

Subash Chandra Panda and ors. Vs. State

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Court : Orissa

Decided On : Sep-08-1993

Reported in : 1994CriLJ1429

Judge : B.N. Dash, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 320 and 326

Appeal No. : Criminal Revision No. 559 of 1990

Appellant : Subash Chandra Panda and ors.

Respondent : State

Advocate for Def. : D.K. Misra, Addl. S.C.

Advocate for Pet/Ap. : P. Palit, Adv.

Disposition : Petition dismissed

Judgement :

B.N. Dash, J.

1. This revision is directed against the judgment of the learned Sessions Judge, Ganjan, Barhampur altering the conviction and sentence of the accused-petitioners.

2. The prosecution case, shortly stated, is that on 6-10-1987 sometime in the morning P.W. 1 R. Elleya Reddy belonging to village Uppalapati killed a goat and sold the meat to his co-villagers and at about 8 in the morning while he was passing on the village street crossing the houses of the accused persons for collection of the price of the meat sold, accused Subash Chandra Panda enquired of him as to the amount of profit earned by him by selling the meat and when P.W. 1 replied that he had no business to poke his nose into his affairs, the latter got infuriated and attacked P.W. 1 along with his co-accused persons who are his brothers by means of Katis (M.Os. I, II, IV and V). As a result of the assaults with Katis, P.W. 1 sustained bleeding injuries and after the matter was subsided by the villagers he lodged the FIR, Ext. 1, at Arijipalli police out-put on the same day at about noon time. In course of investigation P.W. 1 was sent for medical examination, the Katis (M.Os. I, II, IV and V) were seized on production by the accused persons, some blood stained earth was seized from the spot and so also the wearing apparels of the injured (P.W. 1), the seized articles were sent for chemical examination and after completion of investigation charge-sheet having been placed, the accused persons faced trial for the offence punishable under Section 307 read with Section 34, IPC.

3. The defence was one of denial and according to the accused persons, the case had been falsely foisted against them out of previous enmity between the four Brahmin families of the village including the accused persons and the remaining villagers. Three witnesses were examined on behalf of the defence of whom D.W. 1, a co-villager of the parties deposed that there was no such occurrence and the other two witnesses were examined to prove certain documents relating to prior litigation between Dasarathi Panda, the father of accused Subash, Jyotiraj and Prafulla on the one hand and some villagers on the other.

4. At the trial, the prosecution examined as many as 6 witnesses in support of its case of whom P.W. 1 has already been introduced; P.Ws. 2 and 3 were said to be eye-witnesses to the alleged occurrence; P.W. 4 was a post occurrence witness and P.Ws. 5 and 6 were respectively the investigating officer and the medical officer. On a consideration of the entire evidence on record, the learned Assistant Sessions Judge, Chhatrapur believed the prosecution case and convicted the

accused persons Under Section 307 read with Section 34, IPC and sentenced each of them to undergo rigorous imprisonment for five years and to pay a fine of Rs. 200/-, in default, to undergo rigorous imprisonment for a further period of two months. The accused persons having appealed against such order of conviction and sentence, the learned Sessions Judge modified the conviction holding the accused persons guilty under Section 326 read with Section 34, IPC. and sentenced each of them to the period of imprisonment already undergone and to pay a fine of Rs. 500/-, in default, to undergo rigorous imprisonment for a term of one year.

5. Mr. P. Palit, the learned counsel for the petitioners has raised two contentions. His first contention is that the learned Sessions Judge having disbelieved the evidence of P.Ws. 2 and 3 he could not have convicted the accused persons on the uncorroborated testimony of P.W. 1. His second contention is that the injuries received by P. W. 1 having not been proved to be grievous within the meaning of Section 320, IPC, the accused persons could not be convicted Under Section 326 read with Section 34, IPC. The learned Addl. Standing Counsel, on the other hand, supports the impugned judgment.

