

Pradip Choudhury Vs. the State

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Court : Orissa

Decided On : Feb-19-1985

Reported in : 1985CriLJ1770

Judge : B.K. Behera and ;P.C. Misra, JJ.

Appellant : Pradip Choudhury

Respondent : The State

Advocate for Pet/Ap. : Mr. Nanda

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Section 302 of the Indian Penal Code (for short, 'the Code') and sentenced thereunder to undergo imprisonment for life for having committed the murder of his father-in-law (hereinafter to be described as the deceased') on June 21, 1980, at M. P. V. 31 by intentionally causing his death by means of M. O. I. (a knife) and the trial Court has accepted the case of the prosecution based mainly on the evidence of P. W. 2, the mother-in-law of the appellant, who is the widow of the deceased and P. W. 3, the wife of the appellant, who had figured as witnesses to the occurrence and that of P.Ws. 1 and 6, the co-villagers to whom P.Ws. 2 and 3 had immediately reported about the occurrence naming the appellant as the author of the crime, besides the evidence of P.W. 5

who had seen the appellant running away from the village towards the jungle at the relevant time and the recovery of M. O. 1 consequent upon the statement said to have been made by the appellant while in custody and his pointing out the place of discovery and in addition, the recovery of a shirt (M.O. III) from his person. It was in evidence that on chemical examination, blood was detected in M.Os. I and III and its origin could not be determined.

2. Mr. Nanda, appearing for the appellant has strenuously urged that the evidence on which the prosecution had placed reliance was highly unsatisfactory and could not be the foundation for an order of conviction. It has been submitted in the alternative that in case this Court holds, agreeing with the trial court, that the appellant had stabbed the deceased to death by means of M.O.I. the offence would come within the purview of Section 304 Part II of the Code. Mr. Sahu, the learned Standing Counsel, has submitted that neither of the two contentions raised on behalf of the appellant can prevail.

3. We have been taken through the evidence of P.Ws. 2 and 3 and the other relevant evidence. It would clearly appear from the evidence of P.Ws. 2 and 3, who would not normally implicate the appellant if he was not the author of the crime, that having married P.W. 3 on the condition that he would look after the cultivation of the deceased, the appellant moved here and there and did not mind for his work. On the day of occurrence, he returned from the market after sale of Mahula fruits and the deceased asked him as to what he did with the money and further told him to purchase a saree out of the sale proceeds. At this, the appellant brought out M.O.I. which had been kept inside his Dhoti and stabbed the deceased on his chest causing his instantaneous death. It would also be seen from their evidence that immediately thereafter, the appellant took to his heels. P.W. 5 had seen the appellant running away towards the jungle and there was no reason to discard the evidence of this witness. Both P.Ws. 2 and 3, who were in the house of the deceased, where the occurrence had taken place, were natural and competent witnesses and there was no material to show that they were not in a position to witness the occurrence and that therefore, they could not have said as to who had stabbed the deceased to death.

4. The immediate statements made by P.Ws. 2 and 3 to P.Ws. 1 and 6 about what had happened would lend support to their evidence. There was, in addition, the clear evidence of the doctor (P.W. 9), who had noticed one punctured wound 3' x 2' x 5' on the left side of the front chest. This had affected the heart, pericardium, left lungs and pleura. According to the doctor, the external injury and the consequential internal injuries, sufficient in the ordinary course of nature to cause death, could be caused by M.O. I. This would further lend assurance to the testimony of P.Ws. 2 and 3. No doubt, the doctor has opined in his cross-examination that the injuries could as well be caused by fall from a height on a pointed substance, but there was no evidence supporting such a theory.

5. The Investigating Officer (P.W. 11) and another witness (P.W. 10) had testified that while in custody, the appellant had stated that he had concealed the knife in village M. P. V. 30 near the house of Manindra Bhaumik and he led them to that village and brought out the knife from under a thatch of (he back side of the house of that person and each of them had identified M.O. I to be that knife which was seized as per the seizure list, Ext. 10. The entire statement of the appellant including that portion that he had concealed the knife is admissible under Section 27 of the Evidence Act. (See : [1963]3SCR412 K. Chinna Swamy Reddy v. State of Antmra Pradesh). This statement coupled with the recovery would clearly indicate that the appellant was the author of concealment of M.O. I, which, as testified by P.Ws, 2 and 3, was the weapon of attack and the doctor had also opined that M.O. 1 could cause the external and internal injuries on the person of the deceased.

6. Blood, small for test, was noticed in M.Os. I and III. Not much reliance can be placed on this as the origin of blood could not be determined.

7. Inviting our attention to a decision of this Court in the case of Bishnu Charan Das v. The State (1985) 59 Cut LT 193 : (1985) 1 Orissa LR 148 : (1985) Cri LJ 1118 it has been submitted by the learned Counsel for the appellant that in the instant case, the appellant can be convicted under Section 304 Pan II of the Code. In that case also, the accused had dealt one blow by a knife on the chest.

8. In our view, no legal proposition can be laid down that whenever one blow by means of a lethal weapon or by a stabbing instrument is dealt on the person of the deceased, the case would not come within the purview of any of the clauses of Section 300 of the Code defining murder and that the case would come invariably within the purview of Section 304 Part I or 304 Part II of the Code. Each case would depend on its own facts and circumstances. In the circumstances obtaining in the reported case, it was held that the act of the appellant would not amount to murder, but culpable homicide not amounting to murder punishable under Section 304 Part 11 of the Code.

9. There was the evidence of P.Ws. 2 and 3 that the appellant wanted to stay elsewhere with P. W. 3, but he was being told to find out a job and then leave the house with P.W. 3, It was also in evidence that the appellant used to assault his wife and that the deceased had been telling the appellant to live like a gentleman.

There had been no serious quarrel or altercation between the appellant and the deceased preceding the assault and the deceased had asked the appellant as to what he did with the sale proceeds of Mahula fruits and asked him to purchase a saree. As testified by P.W. 3, there had been an exchange of some words between the appellant and the deceased. The appellant had evidently kept concealed M.O. I on his person inside the Dhoti and attacked and stabbed the deceased to death by dealing a very heavy blow which had penetrated 5' deep causing several internal injuries resulting in his death. As rightly noticed by the trial court, the appellant had come being armed with a knife and had kept it concealed. This would indicate that he had the intention to do away with the life of the deceased and that in the circumstances narrated above, he stabbed the deceased to death. It would appear from the conduct of the appellant preceding, attending and following the incident that he had committed the murder after a plan and after pre-meditation.

10. The appellant had undoubtedly the intention of causing the death of the deceased and that with that intention, he had caused injuries sufficient in the ordinary course of nature to cause death. The act of the appellant coming under the third clause of Section 300 is punishable under Section 302 of the Code. This

view of ours finds support from the principles laid down in : 1980 CriLJ1475 (Aditya Mohapatra v. State of Orissa) and : 1983 CriLJ693 (Vasanta v. State of Maharashtra).

We thus find that the order of conviction is well-founded on facts and sustainable in law,

11. The appeal fails and is dismissed.

P.C. Misra, J.

12. I agree.

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