

Mathura Murmu Vs. the State

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Court : Orissa

Decided On : Jul-30-1993

Reported in : 1994CriLJ869

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

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

Appeal No. : Jail Criminal Appeal No. 192 of 1990

Appellant : Mathura Murmu

Respondent : The State

Advocate for Def. : G.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : Banabehari Ray, Adv. for S.B. Das, Adv.

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. On the accusation that Mathura Murmu, the appellant (hereinafter referred to as the 'accused') committed murder by intentionally causing the death of Raghunath Reddy (hereinafter referred to as the 'deceased') law was set into motion by P. Sanyasi Reddy (P.W. 1).

2. Briefly stated the prosecution case is that the deceased having migrated to Paradip from his native place Nandigaon of Ganjam district was working as a labourer at Paradip. The accused has also migrated to the same place from village Gadadoulia of Mayurbhanj district. He was also working as a labourer. The deceased, the accused, P.W. 1 and several others including Sahadeb Apta (P.W. 2) and Pushiram Pradhan (P.W. 10) were all residing at Adibazipada of Athar-baoki area of Paradip. In the morning of 28-9-1989 the accused had removed a bag of coal from the railway wagon for which the railway police caught him red handed. The accused ran away from the spot after quarrelling with the police. The deceased happened to be present there. At the request of railway police he helped them to place the bag of coal in the police office. The accused took exception to this act of the deceased and bore grudge. At about 3.30 p.m. in the afternoon while the deceased was standing near the shop of Ghanashyam Mohapatra (P.W. 6) the accused came and quarrelled with him. In the course of quarrel there was exchange of abusive words. P.W. 2 Sahadeb had come to the shop of P.W. 6 to make some purchases at that time. His shop was closed. He saw the accused and deceased quarrelling. On seeing him the accused went away. While Sahadeb was enquiring from the deceased, the accused went inside the pusti and suddenly came armed with a knife and stabbed on deceased chest little above the abdomen by means of the knife and started running from the place. Dukhiram Pradhan (P.W. 10) had also seen the stabbing while standing at a short distance from the place of occurrence. A hue and cry was raised by the deceased and P.Ws. 2 and 10. The deceased tried to go to his house with that injury but he could not proceed beyond the house of Puni Reddy (P.W. 7) and fell down in front of her house. In the meantime other witnesses also arrived at the spot. P.W. 4 chased the accused. At a place known as Sukhuakhala he was caught by the villagers and was detained with the bloodstained knife. Many others had also seen him running away. P.W. 6 came to the house of P.W. 1 and informed him about the occurrence. Attempts were made to remove the deceased to the hospital by a trolley rickshaw. P.W. 1 proceeded to the hospital where he found the deceased lying with an injury on his abdomen. An oral report was lodged at Paradip police station upon which investigation was under-taken and on completion thereof charge sheet was submitted against the accused.

3. Plea of false implication was taken by the accused.

4. In order to bring home the charge against the accused eleven witnesses were examined. P.Ws. 2 and 10 claimed to be eye witnesses to the occurrence. On elaborate analysis of the evidence of P.Ws. 2 and 10, the learned trial Judge came to hold that the accused was guilty of an offence under Section 302, IPC and accordingly convicted him there under and sentenced to undergo rigorous imprisonment for life.

5. In support of the appeal it is urged that the evidence of P.Ws. 2 and 10 lacks credibility and, therefore, the learned trial Judge should not have convicted the accused. Alternatively it is submitted that a case under Section 302, IPC is not made out against the accused since the occurrence took place in course of a quarrel and only one stab blow was given. The learned Counsel for State on the other hand supported the judgment of conviction and sentence.

6. P.Ws. 2 and 10 have elaborately stated as to how the occurrence took place. They claimed to have seen the occurrence from a close distance. The evidence of P.Ws. 2 and 10 has been attacked on the ground that they had not disclosed the occurrence to anybody of the village until police came. It cannot be said to be unusual since the said witnesses did not inform the villagers about the cause of death. P.Ws. 3, 4, 6 and 7 deposed that they came to the spot on hearing the hue and cry raised by P.Ws. 2 and 10. The other witnesses i.e., P.Ws. 1 and 10 have also stated that they raised a hue and cry when the accused stabbed the deceased and started to run away. In that background the non-disclosure of cause of death by P.Ws. 2 and 10 to any other villagers cannot be a factor to discard their evidence as suspicious. We find no reason to discard the evidence of P.Ws. 2 and 10. But we find that the assault took place during the course of sudden quarrel. The word 'sudden' implies that the fight should not be pre-arranged or unpremeditated. A fight is not per se a palliating circumstance. It is only where the fight is unpremeditated Exception 4 to Section 300, IPC may apply. The lapse of time between the quarrel and the fight is, therefore, a very important consideration. If there intervene a sufficient time for passion to subside and for reason to interpose, the killing will be murder. The occasion must not only be sudden but the

party assaulted must be on an equal footing in point of defence, at least at the onset. The word 'fight' is used to convey something more than a verbal quarrel. It takes two to make a fight. It is not necessary that a weapon is to be used in a fight. The question of applicability of Exception 4 to Section 300 can only arise, if after examining the facts of the case, it could be found with reasonable definiteness that there was a sudden fight upon a sudden quarrel. On the facts of the present case we find that the accused and the deceased were quarrelling. The accused did not come back with the knife and give another attack for the second time. Though it cannot be laid down as a rule of universal application that whenever a single blow is given application of Section 302, IPC is ruled out, but in a given case where the second blow is not attempted, that has to be considered while deciding the question whether an offence under Section 302, IPC is made out. In the case at hand the accused was not armed when the accused and the deceased were quarrelling. But suddenly the accused left the spot and came back with the knife and gave the stab blow. It is not a case where sufficient time to elapse between the departure of the accused and his re-entry with the weapon of assault. So it cannot be held that there was sufficient time for passion to cool-off and the anger resulting from quarrel to subside. We are, therefore, of the view that Exception 4 to Section 300 applies.

7. Considering the nature of injury, the place where it was caused and the size of the weapon, we are of the view that the offence amounted to culpable homicide not amounting to murder and, therefore, this is a case; where the intention can be inferred for death or at least such bodily injury likely outcome of which was death. Accordingly conviction Under Section 302, IPC is set aside. But the accused is convicted under Section 304, Part I, IPC and sentenced to undergo rigorous imprisonment for ten years.

8. The appeal is allowed to the extent indicated above.

D.M. Patnaik, J.

9. I agree.

