

Bichi Munda Vs. State

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Court : Orissa

Decided On : Jun-29-1992

Reported in : 1993CriLJ145

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

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

Appeal No. : Criminal Appeal No. 90 of 1986

Appellant : Bichi Munda

Respondent : State

Advocate for Def. : J. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : A. Routray, Adv.

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. The appellant (also described as 'accused' hereinafter) question legality of his conviction under Section 302 of the Penal Code, 1860 (in short, 'IPC') and sentence of life imprisonment awarded by the learned Sessions Judge, Dhankannal, camp at Athmallik.

2. The accusations which led to the trial of the accused are to the following effect:

On 25-8-1984 the accused appeared at Athmallik Police station with a blood-stained; tangia. He stated that at about 3 p.m. while he was going to the field, Surabala his friend's wife, who was standing in front of her house told that her mother was searching for him So instead of going to the field, he came and sat on a cot in front of the house of Surabala. This was seen by his mother who was lifting; water from a well and his elder sister Raibari. Her mother and sister came near him. Both of them objected to his coming to the house of Surabala, and there was exchange of words between them. Though he asserted that he had no illicit relationship with Surabala, his answer did not satisfy his mother and sister who continued to quarrel with him even after he arrived at his house. The exchange of words among them attracted some others of the village who had just returned from the jungle. They assembled in front of his house to see what was happening. His mother continued to murmur against him. He became terribly annoyed at the attitude of his mother and sister and asked his sister to go away and also threatened that unless she would go away, he would kill her. Her sister challenged him and then left the place. Thereafter he picked up a tangia and assaulted on the neck of his mother who sustained bleeding injury and fell down from the verandah to the ground. He gave another blow on her neck as a result of which she died at the spot. Then he went after his sister to kill her, but she hid in the house of Karuna. So he came towards the police station, and on the way met his nephew Sankari and told him about the incident and came to the police station and gave the information. The Officer-in-charge of Athmallik police station reduced the statement to writing, took signature of the accused, registered a case and took up investigation. Charge-sheet was submitted and the accused faced trial.

3. The plea of the accused was one of denial. His further plea was that his mother died as the tangia accidentally fell on her from a higher place where it was kept.

4. Ten witnesses were examined to further the prosecution case. Though the case was registered on the basis of an oral confession about the murder made to the Officer-in-charge of the Police Station the same was excluded from consideration. On evaluation of evidence, the learned Sessions Judge held that the prosecution

has established its case beyond doubt. Accordingly the judgment of conviction and sentence has been passed.

5. The judgment has been assailed by the accused on counts. It is submitted that the evidence is not credible and there are many untied loose ends. It has also been submitted that the case is one which is covered under Exception I to Section 300 of the Penal Code, 1860. His submission is that the constant bickering of his mother was sufficient to cause grave and sudden provocation and the accused was deprived of his power of self-control. The learned counsel for the State has submitted that the learned Sessions Judge has made threadbare analysis of the evidence and has given cogent reasons in support of his conclusion. It is also submitted that the Exception has no application to the facts of the case.

6. In order to delineate the factual position the evidence of P.Ws. 3, 4 and 6 is relevant. P.W. 3 has stated that she found the deceased crying and the accused came suddenly and gave two blows on her neck. She has also stated that she saw the assault from close quarters. P.W. 4 has stated that in the afternoon of the day of occurrence at about 4 p.m. he along with Susila, Sulochana (P.W. 4) and Raibari (P.W. 5) returned from the jungle with head-load of fuel wood and unloaded the same near their respective houses, and at that time they found that the accused came and dealt two blows on the neck of the deceased by a tangia. He has also stated that he was at a distance of 15 cubits from the place of assault. P.W. 5 the sister of the accused and the daughter of the deceased has stated that the deceased questioned the accused as to why he was frequently visiting the house of Surabala. There was exchange of words between them. She specified the deceased and brought her to her house, and asked the deceased not to say anything to the accused. She also asked the accused as to why he was visiting the house of Surabala being father of two children. After giving advice, she returned to her house and before she could reach her house she heard that the accused had killed the deceased. The accused also came to her house and said that he had killed the deceased and would also kill her. She managed to save her life by running away and hiding in the house of one Karuna. P.W. 6 Sulochana has also stated that she along with other ladies described above had gone to jungle and returned with head-load fuel wood. After unloading the same near her house, she

