

Bishek Mohananda Vs. State

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Court : Orissa

Decided On : Jul-14-1997

Reported in : 1998CriLJ1489

Judge : A. Pasayat and ;S.C. Datta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 302, 304 and 384

Appeal No. : Jail Criminal Appeal No. 120 of 1992

Appellant : Bishek Mohananda

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Anil Deo, Adv.

Judgement :

A. Pasayat, J.

1. In this appeal from Jail, Bishek Mohananda 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, Titilagarh

2. Prosecution case as unfolded during trial is as follows;

On 17-6-1991 at about 4 p.m. in the afternoon Rajkumar Mahanand (P.W. 1) was ploughing his land along with his father Aswini Mahanand (hereinafter referred to as the 'deceased'). All on a sudden the accused came there and objected to ploughing of the land by P.W. 1 and the deceased. Accused drove out the bullocks of P.W. 1 from the land. When P.W. 1 and the deceased objected, accused raised his spear with the intention to kill the deceased, and when the deceased warded off the spear with the stick which he was holding and was being used for driving of bullock at the time of ploughing, it hit head of the accused. Accused got enraged and threw the spear at the abdomen of the deceased as a result of which there was profuse bleeding. When the accused tried to take out the spear from the abdomen, P.W. 1 gave a blow on his head which resulted in causing bleeding injuries. Thereafter the accused fled away. Information was lodged at Bangomunda Police Station, and investigation was undertaken. Deceased who was then alive was removed to Bangomunda Additional Public Health Centre in an injured stage where he was examined. The spear which was sticking to the abdomen of the deceased was removed by making small operation.

As his condition deteriorated he was removed to Titilagarh Government Hospital, and thereafter he was removed to District Head Quarters Hospital, Balabir where he ultimately succumbed to the injuries on 21-6-1991. During trial apart from P.W. 1. Arjun Mahannd (P.W. 2) and Darjee Mahanda (P.W. 3) were stated to be eye-witnesses. It was claimed that confession was made before P.W. 4 about the killing by the accused. Dying declaration was recorded by the doctor who was treating the deceased He has been examined as P.W. 8.

3. The accused pleaded innocence.

4. Placing reliance on the evidence of eye witnesses, the extra judicial confession, and the dying declaration the accused was found guilty, convicted and sentenced as aforesaid.

5. The judgment of conviction and sentence was assailed on several grounds by the accused. Firstly it was submitted that the prosecution has not come out with

clean hands. The deceased and P.W. 1 were aggressors and because of assaults given by them the accused had suffered severe injuries. The fact that accused had suffered injuries in course of the incident is not disputed. A different fabricated story has been given to falsely implicate him. Finally it is submitted that the assaults admittedly took place in course of quarrel, and therefore Section 302, IPC has no application.

Learned counsel for State supported the judgment.

6. 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, So, 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 304. 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 304. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has troubled the Courts for long. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299 Section 300

A person commits culpable homicide if the act Subject to certain exceptions by which the death is caused is done.... culpable homicide is murder if the act by which the death is done....

INTENTION

(a) with the intention of causing death; or (1) with the intention of causing death; or

(b) with the intention of causing such bodily (2) with the intention injury as is likely to cause death; or of causing such bodily injury as

the offender knows to be likely to

cause death of the person to whom

the harm is caused: or

(3) with the intention of causing

bodily injury to any person and

the bodily injury intended to be

inflicted is sufficient in the

ordinary course of nature to cause

death; or

KNOWLEDGE

(c) with the knowledge that the act is (4) with the knowledge that the

likely to cause death. act is so imminently 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)

7. In the peculiar circumstances as highlighted above, inevitable conclusion is that the assault took place in course of a sudden quarrel. Originally the accused was not armed and after commencement of quarrel, he had picked up the weapon of assault. He had also suffered serious injuries which aspect has been admitted by the eye-witnesses. The case, therefore, is covered under Exception 4 of Section 300, IPC. The Explanation makes it clear that it is immaterial in such cases as to which party offers the provocation or commits the first assault. Conviction is altered from Section 302, IPC to Section 384, Part II, IPC. Custodial sentence of seven years would meet the ends of justice.

The appeal is allowed to the extent indicated above.

S.C. Datta, J.

8. I agree.