

Subodh Behera and Two ors. Vs. State

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Court : Orissa

Decided On : Jul-10-1995

Reported in : 1996CriLJ168; 1995(II)OLR424

Judge : A. Pasayat and ;P. Ray, JJ.

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

Appeal No. : Criminal Appeal No. 2 of 1991

Appellant : Subodh Behera and Two ors.

Respondent : State

Advocate for Def. : A. Mohapatra, Standing Counsel and ;G.P. Samal, B. Bhuyan and A.K. Tripathy (for informant)

Advocate for Pet/Ap. : S.K. Sahoo, Adv.

Judgement :

A. Pasayat, J.

1. The three appellants (hereinafter referred to as the 'accused') faced trial on the accusation of having committed offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code, 1860 (in short, 'IPC'), along with one Maguni Behera, who was acquitted by the learned Additional Sessions Judge,

Jajpur.

2. The occurrence in which Raghunath Behera (hereinafter referred to as the 'deceased') lost his life occurred on 28-5-1989 at about 8-30 p. m. The genesis of the dispute as given by the prosecution, in essence, is as follows :

Accused Subodh and Madhaba had cut some bamboos and stacked them in their backyard. Those were removed by the deceased and thrown to a tank. Accused Usha took exception to such action and shouted that the bamboos cut by her sons had been removed for the purpose of carrying a dead-body. Kamala Behera (PW 1) thought that the derogatory words were aimed at her and that led to exchange of hot words. In the meantime deceased arrived there. Madhaba gave a Katari blow on the head of the deceased, which was followed by another blow on the right shoulder by Subodh, and a third blow was given by Usha on the backside, of the deceased. When Bichitrananda Behera and Gajendra Behera, (PWs 5 and 3 respectively), intervened, they were also assaulted by Subodh and Madhaba. Assaults were witnessed by Kamala Behera (PW 1). Rajanikanta Behera (PW 2). Dharanidhar Sahu (PW 3), and Purushottam Babu (PW 4). The deceased in an injured condition was removed to Bari-Ramachandrapur P.H.C. where he was declared to have breathed his last. Information was lodged by Kamala (PW 1), the sister-in-law of the deceased. Investigation was undertaken, certain articles were seized and on completion of investigation charge-sheet was submitted.

3. The accused persons pleaded innocence and false implication on account of pre-existing land disputes.

4. The learned Additional Sessions Judge did not believe the evidence of PW 2, but placing reliance on the evidence of PWs 1, 3, 4, 5 and 8 found the present accused-appellants Subodh and Madhaba guilty under Section 302, IPC, while acquitting them of the charge under Section 307, IPC. For the conviction under Section 302, IPC, they were sentenced to undergo rigorous imprisonment for life. Though both of them were convicted for the offence punishable under Section 324, IPC, no separate sentence was imposed. Accused Usha was convicted under Section 324, IPC and was sentenced to R.I. for two years.

5. In support of the appeal Mr. S. K. Sahu, learned counsel submitted that the so-called eye-witnesses could not have witnessed the occurrence as the alleged occurrence took place in the dark night at about 8-30 p. m. The possibility of witnessing the occurrence as claimed is practically impossible, particularly from the distance from which the witnesses claimed to have seen the occurrence. Authenticity of the first information report is attacked on the ground that PW 1's evidence casts doubt on it. The document shows as if it was written in Bari-Ramachandrapur Public Health, Centre and handed over to Purushottam Sahu, when PW 1, herself has accepted that the first information report was written in her house. Alternatively, it is submitted that the scenario as depicted by the prosecution leaves no manner of doubt that the occurrence took place in course of sudden quarrel without pre-meditation and the accused persons having not committed the crime in cruel manner, and having not taken any advantage thereof, application of Section 300, IPC is ruled out. Even if the prosecution version is accepted in its totality, it is urged at the most a case punishable under Section 304 is made out.

