Jagamohan Barla Vs. State

Jagamohan Barla Vs. State

SooperKanoon Citation : sooperkanoon.com/533870

Court : Orissa

Decided On : Sep-16-1985

Reported in : 1986(I)OLR29

Judge : B.K. Behera and ;R.C. Patnaik, JJ.

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

Appeal No. : Jail Criminal Appeal No. 222 of 1981

Appellant : Jagamohan Barla

Respondent : State

Advocate for Def. : N.C. Panigrahi, Addl. Govt. Adv.

Advocate for Pet/Ap. : P.K. Rath, Ganeswar Rath and A.K. Mohapatra

Judgement :

B.K. Behera, J.

1. The Court of Session has held it established an the basis of the evidence of two witnesses to the occurrence, namely, P, Ws. 5 and 6, supported by the medical evidence, while discarding that of another (P. W. 1), coupled with an extrajudicial confession said to have been made by the appellant before P. W. 2, that after a sudden quarrel during the night of November 20. 1979, the appellant, working as a

Mazdoor with many others including Albert Tope alias Topen (to be described hereinafter as 'the deceased), killed the deceased by means of a sickle (M. O. I) when the latter came to the house of Michael Eka with whom the appellant had been staying along with Ratan Munda (P. W. 6). having left the house or the deceased where he had previously been staying after quarrels with him. The appellant has been convicted under Section 302 of the Indian Penal Code (for short,'the Code') and sentenced to undergo imprisonment fox life.

2. It is not disputed at the Bar that the deceased had died a homicidal death. Appearing on behalf of the appellant, Mr. Rath has submitted that the evidence of P. Ws. 5 and 6 was not worthy of credence and appellant's alleged statement made before P. W. 2 admitting to have killed the deceased could not legally be construed as an extrajudicial confession. It has been contended on behalf of the appellant that if the case of the prosecution is accepted by this Court, the offence would amount to culpable homicide not amounting to murder coming under the purview of Section 304, Part II of the Code as Exceptions 1 and 4 to Section 300 of the Code would be applicable to the facts of the case. It has been submitted on behalf of the State that the order of conviction is well-founded.

3.The appellant's plea at the trial was as follows :

'While we were all sitting together, Albert arrived being heavily drunk and shouted for which all of us present there objected and there was a quarrel between Ratan Munda and Albert, so much so Albert caught hold of the neck of RatanMunda. I separated then and Ratan Munda went away. Albert got angry with me and rebuked in filthy language. Albert gave me two or three fist blows and I equally gave him two or three fist blows. Out of fear for my life I caught hold of some iron instrument and brandished the same in order to save myself. Wife of Albert was in love intrigue with Michael Eka. The house was dark.'

4 We have been taken through the evidence of P. Ws. 5 and who had been staying in the same but with the appellant and had testified as to how the deceased came, picked up a quarrel and challenged the appellant as to what he could do, whereupon the appellant picked up a and dealt a number of blows on the person of the deceased who was carried in an injured condition for medical

treatment and he (sic) to the injuries. P. Ws. 5 and 6 were natural and competent witnesses and were expected to be on the scene. There was no reason as to why they would join hands to falsely implicate a companion of theirs who had been staying with them. Their evidence found assurance from the evidence of the doctor (P. W. 9) who had conducted the autopsy on the person of the deceased and had noticed as many as nine incised wounds on different parts of his body. The medical evidence would indicate that most part of the assault had been directed on vital parts, such as, the band and the neck. The injuries, according to the doctor, were sufficient in the ordinary course of nature to cause death and could be caused by M. O.I. Although the evidence was not quite clear as to whether M. O. I. was the weapon of attack, the evidence of P. Ws. 5 and 6 would establish that the appellant had assaulted the deceased to death by means of a sickle.

5. Coming to the extrajudicial confession, the evidence of P W.2 was that when left for the spot on hearing about the occurrence, he met the appellant on the way and being question by him as to what had happened, the appellant gave out that the deceased came and quarreled with him and, therefore, in exercise of the right of private defence of his person, he (appellant) assaulted the deceased as a result of which the deceased lay unconscious in the hut where he (appellant) had been staying. A part of the cofessional statement borneout by the evidence may be accepted while the exculpatory part negatived by the evidence may not be acted upon as observed by the learned trial Judge. But in order to rely on the statement as a confessional one, the statement must, in terms, admit the commission of the offence or substantially all the facts which constitute the offence. If the statement contains some part which, if accepted, would negative the guilt of the accused, it cannot legally be said to be a confessional statement. In the instant case, the statement of the appellant before P. W. 2 was that he had assaulted the deceased in exercise of the right of private defence of his person. If that part of the statement relating to the exercise of the right of private defence of person could be accepted, the statement made by the appellant before P. W. 2 could not be said to be a confession. We would, therefore, rule that no confession had been made by the appellant before P. W. 2.

6. Even if the extrajudicial confession is excluded as has been done by us, the evidence of P. Ws. 5 and 6 coupled with the medical evidence would manacle, the appellant inescapably and would lead to the conclusion of his guilt.

7. We would next come to the applicability of Exceptions 1 and 4 to Section 300 of the Code.

8. It could not be said to be a case where during a sudden fight between the appellant and the deceased and without coducting himself in any cruel manner or taking undue advantage, the appellant had assaulted the deceased to death. The deceased was unarmed and successive blows had been dealt on different portions of his person including the head and the neck. Exception 4 to Section 300 of the Code cannot be applied.

9. In order to apply the first Exception to Section 300 of the Code, the appellant must have been deprived of his power of self-control at the time of the assault by him on the deceased because of grave and sudden provocation offered by the latter. Any and every quarrel before a murderous assault may not give rise to an assumption that the accused had committed the act while being deprived of the power of self-control by grave and sudden provocation. The test is as to whether a reasonable man, belonging to the same class of the society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self-control. Words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Code.

10. While the three occupants of the hut including the appellant had been preparing their food, the deceased came and abused the appellant. The evidence at P. Ws. 5 and 6 would indicate that the deceased had abused the appellant in filthy languages and it was the deceased who had started the quarrel. When the appellant protested, the deceased gave out that if he had been abusing him, what could he (appellant) do. Although not specifically deposed by P. Ws. 5 and 6, the appellant's plea that the deceased had dealt some blows on the appellant would find some assurance from the evidence of the doctor(P. W. 1) who had noticed a healed up abrasion on the left knee joint of the appellant. All this would show that

the deceased was the aggressor and had started the quarrel having come near the hut where P. Ws. 5 and 6 and the appellant had been staying, abused the appellant in filthy languages, challenged him and even dealt some blows on his person. It was then that the appellant picked up a sickle and assaulted the deceased to death. In the circumstances in which the appellant had been placed and in view of the acts and conduct of the deceased, we are of the view that the appellant had killed the deceased while he had been deprived of the power of self-control by the grave and sudden provocation offered by the deceased. In the facts and circumstances of the case, Exception 1 to Section 300 of the Code would be applicable. The appellant is liable to be convicted under Section 304, Part I of the Code.

11. It has been submitted at the Bar that the appellant has been in custody for nearly six years after his arrest in connection with the investigation and trial of the case and on his conviction. In our view, the sentence of imprisonment already undergone would meet the ends of justice.

12. In the result, the appeal is allowed in part. The order of conviction passed against the appellant under Section 302 of the Indian Penal Code and the sentence passed against him thereunder are set aside and in lieu thereof, he is convicted under Section 304, Part I of the Indian Penal Code and sentenced to undergo imprisonment for the period already undergone by him. The appellant be set at liberty forthwith.

R.C. Patnaik, J.

13. I agree.