came to the house of the deceased who told her that the accused had threatened to kill as she objected to his relationship with Surabala. While she was about to return, the accused brought the tangia (M..O.I.) from the wall and gave two blows on the neck of the deceased. She has stated to have seen the occurrence from a distance of 4 cubits. Nothing contradictory of consequence has been elicited in cross-examination. The evidence of these witnesses clearly establish the guilt of the accused. The learned Sessions Judge was, therefore, right in finding the accused guilty.

7. We shall now deal with the plea relating to grave and sudden provocation. In the scheme of the Penal Code, culpable homicide is genus and murder is specie. Every 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, the Code 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 in SECTION 300 as murder. 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 punishment provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. After setting out the four mental conditions, Section 300 lays down five exception which reduce the offence of murder again to culpable homicide which may be said to be culpable homicide not amounting to murder. These exceptions, thus, lay down the circumstances which mitigate the offence of murder. The exceptions specified in this section are special exceptions which must be distinguished from the general exceptions specified in Chapter IV of the Penal Code. The general exceptions rebut the prima facie liability of the offender and he is completely exonerated from blame. But the special exceptions specified in this section do not completely exonerate him, but only mitigate the offence committed by him, and reduce his liability. The defence of provocation rests upon the fact that provocation was grave and sudden by reason of which the accused was deprived of his power of self-control. One of the

conditions for the operation of this exception is that the accused must have used force in consequence of grave and sudden provocation. It is noted that provocation is an external stimulus which can be objectively measured. But loss of self-control is a subjective phenomenon. To keep into the mind of the accused is seldom possible. The state of mind can be inferred from the surrounding circumstances. It is the temporary loss, and not the permanent or utter absence of reason of self-control, which is contemplated by this Exception and, what is more such loss of self-control must be shown to have been caused by grave and sudden provocative act or conduct of the victim. The following conditions are to be satisfied under the Exception :

- (i) there must be provocation to the accused;
- (ii) the provocation must be grave;
- (iii) the provocation must also be sudden;
- (iv) the provocation must have deprived the accused of his power of self-control;
- (v) the offence must have been committed during loss of self-control; and
- (vi) the person killed must have been the person giving provocation or another by mistake or accident.

These aspects were highlighted by the apex Court in *K. M. Manavati v. State of Maharashtra*, AIR 1962 SC 605 : (1962 (1) Cri LJ 521). In applying the test, it is of particular importance to consider whether sufficient interval had elapsed, since the provocation to allow a reasonable man to cool; and to take into account the instrument with which the homicide was effected, because a retort in the heat of passion induced by provocation by a simple blow is very different thing from one by making use of a deadly weapon like a concealed dagger. It is also to be noticed that the provocation must be grave which means that it must be serious enough to influence the mind of the person provoked. If the provocation is not immediate and grave, but is the culmination of a long period of swaggaring and insult, which finally makes an accused lose his temper, the benefit of Exception I cannot be given to him. A provocation, however grave which is not sudden, but is a chronic

one, will not satisfy the requirements of this Exception. As observed by the Supreme Court in K.M. Nanavati's case (supra) mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence, but that is, in itself, insufficient to invoke the provisions of Exception I. The word 'sudden' involves two elements. Firstly, the provocation must be unexpected, and secondly the interval between the provocation and the homicide should be as brief as possible. Provocation must be distinguished from resentment. Whether the provocation in a given case was grave and sudden is a question of fact. Each case has to be considered according to its own facts and the Court has to take into account the particular circumstance of the case. In the case at hand the narration of the fact situation as made above clearly rules out the applicability of the Exception. It is not a case where it can be said that there was any grave and sudden provocation which deprived the accused of his self-control.

8. The appeal accordingly fails and is dismissed.

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