

Balgopal Panda and ors. Vs. the State

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Court : Orissa

Decided On : Mar-13-1990

Reported in : 70(1990)CLT1; 1990CriLJ1848

Judge : K.P. Mohapatra and ;J.M. Mahapatra, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 148, 149, 302, 323 and 325

Appeal No. : Criminal Appeal No. 77 of 1988

Appellant : Balgopal Panda and ors.

Respondent : The State

Advocate for Def. : J. Mohanty, Additional Standing Counsel

Advocate for Pet/Ap. : P. Palit, Adv.

Disposition : Appeal allowed

Judgement :

K.P. Mohapatra, J.

1. In all 15 accused persons, including the appellants and injured Srikara Panda and Banarnali Panda, stood trial for having committed offences under Sections 148, 323 and 302 read with Sections 34 and 149 I.P.C. in the court of the learned Sessions Judge, Balangir. Out of them, appellant Balgopal was convicted for

offences under Sections 302 and 323, appellant Jalbudu was convicted for the offence under Section 325, and appellants Digri and Bharat were convicted for the offence under Section 323 I.P.C. While appellant Balgopal was sentenced to undergo imprisonment for life, the others were sentenced to undergo imprisonment for various terms. The rest of the accused persons were acquitted of all charges. In this appeal, the conviction and sentence of the appellants have been assailed.

2. Facts of the prosecution case are narrated in brief. There is a hill, named, Barapahad from which a natural stream, locally known as Arakha Khol flows and irrigates lands of villages Khagsakana and Kandhapali. The villagers of neighbouring village Rajapali attempted to divert the water of the stream so as to irrigate their own lands and with that end in view, two days prior to the occurrence, dug a Nala from it, as a result of which the water of the stream was diverted to the lands of village Rajapali. The villagers of Khagsakana did not tolerate it and raised a Bandha to stop flow and diversion of water through the Nala. On the date of occurrence, namely, 27-9-1984, at about 8.00 a.m., the informant (P.W. 1), the deceased (Bibachha Padhan), P.Ws. 6 and 7 and some others belonging to Khagsakana came near the stream to watch the flow of water and sat under the shade of a Guhuria tree standing beside Burda Sonepur road. About half an hour thereafter, the appellants and the other accused persons being armed with lathis came and severely assaulted P.W. 1, the deceased and P.Ws. 6 and 7. During assault, the main part was played by appellant Balgopal who severely assaulted the deceased on his head resulting in serious bleeding injuries. After assault, the appellants and the other accused persons fled away. The deceased was carried in a severely injured and unconscious condition to his own house where he breathed his last. P.W. 1 lodged FIR before the police in the village itself, after which investigation commenced. The dead body was sent for postmortem examination. Search and seizures were made. Prosecution witnesses were examined. Injured witnesses were sent for medical examination. After close of investigation, charge-sheet was submitted.

3. The defence of the appellants was total denial, of their participation in the alleged offences. On the other hand, they pleaded that P.W. 1 and the other

villagers attacked and assaulted the villagers of Rajapali by Tangis resulting in serious injuries on two of the accused, named, Srikara Panda and Shankarsan Panda. The additional plea of appellant Balgopal was alibi on the ground that he was living in village Paikabahal where he was serving as a teacher in the local M.E. School.

4. The learned Sessions Judge found only the appellants guilty of the offence's already referred to above and acquitted the rest.