Mr. A. Mohapatra, learned counsel for State on the other hand submitted that the witnesses have stated graphically and in detail about the occurrence. Two of the witnesses, i. e., PWs 5 and 8 sustained injuries in course of occurrence. There was not even any suggestion to PW 5 that he has not sustained injury as claimed. In this background there is reason to cast suspicion on the evidence of the witnesses. It is submitted that the manner in which the assaults were made clearly makes out the intention of the accused persons to commit murder of the deceased, and therefore, they have been rightly convicted for offence punishable under Section 302, IPC.

So far as accused Usha is concerned, the learned counsel for the accused submitted that the injury which is stated to have been inflicted on the deceased on account of assault by her was not very serious in nature, and the doctor has clearly stated that the name was not fatal, and therefore, Usha should not have been convicted under Section 324, IPC.

6. We shall first deal with acceptability of evidence of the witnesses. The eye-witnesses including the two injured witnesses (PWs 5 and 3) are related to both the deceased and the accused, and were neighbours to both. There is no reason as to why the witnesses who are neighbours and relatives of the deceased would falsely implicate the accused persons, and thereby shield the actual culprits. A witness is normally to be considered independent unless he or she springs from a sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused to wish to implicate him falsely. When a plea of hostility is advanced, foundation for the same has to be laid. Without it, same has to be rejected outright. On scrutinising evidence of witnesses who claimed to be eye-witnesses, there is no doubt that they are truthful witnesses, who have stated about assaults on the deceased, and the injured PWs 5 and 8. We, therefore, find no reason to discard their evidence.

7. So far as lodging of first information report is concerned, except placing reliance on a sentence which has been taken out of content by the learned counsel for the accused from evidence of PW 1, there is no material to show that the first information report which is on record is not the original one or that the same has been substituted or manipulated. On a close reading of the evidence of PW 1 it is clear that Ext. 1 is a genuine document. We find no substance in the plea that the first information report on record is a suspicious document.

8. So far as identification aspect is concerned, it is to be noted that witnesses were closely acquainted with the deceased. The distance from which they claimed to have seen the occurrence is not so large as to render identification impossible. Persons whom one knows very well can be identified from a comparatively longer distance, and when there are particular and characteristic signs; the distance extends to a considerable extent. Identification depends on several factors like proximity of the identifier with the person identified, visibility condition and several other factors. Additionally there is evidence on record to show that deceased was carrying a lantern when he came to the spot. In the aforesaid premises', there is no substance in the plea that identification was improbable.

9. Coming to the question whether Section 302 has application to the facts of the case, it is to be noted that single assault has been attributed to each of the accused persons. There is no dispute, and in fact the prosecution case is that the deceased came near the house of the accused persons, there was exchange of hot words, and the accused persons were not armed originally. It appears that on the spur of moment they had dealt the blows. There is also not considerable gap between the time when assaults were made by two of the assailants. Though it cannot be laid down as a rule of universal application that whenever a single blow is given by the accused intention is not to cause death, in the peculiar circumstances of the cases and considering genesis of the dispute and materials on record, we are of the view that Exception 4 of Section 300 is applicable. The assaults were made in course of sudden quarrel in the heat of passion. The accused persons cannot be said to have taken undue advantage or acted in a cruel or unusual manner. The nature of injuries did not reveal the intention of accused to cause death of the deceased. But they can certainly be attributed to the knowledge that the likely result of assault would be death or grievous injuries sufficient to cause death. The second limb of Section 304, IPC is therefore, applicable to the facts of case.

10. Considering the background in which the occurrence took place, custodial sentence of eight years would meet the ends of justice in respect of accused Subodh and Madhaba. So far as accused Usha is concerned, in view of the analysis made by learned trial Judge. She has been rightly held guilty under Section 324, IPC.

The appeal so far accused Subodh and Madhaba are concerned is allowed to the extent indicated above, and so far accused Usha is concerned is dismissed.

P. Ray, J.

11. I agree.