

Kartik Bag Vs. State

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Court : Orissa

Decided On : Aug-13-1984

Reported in : 58(1984)CLT477; 1984(II)OLR874

Judge : B.K. Behera and ; S.C. Mohapatra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 193 of 1979

Appellant : Kartik Bag

Respondent : State

Advocate for Def. : M.R. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : Ashok Das and S.N. Satpathy

Judgement :

B.K. Behera, J.

1. The Court of trial has held it established, by accepting the case of the prosecution, that on January 17, 1978, the appellant dealt, a lathi blow on Parameswar Bag (to be described hereinafter as the deceased') and after the latter fell down, dealt some blows by an are which he and his wife had carried to the land in their cultivating possession after the deceased went upon the land, of

the appellant and dealt a lathi blow which missed the appellant and hit the ground. For his conviction under Section 302 of the Indian Penal Code (for short, the 'Code'), the appellant has been sentenced to undergo imprisonment for life.

2. The medical evidence would undoubtedly show that the death of deceased was homicidal in nature- The evidence led by the prosecution that the appellant had caused injuries on the person of the deceased which had resulted in his death has not been challenged before us by Mr. Das appearing for the appellant. It had been submitted by him that what had been done by the appellant was the result of grave and sudden provocation offered by the deceased himself who first attacked the appellant and the latter, on the spur of the moment without any premeditation, dealt some blows which resulted in the death of the deceased. It has also been brought to our notice that the medical evidence does not conclusively establish that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. It has, therefore, been submitted that the appellant may be convicted under Section 304, Part I of the Code and the period of imprisonment already undergone by him would be sufficient in the circumstances of the case. Mr. M. R. Mohanty, the learned Additional Standing Counsel, has supported the order of conviction as legal and sustainable.

3. As can be seen from the medical evidence, some injuries were scalp-deep and some were bone-deep; On dissection, the doctor (P. W. 8) had noticed fractures of the maxilla on both the sides and of the mandible on its right. No internal injury had been noticed on any vital internal organ, such as, the brain. The doctor has not categorically testified that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. On the other hand, he has opined that all these injuries collectively can cause death in ordinary course of nature. Some injuries, as can be seen from the medical evidence, had been caused by the blunt side of the axe, regard being had to the medical evidence and the manner and circumstances in which the appellant had assaulted and killed the deceased, after all attack by the deceased and without any premeditation, it would not be legal and appropriate in our view to bring the case within any of the clauses of Section 300 of the Code defining murder. Accepting the contention raised on behalf of the appellant, we would hold that the appellant

had committed culpable homicide not amounting to murder punishable under Section 304, Part I of the Code.

4. It admits of no doubt that the appellant was in cultivating possession of the land whereupon the deceased went being armed and shouting that he would kill the appellant, dealt a blow which missed the appellant and hit the ground. Thus the deceased was the aggressor and the appellant would normally and naturally be greatly provoked by such action on the part of the deceased who had offered the provocation. In order that Exception I to Section 300 of the Code would apply, the provocation must be grave and sudden. The test for 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. Words and expressions 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, (See AIR 1962 Supreme Court 605-K. *M. Nantavati v. State of Maharashtra*). The appellant, as has been submitted at the Bat, belongs to a backward class. The deceased gave out that he would kill the appellant and then dealt a blow by a lathi which missed the appellant's person. It was then that on the spur of the moment and evidently being enraged and whilst deprived of the power of self-control owing to sudden and grave provocation caused by the words and act of the deceased, the appellant dealt some blows on the deceased causing his death. We are of the view, in the circumstances of the case, that the case would come under Exception I to Section 300 of the Code. On this ground also, the order of conviction passed against the appellant under Section 302 of the Code cannot be sustained, but he is liable to be convicted under Section 304, Part I of the Code.

5. We notice that the appellant had been in custody for more than a month in the course of investigation and has been undergoing imprisonment after the order of conviction recorded on September 5, 1979. In our view, the sentence of imprisonment undergone by him would meet the ends of justice for his conviction under Section 304, Part I of the Code.

6. In the result, the appeal is allowed in part. The order of conviction recorded against the appellant under Section 302 of the I. P. G, is set aside and in lieu thereof, he is convicted under 304, Part I of the Indian Penal Code and sentenced, to undergo imprisonment for the period-already undergone by him. The appellant be set at liberty forthwith.

S.C. Mohapatra, J.

7. I agree.

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