5. During hearing, it was not disputed that the death of the deceased was homicidal in nature.

6. Mr. P. Palit, learned counsel appearing for the appellants, raised the following contentions:

(1) Ext. 1/1 was by no means the first report submitted to the Investigating Officer, Earlier to Ext. 1/1, a station diary entry (Ext. 16) had been made and the informant (P.W. 1) presented a written report to the Investigating Officer narrating the facts of the incident. Either of these reports was not treated as FIR and, so, there are reasonable grounds to believe that the incident as it had occurred had been suppressed, and altogether a different case in order to suit the prosecution party so as to involve a large number of villagers of Rajapali in a heinous crime was concocted and accordingly the FIR (Ext. 1/1) was framed. Therefore, the prosecution case should be viewed with grave suspicion and should altogether be discarded;

(2) The inquest report did not disclose that the deceased had at all any head injury except stains of blood. The medical officer who performed the post-mortem examination did not find any visible external injury on the head. On the other hand, after dissection, it was found that the skull had practically been smashed and the brain substance was sufficiently injured beyond repair. In that event, in normal course there ought to have been some visible external injury on the head. These facts raise grave doubts as to the truth of the occurrence as presented by the prosecution. On the other hand, there are reasonable grounds to suppose that the real story as to how death of the deceased occurred was suppressed; and

(3) Two of the accused, named, Srikar Panda and Shankarsan Panda had received serious incised wounds on their body. The prosecution witnesses denied that they had sustained such injuries. The prosecution did not explain as to how these two accused persons sustained the injuries in course of the same transaction. So, the prosecution case as presented should be viewed with suspicion.

The contentions require careful examination with reference to the evidence on record.

Point No. 1

7. P.W. 16 was the Assistant Sub-Inspector of Police of Tarva Police Station. He stated that on 27-9-1984 at about 10.05 a.m. he received a phone call from Dr. Bhairab Ch. Das and on the basis thereof made a station diary entry (Ext. 16) and then proceeded to the village of occurrence. On information of P.W. 1, he recorded FIR (Ext. 1/1) at about 1.00 p.m. Ext. 16 reads as follows:

'Received telephonic message from Dr. Bhairaba Dash of Menda that trouble is going on at village Khagsakana in between village Khagsakana and Rajapali regarding supply of water to the cultivated land. As I asked over phone. Mr. Dash to ascertain actual facts regarding trouble in a between the above noted villages but he could not be able to tell the details. Hence noted in S. D. for reference.'

This was the first information which P. W. 16, one of the Investigating Officers of the case received and in natural course it should have been registered as the first information, because even on a telephonic message a first information can be recorded so as to initiate investigation. 1969) 3 SCC 730, Sakharam v. State of Maharashtra, and 1988 (Supp) SCC 152 ; (1988 Cri LJ 936), Nanhau Ram v. State of Madhya Pradesh). But as it was a cryptic message regarding occurrence, the names of the accused nor the deceased were not disclosed and details of the occurrence were not mentioned, there was justification for not treating the station diary entry (Ext. 16) as the FIR in the case. This proposition is supported by (1984) 4 SCC 83: (1984 Cri LJ 1438), State of U.P. v. P. A. Madhu.

8. P.W: 1 was not only the informant, but also an eye witness to the occurrence. He stated in para 8 of the chief examination as follows:--

'At about midday I found the police babu in the village. I came out of the house and made over a written report to him. The police babu asked me regarding the incident. He recorded, the version of the incident told by me to him. He read over and explained the contents of that writing and admitting the same I put my, signature. But he returned the writing which was made over to him by me With, certainty I cannot say if that writing is now with me in my house.'

The aforesaid evidence is very important. The occurrence took place at about 8.00 a.m. The Investigating Officer (P.W. 16) was first to arrive at Khagsakana near about 1.00 p.m. During the intervening period, P.W. 1 had prepared a report as to the details of the occurrence. In natural course, it was expected that it contained a true and unadulterated report of the incident that had just taken place. In all fairness P.W. 16 should have accepted it as the first information and had he done so, the true incident that took place could have been known. On the other hand, he discarded the first written report and chose to record a report on his own initiative, thereby giving sufficient scope to the defence to contend that the subsequent report treated as FIR (Ext. 1/1) contained tainted and embellished facts so as to suit the prosecution.

9. The further fact that eye witnesses to the occurrence though available were not examined on the date of occurrence and were examined on the next day adds to the suspicion.

