

Narayan Bag Vs. State of Orissa

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Court : Orissa

Decided On : Jul-31-2003

Reported in : 97(2004)CLT60; 2003(II)OLR357

Judge : Sujit Barman Roy and ;L. Mohapatra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304-II

Appeal No. : Criminal Appeal No. 339 of 1994

Appellant : Narayan Bag

Respondent : State of Orissa

Advocate for Def. : Additional Standing Counsel

Advocate for Pet/Ap. : D.P. Dhal and ;A.K. Acharya, Advs.

Judgement :

L. Mohapatra, J.

1. This appeal is directed against the judgment and order passed by learned Additional Sessions Judge, Sambalpur convicting the appellant for commission of offence under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

2. The case of the prosecution is that on 12.6,1993 in the afternoon at about 4 'O' clock the deceased was coming to his house for taking tiffin. At that point of time, the appellant was standing near his vehicle. Seeing the deceased the appellant demanded money due from him. To such demand, the deceased stated that he had no money to pay and there was a quarrel between both of them. It is the further case in the FIR that thereafter the deceased threw a stone aiming at the accused which hit the forehead of the accused. Thereafter, there was push and pull between the accused and the deceased and it is alleged that the accused suddenly brought out a knife from his vehicle and stabbed on the back of the left side shoulder twice, as a result of which the deceased died on the spot. This FIR was lodged by one Bijili Behera (P.W. 1). On these allegation, FIR having been registered for commission of offence under Section 302 of the Indian Penal Code, investigation was taken up and ultimately charge sheet was submitted for commission of the said offence.

3. In order to bring home the charge, the prosecution examined 10 witnesses. Defence did not examine any witness, but the appellant in his statement under Section 313, Cr.P.C. stated that after he was hit by the stone thrown by the deceased he went to the Police Station where from he was sent to the Court. He has denied the entire prosecution case.

4. The trial Court on the basis of evidence of eye witnesses and recovery of the knife at the instance of the accused, found the appellant guilty of the charge and convicted him thereunder.

5. The learned counsel, Mr. Dhal appearing for the appellant submitted that the version of eye witnesses clearly indicates that there was a quarrel between both the deceased and the appellant and the deceased threw a stone aiming at the appellant which hit his head. Only after the accused got injured he brought out a knife from the vehicle and stabbed the deceased. According to Mr. Dhal, this evidence clearly goes to show that after receiving injury on the head, the appellant lost his balance and brought out the knife and stabbed the deceased and therefore there was grave and sudden provocation at the instance of the deceased. According to Mr. Dhal, the appellant should have been convicted for offence under

Section 304 Part-11 of the Indian Penal Code as he had no intention of causing death though he had knowledge that injury caused by him might cause death. The learned Additional Government Advocate, on the other hand, referring to the evidence of eye witnesses, submitted that the finding with regard to assault by the appellant by means of a knife cannot be disbelieved. Whether the appellant is liable for conviction under Section 302 or under Section 304 Part-11 of the Indian Penal Code was also considered by the trial Court and the trial Court did not accept the contention of the appellant since the evidence clearly goes to show that while the deceased was returning home, the appellant chased and stabbed him from his back. According to the learned Additional Standing counsel the conviction under Section 302 of the Penal Code is justified.

6. Keeping in mind, the contention of learned counsel appearing for both the sides, we proceed to examine the evidence led before the trial Court. P.W. 1 is an eye witness to the occurrence. P.W. 1 in his deposition has stated that on the date of occurrence when he was in his house, he heard the quarrel between the accused and the deceased and came out of the house. He found the accused asking for money from the deceased and the deceased said that he had no money as a result of which a quarrel took place between them. At that time, the accused pushed the deceased towards the vehicle as a result of which the deceased dashed against the vehicle and thereafter the deceased picked up a small stone and threw it aiming at the accused which hit the head of the accused and the accused sustained a bleeding injury. Thereafter, the accused chased the deceased by holding a knife and dealt blows on the back side of the deceased. P.W. 3, is the wife of the deceased. She in her evidence has made similar statement as that of P.W. 1 with regard to the incident. P.W. 4 is an eye witness to the occurrence who was sitting in the cabin of the vehicle. This witness in his evidence stated that a quarrel took place between the accused and the deceased with regard to payment of money and he got down and separated them. However, thereafter, again both of them picked up quarrel and the deceased threw a stone aiming at the accused which hit the head of the accused. The accused got annoyed and stabbed the deceased on the back of his left side. P.W. 5 who is another witness to the occurrence has made similar statement as that of P.W. 4. Though there is no allegation in the FIR that while the deceased and the appellant

