

Bansidhar Mallick Vs. the State

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Court : Orissa

Decided On : Feb-17-1998

Reported in : 1998CriLJ1897

Judge : S.C. Datta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Criminal Revn. No. 166 of 1995

Appellant : Bansidhar Mallick

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : S.C. Sahoo, ; S.K. Sahoo and ; G.C. Swain, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

S.C. Datta, J.

1. The petitioner (hereinafter referred to as 'the accused.') faced trial before the learned Assistant Sessions Judge, Kandrapara on a charge under Section 307 I.P.C. He was found guilty of the said charge and sentenced to suffer R.I. for five

years and to pay a fine Rs. 1,000)/- in default to undergo R.I. for one year more.

2. Being aggrieved thereby the accused preferred appeal before the Sessions Court and the learned Additional Sessions Judge, Kendrapara by judgment and order dated 6th March, 1995 upheld the order of conviction and sentence and dismissed the appeal. The petitioner has, therefore, saved this Court in revision.

3. The prosecution case, in short, is that the relationship between the complainant's family and that of the accused was a strained one for the use of water of a village well. A few days prior to the date of occurrence, the accused quarrelled with Manju, the daughter of the injured Sukadev for use of water of the said well which was taken exception of by the injured Sukadev. In resolve the dispute one Bhagyarathi Swain (P.W. 1) was appointed as a mediator. While discussion was going on for settlement of the dispute between the parties, the accused entered into the house of the injured and assaulted his wife and daughter Manju. The injured Sukadev lodged an F.I.R. at Kendrapara Police-station against the accused and police was looking out for him.

4. In this background on 27-3-1995 at about 19 A. M. accused encountered with the injured and dealt him two blows with an axe on his head and another blow by the same axe on the left side of his back. Consequently, injured Sukadev fell down. This incident was noticed by many persons. After the assault the accused fled. The injured Sukadev was first shifted to Kendrapara Hospital and therefrom he was taken to P.C.O Medical College and Hospital, Cuttack, where he was detained for 22 days for treatment. The F.I.R. was lodged by Rabindra Mallik, the son of the injured on the date of occurrence at about 10.40 P.M. On the basis of the F.I.R. a case was registered and investigation started. On completion of investigation, police submitted charge-sheet under Section 307 I.P.C. and eventually, the petitioner stood his trial before the Assistant Sessions Judge, Kendrapara.

5. The defence version of the case was that there was never a dispute between the parties over the use of water of village well. It is, however, accepted that following a scuffle between the injured Sukadev and the accused, the former fell down on the floor of the well and sustained injury on his head by coming in contact

with broken places of glasses and brick bats. It appears that the defence version of the case was totally disbelieved by the Courts below. It was held by the trial Court as well as by the appellate Court that it was the petitioner who was the author of the crime and the injured Sukadev sustained injuries on his head and back because of assault given by the petitioner with the help of an axe. It has been held by the Courts below that the petitioner had the intention to cause the death of the injured and as such, he was found guilty of the charge under Section 307 I.P.C. and sentenced as aforesaid.

6. It is contended on behalf of the petitioner that the Courts below failed to appreciate properly the evidence adduced by the parties and came to a wrong decision. It may be remembered that there has been a concurrent finding of fact about the guilt of the accused. There is nothing on record to show that the findings arrived at by the Courts below are perverse and contrary to the settled principles of law. Even then it is to be examined how for the prosecution has been able to establish the charge against the accused.

7. P.W.1 is the injured himself and P.W.3 is another eye-witness to the occurrence. It appears from the evidence of these two witnesses that the accused dealt not only one blow but two blows successively with an axe on the head of the injured. He gave a third blow on the left hand side of the back of the injured also with the help of axe. We find from the evidence of the Doctor that the injured Sukadev Mallik was admitted to Hospital on 27-3-93, Dr. Debendra Prasad Sutar (P.W.4) attended him and found the following injuries :-

(i) One lacerated wound 2' x 1/2' x bone deep on front to lateral aspects of skull-simple in nature caused by hard and blunt weapon. The age of the injury is within 24 hours.

(ii) Incised wound anteriority directed 3' x 1' of 1/2cm deep on left side back simple in nature and might have been caused by a sharp cutting weapon, age of the injury within 24 hours.

(iii) Suspected depressed fracture of 2' x 1' just below the injury No. (1) opinion was kept reserved and the patient was advised X-Ray.

Ext. is the report of the Medical Officer.

8. It appears that the Medical Officer suspected drapped fracture of 2' x 1' just below the injury No. (I) and he reserved opinoin for X-Ray examination. Anyway, it appears that the injured (P. W. I) has told in clear and cogent terms about the assault on him. His evidence has not been shaken in any manner. P.W.3 has noticed incident from close quarter. He fully corroborates the evidence of the injured (P.W.I). The appellate Court noticed that though P.W. 1 has stated in examination-in-chief that the injured Sukadev sustained injuries by fall near the well due to scuffle with the accused and was injured due to glass splinters but in cross-examination he has admitted that the injured sustained injuries due to assault by accused. The evidence of prosecution witnesses particularly P.Ws. 1, 3 and 5 clearly goes to prove that the accused was responsible for causing injuries on the head and back of the injured. It appears that the appellate Court quite rightly held that the intention to cause death could be gathered from the circumstances, like the weapon of offence used, nature of the injuries, the seat of injuries etc. He noticed that the injuries were on the head which is a vital part of human body. It appears that the accused dealt not only one blow but two successive blows on the head of the injured and one blow on the left side of the back of the injured by the axe. The attack was so violent that the injured suffered fracture injury on his head. Luckily he survived. Otherwise it might have proved fatal. These clearly shows the intention of the accused. On an analysis of the evidence and having considered the circumstances, it appears that the Courts below have come to a correct conclusion and no interference is sought for. In view of what goes before, the revision petition fails and is dismissed. The petitioner do surrender to the Bail Bond to serve out the sentence.