10. The learned Sessions Judge dealing with this aspect of the case took a very light view: He observed that P.W. 1 was not cross-examined as to why the written report was returned to him and whether he had narrated the gist of the incident and had signed the report. He had also no axe to grind against the accused persons so as to depose against them falsely. With regard to delay in the examination of the prosecution witnesses, he relied upon AIR 1973 SC 1409: (1973 Cri LJ 1120), Ranbir v. State of Punjab, in which it was held that the fact of delayed examination by itself is not open to objection if a satisfactory explanation has been given by the investigating agency. But such fact would be material if it is

indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. The criticism of the learned Sessions Judge does not hold water. P.W. 1 had stated something favourable to the defence and so no cross-examination on that point was called for. On the other hand, it was the duty of the prosecution to explain in what circumstances the written report submitted by P.W. 1 to P.W. 16 was not accepted as FIR, but was returned to him. In cross-examination, P.W. 17, the main Investigating Officer explained that he examined two important and injured eye witnesses (P.Ws. 6 and 7) on 2-10-1984. He did not examine any witness in the case till 28-9-1984, as he could not find time on account of his engagement in search and seizure on 27-9-1984. The aforesaid explanation is highly unsatisfactory and does not speak well of an Investigating Officer in a case of murder. He had absolutely no reason not to examine P.Ws. 6 and 7 who were eye witnesses to the occurrence and were themselves injured at the earliest opportunity. The injuries on them were not such so as to disable them to open their mouths for being examined. After all, P.W. 6 received two lacerated wounds on the scalp and P.W. 7 had three swellings on the buttock, back and right forearm, all of which were simple in nature. If these facts are considered along with return of the written report submitted by P.W. 1 to P.W. 16, at the earliest opportunity, a volume can be said against the prosecution case. The principle laid down in the case of *Ranbir v. State of Punjab* (supra) instead of supporting the prosecution case goes against it, because the defence has indicated and suggested unfair practice by the investigating agency in suppressing the true incident, but giving out a concocted story through the FIR (Ext. 1/1).

11. It was held by the Supreme Court in 1981 Gri LJ 736 : (AIR 1981 SC 1230), *Sevi v. State of Tamil Nadu*, that if the original FIR is suppressed, inference can be drawn that the prosecution case is suspicious. In AIR 1983 SC 488 : (1983 Cri LJ 826), *Patil Hari Meghji v. State of Gujarat*, however, a similar question arose. It was suggested that the original FIR was concealed, because it did not mention the names of two of the accused persons. This was found to be a speculation, and so accepting the ocular evidence, conviction was maintained. The facts of the case are, therefore, distinguishable.

12. In consideration of the aforesaid facts and evidence, we do not hesitate to hold that the true first report submitted by P.W. 1 was suppressed by the prosecution. Had it been treated as FIR and produced during trial, the story narrated in it would have been unfavourable to the prosecution. Therefore, while it was managed that it would not see the light of the day, a first information which suited the prosecution, but not revealing the true incident, was brought into being. In such circumstances, it would be reasonable to infer that the first information report (Ext. 1/1) contained a tainted, embellished and exaggerated story, but not the true one.

Point No. 2

13. P.W. 3, the medical officer of Headquarters Hospital of Balangir, conducted the post-mortem examination of the dead body of the deceased on 28-9-1984 and found only the following external injuries:--

- (1) There was bleeding from the left nostril of the nose;
- (2) A bruise of the size of 3 c.ms. x 1 c.m. on the right hand; and
- (3) A bruise of the size of 4 c.ms. x 2, c.ms. on the right side of the back.