were quarrelling with each other with regard to payment of money, the appellant pushed the deceased as a result of which the deceased dashed against the vehicle, such a statement has been made by the informant (P.W. 1) as well as P.W. 3 in Court. The statement of P.Ws. 4 and 5 who are independent witnesses to the occurrence corroborate with that of the allegation made in the FIR. We, therefore, on consideration of the evidence of these 4 witnesses as well as the FIR hold that on the date of occurrence, the appellant demanded payment of money from the deceased. When the deceased refused to pay the amount there was a quarrel between both of them. The deceased thereafter picked up a stone and threw it aiming at the appellant which hit the head of the appellant causing a bleeding injury. After receiving the said injury, the appellant brought out a knife and stabbed the deceased on his back. Apart from the evidence of eye witnesses there is also evidence on record to show that the appellant was brought by Police to the village while in custody and he stated before the police that knife was in his house and accordingly led the police along with other witnesses to his house and brought out one blood stained knife. P.W. 2 is the witness who has stated so and is also a witness to the seizure of the knife. P.W. 10 is the I.O. who has also stated that while in custody the appellant made a statement that he had kept the knife in his house and led the police and gave recovery of the knife. The doctor who conducted the post-mortem examination in his evidence has also found two injuries on the body of the deceased and has opined that the said injuries could be caused by sharp cutting weapon and the injury No. 1 itself is sufficient to cause death.

7. On reading the entire evidence on record, we are of the view that it is the appellant who had assaulted the deceased by means of a knife and the injuries sustained by the deceased in course of such assault are the cause of death of the deceased. The only question to be determined is whether the appellant should be convicted for commission of offence under Section 302, IPC or under Section 304 Part-11 of the Code. The FIR allegations read with evidence of P.Ws. 4 and 5 clearly indicate that on the date of occurrence there was a quarrel between the appellant and the deceased with regard to payment of money and the deceased suddenly picked up a stone and threw the same aiming at the appellant which hit the head of the appellant. Immediately thereafter, the appellant brought out a knife

and stabbed the deceased on his back near the shoulder. However, it appears that P.Ws. 1 and 3 have developed the story by stating that the appellant first pushed the deceased as a result of which the deceased dashed against the vehicle, whereafter the deceased picked up a stone and threw it at the accused- appellant. We are not able to accept the development made in the story since P.W. 1 who is the author of the FIR has not stated so in the FIR itself. We are therefore, of the view that not only there was a quarrel but also the deceased suddenly picked a stone and threw it at the accused which hit his forehead resulting in an injury and because of such grave and sudden provocation, the appellant brought out a knife and assaulted the deceased on his back near the left shoulder. We are also of the view that by giving two blows near the shoulder, the appellant was aware that the injury caused by him may result in death but he had no intention of causing death since at the spur of the moment he lost his balance having received injury on his head and stabbed the deceased.

8. We therefore, set aside the conviction of the appellant under Section 302 of the Indian Penal Code and convict him for commission of offence under Section 304 Part-II of the Indian Penal Code and sentence him to undergo rigorous imprisonment for a period of 7 years. It appears that the appellant had been released on bail by this Court vide order dtd. 21.8.1996. The learned counsel for the appellant is not in a position to say the period of sentence undergone by the appellant. We therefore, direct the trial Court to calculate the sentence undergone by the appellant, and if the appellant is required to serve the remaining part of the sentence imposed by us, appropriate steps in accordance with law shall be taken by it to apprehend the appellant for serving the remaining part of the sentence.

The Criminal Appeal is disposed of accordingly.

Sujit Barman Roy, C. J.

9. I agree.