anger he had dealt with a blow on the deceased with a bamboo piece, and that he was in jail custody for more than five months in connection with this case, this Court sentences the appellant to imprisonment for the period he has already undergone in custody and to pay a fine of Rs. 5,000.00 (five thousand), in default to undergo rigorous imprisonment for a period of six months. This Court further directs that out of the fine amount, a sum of Rs. 3,000.00 (three thousand) shall be paid to P.W. 1, the widow of the deceased.

With the aforesaid modification in sentence, the Criminal Appeal is disposed of.

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