6. As regards the first contention, I find that the learned Sessions Judge has nowhere disbelieved the evidence of P.W. 2 and 3, as submitted by Mr. Palit. On the other hand, in para 9 of his judgment the learned Sessions Judge has observed - 'I see no contradiction in the narration of the events made by P.Ws. 1 to 3.' After noticing some discrepancies in the evidence of P.Ws. 1 to 3 and also the prior litigations between the father of accused Subash, Jyotiraj and Prafulla on the one hand and some villagers forming a village committee on the other, the learned Sessions Judge has observed 'Even if, in the circumstances, the evidence of P.Ws. 2 and 3 is ignored, the evidence of P.W. 1 would be there for bringing home the charge Under Section 326 read with Section 34 of the IPC as against all the four appellants, from out of whom, as is apparent, appellant Subash Chandra Panda, who had been hurt the most, had only inflicted the hardest blow, unlike the others inflicting just grazing wounds.' From such observation, it cannot be said that evidence of P.Ws. 2 and 3 has been disbelieved by the learned Sessions Judge. All that he has stated by that observation is that even if the evidence of P.Ws. 2

and 3 is set apart, the prosecution case is liable to be believed on the basis of the evidence of P.W. 1. While making such observation the learned Sessions Judge had kept in view the medical evidence of P.W. 6, which according to him, lends full corroboration to the evidence of P.W. 1. It is well known that enmity is a double edged weapon because it can be used not only for foisting a case against a person who has committed no offence but also to commit an offence. When the learned Sessions Judge has fixed the guilt of the accused persons on the basis of the evidence of P.W. 1, which according to him, has been corroborated not only by the evidence of P.Ws. 2 and 3 but also by the medical evidence, his ultimate conclusion in believing the prosecution case can hardly be interfered with.

7. Coming to the second contention, it is seen from the medical evidence that P.W. 1 had sustained five incised wounds of various dimensions on his person of which the dimension of injury No. 5 described as grievous is 6' x 2' x 3 1/2' and the same is located around the upper part of the left shoulder joint. According to the doctor (P.W. 6), the said injury had cut the muscles, tendons and the scapula-bone. While deposing as to the nature of the said injury, the Medical Officer has stated 'I did not refer for X-ray examination of injury No. 5 as I could see the nature of injury'. From such evidence, it cannot be said, as contended by the learned Addl. Standing Counsel that the entire scapula-bone had been cut and the wound was therefore a fracture. So, the question arises whether without knowing the extent of cut to a bone it can be conclusively said that there has been a fracture to that bone in which case alone such injury can fall within the meaning of Clause 7 of Section 320, IPC. which defines 'grievous hurt'. In Stedman's Medical Dictionary, 23rd Edition, the term 'fracture' has been defined as '1. To break. 2. A break, especially the breaking of a bone or cartilage'. In view of this definition, a partial cut to a bone can as well be said to be a fracture because it breaks that bone to certain extent. In *Hori Lal v. The State of U.P.*, : 1970 CriLJ1665 a similar question came up for consideration before the Apex Court and while rendering a finding the learned Judges observed as under (at page 197.1; of AIR):-

'It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or

splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of Clause 7 of Section 320. What Court has to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.'

(Quoted from the placitum)

In this case the extent of cut to the scapula-bone is of course not ascertainable but since the doctor has deposed as seen above that he could see the nature of the injury to be grievous, it has to be taken that there was break to the bone by the cutting and as such, the injury was grievous within the meaning of Clause 7 of Section 320, IPC. Mr. Palit for the petitioners has referred me to the decision in *Mustafa Sheikh v. Lalchand Sheikh*, 1985 Cri LJ 1183. In that case one of the questions that came up for consideration before a Division Bench of the Calcutta High Court was whether a particular wound to a bone was a fracture and as such grievous within the meaning of Clause 7 of Section 320, IPC. In that case even if the depth of the wound to the bone was known, the learned Judges came to hold that while examining the wound the doctor having not stated the wound to be a fracture, it could not be said that the wound was really a fracture. The learned Judges did not take into consideration the effect of depth of the wound caused to a bone which according to the dictionary meaning can be said to be a breaking of the bone and as such a fracture. This view of the Calcutta High Court cannot be said to have laid down the correct proposition of law in view of the decision of the Supreme Court in *Hori Lal's case* (supra). Even if a doctor does not specifically opine a particular wound to be a fracture, the same can be held to be a fracture, if it is otherwise shown to be as such. As already indicated earlier the wound in question having cut the scapula-bone, the same was a fracture within the meaning of Clause 7 of Section 320, IPC even if the extent of depth of the injury is not ascertainable. That being so, I do not find any infirmity in the order of the learned Sessions Judge convicting the accused-petitioners Under Section 326 read with Section 34, IPC.

8. In the result, I find no merit in the revision which is, accordingly, dismissed.

