

Hukum Pradhan Vs. the State

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Court : Orissa

Decided On : Aug-07-1986

Reported in : 1987CriLJ251

Judge : G.B. Patnaik and; L. Rath, JJ.

Appellant : Hukum Pradhan

Respondent : The State

Judgement :

L. Rath, J.

1. This appeal has been preferred from jail by the appellant having been convicted under S. 302, I.P.C, for having committed murder of one Dinabandhu A mat, his co-villager by shooting an arrow.

2. The prosecution case as unfolded by the evidence is that on 4-6-1981 at about 7,00 A.M. while the deceased was proceeding on his bicycle from his house towards Ranchi road, the appellant standing behind the house of another co-villager Indradeo Singh shot an arrow which hit the deceased in the right side of his chest just near the exit of the school compound. As a result of the hitting of the arrow, the deceased turned his bicycle towards the left and after proceeding for a distance of 5 to 10 cubits dropped on the ground. P.W. 3 (Saraswati Ekka) and P.W. 5 (Balamati Dei) who were .at the tube well situated nearly within the school

compound as also P.W. 4 (Baidehi Das), who was approaching the tube well saw the occurrence. A hue and cry was raised by the witnesses and several persons of the village assembled at the spot including the wife, mother and daughter of the deceased as also Dileswar Jaipiiria (P.W. 1) and Bijayabasant Das (P.W. 2) who are co-villagers. The deceased by then was writhing in pain and seeing this, P.W. 1 wrote down an F.I.R. (Ex. 1) and sent the same to Lanjiberna Police Outpost through P.W. 2, who was also requested to arrange a Jeep so that the deceased could be removed to Kutra Primary Health Centre. P.W. 2 after handing over the F.I.R. at Lanjiberna Police Outpost informed the occurrence to the brother of the deceased Upendra Amat (P.W. 12) and sent a Jeep in 'which the deceased was removed to the Primary Health Centre where the protruding handle portion of the arrow was cut and removed and first-aid was given by the Medical Officer (P.W. 8) but however since the condition of the deceased was deteriorating, the Doctor advised for his removal to Sundargarh Hospital. The deceased was thereupon sent in the same Jeep and the Doctor who had also to attend a meeting at Sundargarh accompanied the deceased. Since the condition of the deceased became worst on the way, he was taken on the advice of the Medical Officer to Bargaon Government Hospital where he died. The matter was reported by some of the villagers accompanying the deceased at Bargaon Police Station. The Bargaon Police held inquest over the dead body of the deceased and prepared inquest report (Ext. 4) and sent the dead body for post mortem examination through C/788 Gopinath Sahu (P.W. 10). The post mortem was held by the Medical Officer of Bargaon Hospital (P.W. 15). In the mean time preliminary investigation was taken up by P.W. 13, the A.S.I, attached to Lanjiberana P.S. on receipt of the F.I.R. which he sent to Rajgangpur P.S. for registration of a case. P.W. 13 examined at the Outpost P.W. 2 who had handed over the F.I.R. and thereafter, proceeded to the spot and seized the bloodstained earth, sample earth and a pair of chappal from the spot under seizure list Ext. 2 and examined some more witnesses. He thereafter handed over investigation to the Officer-in-charge, Rajgangpur P.S. (P.W. 14) who arrived at the spot at 4.30 P.M. He re-examined the witnesses who had been examined by P.W. 13 and arrested the appellant and also seized bow (M.O. VI) under seizure list, Ext. 37. Thereafter, he obtained the post mortem report as also articles seized by the Officer-in-Charge, Bargaon P.S.

(P.W. 9) including the arrow (M.O. VI). After completion of investigation, he submitted Charge-Sheet against the appellant.

3. While the defence of the appellant was one of denial and no witnesses were examined by him, the appellant attempted to suggest to the witnesses the case of an accident, the arrow being aimed at the birds sitting on the tree and having hit the deceased instead.

4. Though the prosecution has examined in all 15 witnesses in support of its case, yet the main plank of its case rests upon the ocular statement of P.Ws. 3, 4 and 5 who witnessed the occurrence. P.Ws. 1 and 2 are the persons who reached the spot after the occurrence. P.W. 1 states to have ascertained, on questioning P.W. 3, that the arrow had been shot by the appellant. P.W. 2, as has been stated above, is the person who took the F.I.R. written by P.W. 1 and delivered the same in the outpost and thereafter sent a Jeep for removal of the deceased to Kutra Primary Health Centre. P.Ws. 6 and 7 are the seizure witnesses. P.W. 8 is the medical Officer of Kutra P.H.C. and is the person who had first attended the deceased and had accompanied him to Bargaon Government Hospital. He states that the deceased had profuse bleeding and his condition was precarious. He had cut the protruding bamboo portion of the arrow and administered first aid to the deceased. P.W. 9 is the Officer-in-Charge of Bargaon P.S. who conducted some investigation and had sent the dead body for post mortem examination and had seized the bamboo handle of the arrow (M.O. II) under Ext. 6. P.W. 10 is the Constable who had identified the dead body to the Medical Officer, Bargaon Hospital and had got back the wearing apparels, etc., of the deceased after post mortem examination. P.W. 11 is a co-villager of the deceased and had accompanied the deceased from Kutra to Bargaon and is also a witness to the seizure of the handle portion of the arrow (M.Q. II). P.W. 12 is the brother of the deceased and was working at Lanjhiberana and stated to have been informed by P.W. 2 that his brother had been injured by the appellant. He is also a person who had accompanied the deceased to Bargaon and had submitted written report at Bargaon Police Station after the death of the deceased.