Except the above he found no other injuries on any part of the body, particularly on the head. On dissection, however, he found a large number of injuries mostly on the skull and brain. They were as follows:--

- (1) There was a big haematoma of the size of 15 c.ms. x 10 c.ms. on the right side of the scalp;
- (2) There was another haematoma of the size of 15 cms. x 10 cms. on the left side of the scalp;
- (3) There was a fissured fracture of the length of 18 cms. on the left side of the skull, as a result of which it had/been fragmented into four pieces;
- (4) There was comminuted fracture of the size of 18 cms. x 5 cms. on the right side of the skull;

- (5) There was tearing of membranes with laceration of the brain substance on the right side of the skull underlying the fracture;
- (6) The right side of the membrane was found torn by broken parts of bone and the cavity of the skull was full of blood;
- (7) There was one subdural haematoma over the left side;
- (8) The right side of the brain was lacerated over the parietal and temporal areas;
- (9) Brain vessels were found torn at several places;
- (10) Left side of the brain was compressed by a big subdural haematoma; and
- (11) There was fracture of both the bones of the right lower leg.

(vide P.M. report Ext. 5.)

He opined that the injuries found on the deceased could be caused by heavy blows with blunt weapons, such as, lathi, thenga and badi, etc. The injuries on the brain were the result of the injuries to the scalp. In cross-examination, he stated that while conducting the post-mortem, he thoroughly examined the dead body to find out the injuries. There was no chance for any injury to escape his notice. There were absolutely no other external injuries except two bruises which were noticed by him and have been referred to above. He further stated in cross-examination that it is not necessary in all cases that if a heavy blow with a lathi is given on the head, there would be rupture of the scalp causing a lacerated injury. There may or may not be any external injury, even though the blow may be heavy enough to cause a big haematoma and the corresponding fracture. He could not, however, state the circumstances under which there may not be any external injury causing internal injuries on the head.

14. P.W. 16, the first Investigating Officer held inquest over the dead body of the deceased as per his report (Ext. 6/1) at about 1.30 p.m. on the date of occurrence itself. He noted against column No. 4 in the inquest report that he noticed as if there were blood stains on the head and a swelling on the cheek. He did not mention that there was any injury on the head. The inquest report thus raises an

important point, i.e., no visible external head injury was found on the dead body of the deceased. To repeat, P.W. 3 stated in para 5 of the cross-examination that a heavy blow with a lathi, such as, M.Os. I to III on the head may not necessarily cause rupture of the scalp causing lacerated injury. There may or may not be any external injury, even though the blow is heavy enough to cause a big haematoma corresponding to the fracture as in the present case. He could not, however, say the circumstances under which there may not be any external injury, if a heavy blow is given by means of a lathi on the head. In this connection, the following extracts are quoted from page 221 of Taylor's Principles and Practice of Medical Jurisprudence, 13th Edition, edited by K. Keith Mant:--

'Blunt injuries to the head --

These are the most common, serious and fatal injuries encountered in practice. The external appearances of the impact, if present, will depend upon the instrument, the point of impact, and whether the point of impact was protected by headgear or hair.

x x xIf the impact has occurred over the scalp, the hair may prevent any external laceration, although the inner layers of scalp may be found lacerated upon dissection. This absence of an external laceration is not infrequent even where severe fracture of the skull occur if the instrument is padded or has a broad striking edge.'

In Modi's Medical Jurisprudence and Toxicology, 20th Edition by N. J. Modi, at page 264, the following observation has been made:--

'Skull.-- Fractures of the skull are sometimes caused without any contusion or wound on the scalp, though there may be extravasation of blood on its undersurface as the force of violent impact may be cushioned by a pugree or abundant growth of hair on the head. The type of skull fracture that may result from violence depends on the weight and velocity of the weapon, the amount of force the type of appliance used viz. a blunt or cutting weapon, a pointed or edged object or implement, a blade or a crushing or grinding force, the area large or small to which applied and the varying thickness of the bone, on which depends its

strength.'

