Durjodhan Ray Vs. State

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Court : Orissa

Decided On : Jun-18-1997

Reported in : 85(1998)CLT114; 1997(II)OLR514

Judge : A. Pasayat and ;P.K. Misra, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 299 and 300

Appeal No. : Jail Crl. Appeal No. 67 of 1992

Appellant : Durjodhan Ray

Respondent : State

Advocate for Def. : S.C. Satpathy, Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Mohapatra and G.S. Namtoar

Judgement :

A. Pasayat, J.

1. In this appeal from jail, Durjodhan Ray (hereinafter referred to as the 'accused') calls in question legality of his conviction for commission of offence punishable under Section 302, Indian Penal Code, 1860 (in short, 'IPC'), and sentence of imprisonment for life, as awarded by the learned Additional Sessions Judge, Sambalpur. Accused stood charged for allegedly having committed homicidal

death of Purushottam Ray (hereinafter referred to as the 'deceased').

2. In a nut-shell, prosecution case is as follows :

On 8.6.1990 information was lodged at Laikera Police Station to the effect the that the accused caused homicidal death of deceased by pelting stones at him. Due to pelting of stones bleeding injuries were caused, which led to death of the deceased ultimately. Information was lodged by Rukman Baboo (P.W.6) who claimed to be an eye-witness to the occurrence along with several others. The time of incident was indicated to be around 10, a.m. in the morning. On the basis of F.I.R. lodged investigation was undertaken. On completion of investigation, charge-sheet was placed.

3. The accused pleaded innocence and false implication by the prosecution.

4. Eleven witnesses were pressed into service to further the prosecution version, P.Ws 6, 7, 8 and 9 claimed to be eye-witnesses to the occurrence, learned trial Judge placed reliance on the evidence of P.Ws 6 and 7, while observing that the scenario as described by PWs 8 and 9 cannot be accepted in its entirety. He found the accused guilty, and convicted and sentenced as aforesaid.

5. Mr. A.K. Mohapatra, learned counsel appearing for the accused, pleaded that the evidence of PWs 6 and 7 should not have been acted upon as it is not credible. With reference to the observation made by the learned trial Judge with regard to evidence of PWs 8 and 9, it is submitted that the prosecution has presented an exaggerated version, and therefore, the evidence should have been discarded in its entirety. Alternatively it is pleaded that a case under Section 302, IPC is not made out.

Mr. S.C. Satpathy, learned Addl. Standing Counsel on the other hand supported the judgment of conviction and sentence.

6. So far as acceptability of P.Ws 6 and 7's evidence is concerned, we find that P.W.6 was the informant, and report was lodged immediately after the occurrence. The police station is at a distance of about 15 kilometres from the place of occurrence, and therefore, there is no delay in lodging the report. Accused, and

PWs 6 and 7 are co-villagers, and it has not been indicated as to why these two witnesses would falsely implicate the accused. So far as partial acceptance of evidence of PWs 8 and 9 is concerned, it is to be seen that the learned trial Judge has not discarded their evidence as lacking credency. On the other hand he has accepted a part of their version.

7. Coming to applicability of the principle of falsus in uno falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the Court has to carefully screen the evidence. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witnesses cannot be branded as liar.

The maxim falsus in uno falsus in omnibus (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called a 'mandatory rule of evidence' (See Nisar Alli v. The State of Uttar Pradesh : AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab : AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. The witnesses just

cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sarhad S/o. Belly Nayata and Anr. v. The State of Madhya Pradesh : (1972) 3 SCC 751, and Umar Ahir and Ors. v. The State of Bihar : AIR 1965 SC 277). An attempt has to be made to, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the contact and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwiecle Ariel v. State of Madhya Pradesh : AIR 1954 SC 15. and Balaka Singh and Ors. v. The State of Punjab : AIR 1975 SC 1962). As observed by the Apex Court in State of Pakistan v. Smt. Kalki and Anr. : AIR 1981 SC 1390, normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. That being the position, the learned trial Judge was justified in placing reliance on the evidence of P.Ws. 6 and 7.

8. Coming to the alternative plea relating to non-application of Section 302, IPC to the facts of the case, the factual position as described by P.Ws. 6 and 7 is to the effect that the deceased was running and the accused was pelting stones at him from a distance. After the deceased fell down, the process of pelting of stones continued.

9. In the scheme of the IPC, 'culpable homicide, is genus, and 'murder' is the species. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide' sans special characteristics of murder is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment proportionate to the gravity of this generic offence, IPC practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined as 'murder' in Section 300. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the First Part of Section 302. Then there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under Second part of Section 302. The academic distinction between 'murder' as 'culpable homicide not amounting to murder' has vexed the Courts for long. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299 Section 300A person commits culpable Subject to certain exceptions culpablehomicide if the act by which the homicide is murder if the act by death is caused is done ..... which the death is done .....INTENTION(a) with the intention of (1) with the intention of causing causing death; or death; or(b) with the intention of (2) With the intention of causingcausing such bodily such bodily injury as the injury as is likely to offender knows to be likelycause death; or to cause death of the personto whom the harm is caused; or(3) With the intention of casingbodily injury to any personand the bodily injuryintended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE (c) with the knowledge that (4) with the knowledge that the act is likely to cause the act is so imminently death. dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above. (Underlining for emphasis)

10. On a glance of the above table, it is clear that not only the actus reus, but also the mental elements of intention or knowledge, required by two Sections, are the

same and the only distinction between the offence lies in the degree of risk to human life which the offender intends or knows. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. An injury 'likely to cause death' within the meaning of Section 299(2) may, or may not, fall within the descriptions, mentioned in Clauses (2) and (3) of Section 300, which both clauses together do not equal culpable homicide in Section 299(2). The offence will amount to murder if the conditions, laid down in any one, or more, of the four clauses of Section 300, are satisfied. If the offence comes under Section 299, or under one, or other, of the Exceptions to Section 300, it will be culpable homicide not amounting to murder. If an act is done with the knowledge that the doer is likely by such act to cause death, the offence is culpable homicide unless the act done is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and is committed without any excuse, in which case the offence is murder. If the act is done with the intention of causing any bodily injury as is likely to cause death, the offence is culpable homicide unless the offender knows that the act done is likely to cause death of the person to whom the harm is caused or if the bodily injury is sufficient in the ordinary course of nature, to cause death. The degree of knowledge is a question of fact.

11. In the circumstances, it cannot be said that Clause Thirdly of Section 300 is attracted to the facts of the case. However, knowledge can be attributed to the accused. Appropriate conviction, therefore, would be under second limb of Section 304, IPC. The conviction is altered, and instead of conviction under Section 302, IPC accused is convicted under Section 304, Part II, IPC. Custodial sentence of eight years would meet the ends of justice.

The appeal is allowed to the extent indicated above.

P.K. Misra, J.

12. I agree.