5. From the evidence of P.W. 15 who conducted the post mortem examination it appears that the deceased had a punctured wound 2V2' x 2' X liver deep; there was injury over the 7th and 8th intercostal space on the mid-axillary line on the right side. There was also an arrow inside the abdomen piercing the liver and one small bamboo portion of the arrow was projecting outside. On dissection, it was found that the punctured wound had cut the right 8th rib on right mid-axillary line. The Peritoneum was cut and the arrow had pierced the liver causing a lacerated injury in the liver which was 2' X 3/4' X 4 1/2' deep. The arrow had pierced the whole of the liver transversely starting from the right lateral part of the liver. The whole of the peritoneal cavity was found filled with blood. In the opinion of the Medical Officer, the cause of death was due to injury to the vital organ like liver, haemorrhage and shock and that the injuries were sufficient in the ordinary course of nature to cause death.

6. We have been taken through the entire evidence and on an analysis of the same, it can be said that on the evidence of P.Ws. 3,4 and 5 there cannot be any doubt that it is the appellant who had shot the arrow which hit the deceased causing his death. The death of the deceased was thus homicidal and the appellant was responsible for the same. The evidence of P.Ws. 3, 4 and 5 in spite of some minor inconsistencies which are not relevant to the case is otherwise wholly consistent regarding shooting of the arrow by the appellant which hit the deceased. P.W. 3 has stated that while she was filling water in the tube well and Balamati (P.W. 4) was washing clothes there the deceased came on a cycle from her back side, i.e., from the Western side and crossing the tube well proceeded ahead to approach Ranchi road and that while he had crossed the Seris tree situated near the entrance of the School, the appellant standing near the house of Indradeo Singh shot an arrow from his bow which hit the right side chest of the deceased. As a result of the injury the deceased turned the cycle to his left and after proceeding a little distance fell down from the cycle. She called out the wife of the deceased while standing at the tube well and thereafter, went to her own house with the earthen pot filled with water. Before her leaving for her house, the wife and daughter of the deceased had arrived at the spot. Many other persons of the village had also arrived and she told shouting that the appellant had shot the arrow at the deceased. P.W. 4 who is the daughter of P.W. 2 is aged about 12

years and stated that while she was going from her house to the tube well the deceased crossed her from behind on a bicycle and proceeded ahead. When the deceased was near the entrance of the School compound, the appellant shot an arrow which hit the deceased. She also named P.Ws. 3 and 5 as being at the tube well at that time. The deceased after being hit with the arrow proceeded a little and then fell down on the ground. P.W. 3 raised a hulla which brought to the spot the wife, daughter and mother of the deceased as also many other co-villagers including P.Ws. 1 and 2. Though she is a child witness, yet her evidence is consistent and the necessary precaution had also been taken before recording her deposition. P.W. 5 likewise stated that she was washing clothes at the tube well and P.W. 3 was pumping the tube well to fill her earthen pitcher with water and while they were so engaged, the deceased came on a cycle from his house and proceeded towards Ranchi Road. When he had just crossed the entrance of the School compound, the appellant standing close to her house (she is the wife of Indradeo Singh) shot an arrow which pierced the right side chest of the deceased. The deceased on being hit by the arrow turned to the left and after proceeding to a little distance fell down from the cycle. P.W. 3 raised a hulla calling the wife of the deceased hearing which the wife, daughter and mother of the deceased immediately arrived at the spot followed by several other villagers. Nothing has been elicited from the witnesses in the cross-examination so as to shake their credibility. It thus can be concluded with certainty that it is the appellant who shot the arrow which hit the deceased and that the injury caused thereby was responsible for the death of the deceased.

7. However, the question is whether in spite of such fact, the appellant can be convicted Under Section 302, I.P.C. There is absolutely no evidence forthcoming that the appellant had any intention of killing the deceased. As a matter of fact, the prosecution has not attempted to prove any intention or motive in the appellant to kill the deceased. It is also nowhere in the evidence that the appellant aimed the arrow at the deceased. It thus on no account can be said that the appellant had intended to shoot the arrow at the deceased. Shooting of an arrow is also not so imminently dangerous that it must, in all probability, cause death or cause such bodily injury as is likely to cause death. The appellant was not shooting an arrow inside a crowd in which event it would have been almost a certainty that it would

hit somebody causing a grave risk to the life. Shooting of an arrow, so far as the appellant was concerned, was a stray incident without having been aimed at the deceased at all. The possibility cannot be ruled out that if the appellant did not intend to shoot the arrow at the deceased or aimed it at him, then the appellant was aiming the arrow at some other object or without aiming at a particular object in view.

8. The suggestion of the appellant to the prosecution witnesses was that of an accident while the arrow was being shot at birds sitting on the tree. Such suggestion was denied by the prosecution witnesses and the burden of bringing the case under the general exceptions has not at all been discharged by the appellant.

9. Considering all the facts and circumstances of the case the action of the appellant appears to be a rash and negligent one. The shooting of an arrow from a distance of ten feet from a road which is very frequently used without taking due care and caution as is expected of a reasonable man would impute a culpable rashness and wanton neglect of the civic duty owed by one. It was held in : 1972 CriLJ496 , S. M. Hussain v. State of Andhra Pradesh that criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence, on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. The appellant must be imputed with the knowledge; that he was undertaking a very dangerous act which could cause injury to others and that he was entirely indifferent to the consequences. The act was committed without taking any reasonable and proper care.

10. We would thus hold the appellant guilty of an offence Under Section 304A, I.P.C., and not Section 302, thereof.

11. In the result the conviction of the appellant Under Section 302, I.P.C., is converted to one Under Section 304A, I.P.C., and the appellant is sentenced to rigorous imprisonment for 18 months. The appeal is thus partly allowed. Since the appellant has been arrested since 4-6-1981, he be set at liberty forthwith.

G.B. Patnaik, J.

12. I agree.

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