The evidence in this case is, appellant Balgopal gave two strokes on the head of the deceased with much force and there was profuse bleeding from the head of the deceased. The girth of the lathi was about 5' to 6'. The head of the deceased was not covered in any manner except that he had normal growth of hair. When the impact of the lathi which was not padded was considerably great and the deceased had no cover or protection on his head, in natural course, when there was profuse bleeding, there should; have been visible lacerated injuries on the head corresponding to the internal injuries found by the Medical Officer. The opinions expressed by Taylor and Modi are not of general and universal application. In cases envisaged by them, there may not have been visible external injuries on the head. But in some cases as in this particular case, there was every chance and possibility of the deceased receiving visible lacerated injuries on the head which fact appears to have been suppressed by the prosecution which has not told the real story.

15. P.W. 1, the informant and an eyewitness to the occurrence stated in para 24 of the cross-examination that appellant Bal-gopal gave two strokes on the head of the deceased with much force. He saw profuse bleeding from his head standing close to him at the spot before he himself left the place running. The girth of the lathi by which he was assaulted was about 5' to '6'. The deceased had not covered his head either with any cap, turban or any other material, and, therefore, the blood was visible on the Surface of the head. He had hair on his head of normal growth and size. The above evidence would show that on account of assault by a heavy lathi, the deceased received lacerated injuries on the head which profusely bled, although this fact has been belied by the evidence of the Medical Officer (P.W. 3), as well as the first Investigating Officer (P.W. 16) and the inquest report (Ext. 6/1).

16. The result of the aforesaid discussion is that one of the eye-witnesses who claims to be standing close to the deceased at the time of assault stated that on account of two heavy lathi blows on the head, the deceased sustained lacerated injuries which profusely bled. Another set of the prosecution witnesses, namely,

P.Ws. 3 and 16 stated that there were no visible external injuries on the head. If the deceased was wearing a turban on the head or had put some padded towel or some such material on the head or had a luxurious growth of hair of heavy density, then according to the medical opinion referred to above, there might not have been visible external injuries, although the skull could be completely shattered and the brain substance reduced to a pulp. But the case here was quite different. The deceased had hair of normal size on the head and wore nothing. If there was heavy impact of lathi, in usual course there ought to have been at least two visible and bleeding lacerated injuries on the head. But there was none. In these circumstances, it would be reasonable to believe, that the eyewitness to the occurrence did not state the truth, concealed some incident and gave an exaggerated version which is belied by the prosecution evidence itself. These facts lend support to the grave suspicion that the prosecution did not unfold the true story of the incident which the prepared report of P.W. 1 which was not accepted as F.I.R. could have revealed, In view of the peculiar facts of this particular case, there is no other way than to prefer the medical evidence and reject the ocular version. This view is supported by AIR 1983 SC 484: (1983 Cri LJ 822), Solanki Chimanbhai Ukabhai v. State of Gujarat; and (1989) 31 OJD (Cri) 14, Makarananda alias Malkham Saher v. State.

Point No. 3

17. Two of the accused Srikar Panda and Shahkarsan Panda (since acquitted) had received injuries for which there was a counter Sessions Case No. 58 of 1985 against some of the prosecution witnesses which, however, ended in acquittal. In that case, there were two injury reports on the back of the requisitions (Exts. C and D). The injury reports were, however, not marked as exhibits, presumably because the Medical Officer who examined the injured was not summoned to prove the injury reports. The injury reports, however, were prepared by a public officer in discharge of his public duties on requisitions being sent by the Investigating Officer for examination of the injured and so they can be preferred to as being public documents. It will appear therefrom that injured Srikar Panda had received the following injuries :--

- (1) One sharp cutting injury of the size of 1/4' x 2 10' x 1/ 10' on the lateral side of the right eye brow region;
- (2) One abrasion of the size of 1' x 1/2' in the anterior aspect of the right forearm;
- (3) One abrasion of the size of 2' x 1' x 2' above the right wrist;
- (4) One abrasion of the size of 2' x 1 / 3' on the lateral aspect of the right elbow;
and
- (5) One abrasion of the size of 1' x 1' in the lower aspect of the left side of the back.

Injured Shankarsan Panda was found to have the following injuries:--

One longitudinal incised wound of the size of 2' x 2/ 10' x scalp deep over the occipital prominence.

All the injuries were found to be simple in nature. P.W. 16, the first Investigating Officer stated in cross-examination that two of the accused persons, namely, Srikar Panda and Shankarsan Panda had injuries on their persons and so he issued requisitions (Exts. C and D) for their examination by the Medical Officer of Tarva Dispensary. P.W. 1 stated in cross-examination that these two accused persons had no marks of injuries on the date of occurrence. From the evidence of P.W. 16 and the injury reports, there remains little doubt that two of the accused persons named above had sustained injuries. Therefore, the following three questions arise in this connection for consideration:--

- (1) Whether the two accused persons received the injuries in course of the same occurrence;
- (2) If the prosecution was obliged to explain the injuries; and
- (3) Whether denial of the existence of the injuries on the two of the accused persons amounted to suppression of the true occurrence.

According to the decisions reported in AIR 1976 SC 2263 : (1976 Cri LJ 1736), Lakshmi Singh v. State of Bihar; AIR 1979 SC 1010 : (1979 Cri LJ 888), Jagdish v. State of Rajasthan; and AIR 1988 SC 863 : (1988 Cri LJ 925), Hare Krishna Singh v. State of Bihar, the prosecution is not obliged to explain minor and superficial injuries sustained by the accused. But it is bound to explain serious injuries. This proposition is indisputably fully applicable to the facts of the case. Therefore, it cannot be gainsaid that the prosecution was not bound to explain the dangerous injuries on the vital parts of the bodies of two of the accused persons. All the injuries sustained by the two accused persons cannot be said to be minor and superficial. At least the sharp cutting injury on the lateral side of the right eye brow region of accused Srikar Panda and the incised wound over the occipital prominence on accused Shankarsan Panda, though reported to be simple, cannot be said to be superficial. If the impact of the blows would have been heavy, they could even cause grievous injuries or even death. Non-explanation of the injuries or denial of existence of such injuries leads to other consequences. First of all, it has not been made clear by the prosecution whether the two accused persons sustained the injuries in course of the same occurrence; and second, by suppressing the injuries, an impression has been given that the true occurrence has not been unfolded. When the foremost question for consideration is the true story has not been unfolded and a concocted story has been substituted by the prosecution, consideration of these facts assumes importance and cannot be lost sight of.

18. In the ultimate analysis, in view of the infirmity in the prosecution case, we form the opinion that the true occurrence was not unfolded and may be a different version which suited the prosecution was placed before the Court and put in the mouth of the eye-witnesses to the occurrence who in that case cannot be said to have stated in Court the facts which were true and they saw. We entertain grave doubts as to the prosecution version and once the case is in the region of suspicion, the benefit will go to the appellants. It is true that a valuable life was lost and some of the persons were seriously injured. Peace amongst villagers in the locality was also gravely affected. Had the investigating agency accepted the prepared report produced by P. W. 1 as F.I.R. and investigated into the case in a correct manner, the true case would have been unfolded and justice done. But for

reasons unknown, it was discarded and as we suspect, a different colour was given to the occurrence. Therefore, we find no alternative than to acquit the appellants.

19. Before parting with the case and with considerable concern, we notice that a lot of time of the Court was wasted by rambling and purposeless examination and cross-examination of witnesses. It is of such useless magnitude that one would get lost in its labyrinth. Time is valuable both for the Bench and the Bar, and both should realise that purposeless and irrelevant examination and cross-examination of witnesses are absolutely of no help either to the prosecution or to the accused.

20. In the result, the appeal is allowed. The appellants are found not guilty of the charges framed against them and are acquitted. They be set at liberty forthwith.

J.M. Mahapatra, J.

21. I agree.

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