

State Vs. Niranjana Jena @ Babuli

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Court : Orissa

Decided On : Dec-23-2005

Reported in : 2006(1)OLR385

Judge : P.K. Tripathy and; A.K. Parichha, JJ.

Acts : Evidence Act - Sections 27, 61 and 62; [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 354(3) and 366(1)

Appeal No. : DSREF No. 1 of 2005 and CRLA No. 58 of 2005

Appellant : State;niranjana Jena @ Babuli

Respondent : Niranjana Jena @ Babuli;state

Advocate for Def. : S. Swain and Associates in Death Reference No. 1 of 2005 and; P.K. Mishra, Standing Counsel in CRLA N

Advocate for Pet/Ap. : P.K. Mishra, Standing Counsel in Death Reference No. 1 of 2005 and; S. Swain and Associates in CRLA

Judgement :

A.K. Parichha, J.

1. The Additional Sessions Judge, Jajpur by judgment dated 17th January, 2005 passed in Sessions Trial No. 776/ 58 of 2001 convicted the appellant under Section 302, IPC, for having committed the murder of deceased Pravat Ghadei and Kasinath Ghadei and awarded capital punishment of death.

On a further finding that the appellant has caused disappearance of evidence of the commission of offence with the intention to screen himself from legal punishment, he also convicted the appellant Under Section 201, IPC and sentenced him to undergo R.I. for 4 years and pay a fine of Rs. 200/- in default to undergo R.I. for four months. On a reference being made to this Court under Section 366(1), Cr.P.C. by the learned Additional Sessions Judge, Jajpur for confirmation of the sentence of death, DSREF No. 1 of 2005 has been registered.

The accused/appellant also challenges to the aforesaid order of conviction and sentence in CRLA No. 58 of 2005.

On consent of the parties, both the aforesaid MATTERS were heard together and are disposed of by this common judgment.

2. Convict, Niranjana Jena and one Bira Kishore Ghadei were charge-sheeted in Binjharpur P.S. Case No. 172 of 2000 for commission of offence under Sections 302/201, IPC. Prosecution case, in essence, was that in the morning of 16.9.2000 goat of convict Niranjana DAMAGED some harvested paddy of the deceased Pravat Ghadei at the thrashing floor and on this incident, there was a quarrel between the two. The matter was somehow pacified at the intervention of deceased Kasinath Ghadei, father of the other deceased Pravat Ghadei and convict Niranjana tendered apology. On the next day, when deceased Pravat was carrying paddy bundles from his land to thrashing floor, convict Niranjana came out from his place of concealment, gave a push from the back, and AS A RESULT when Pravat fell down, he (Niranjana) gave successive blows by means of Katari on the neck of deceased Pravat as a consequence of which the neck of Pravat was almost severed and Pravat died instantaneously. Immediately thereafter convict Niranjana rushed to the thrashing floor where Kasinath and one of his labourers Dasaratha Das were stacking paddy bundles. He dealt two blows on the neck of Kasinath with the same Katari. As a result, the neck of Kasinath was completely

cut and he also died at the spot. One Kartik Ghadei, who was working in the neighbouring field, on seeing the occurrence, raised nullah in the village and then lodged a report in Bari Police Out-post. Basing on that report, investigation was undertaken, in course of which witnesses were examined, incriminating articles were seized, post mortem examination conducted. In course of investigation, it was learnt that after committing the offence, convict Niranjan had handed over the weapon of offence, i.e., Katuri, to one Bira Kishore Ghadei. Basing on the information given by said Bira Kishore Ghadei, the weapon of offence was recovered from a nearby paddy field. On completion of investigation, both Niranjan and Bira Kishore were charge-sheeted under Sections 302, and 201, IPC.

3. Both the accused persons took the plea of complete denial and claimed for trial.

4. In order to establish the charges, prosecution examined 11 witnesses and proved several documents marked Exts.1 to 13. the Bamboo Bahungi used by deceased Pravat and the Katuri, i.e., the weapon of offence were marked M.Os. 1 & II respectively. No witnesses, documents or material objects were produced from the side of the defence.

5. On the basis of such evidence, the trial Court found that none of the charges was established against accused Bira Kishore Ghadei and accordingly, acquitted him. It, however, found from such evidence on record proof of charges against convict Niranjan beyond all reasonable doubt and accordingly, convicted and sentenced him in the manner already indicated.

6. Mr. S. Swain, learned Counsel appearing for convict Niranjan submitted that the eye witnesses are not at all reliable as their statements are inconsistent and riddled with improbabilities and glaring contradictions. He also submitted that evidence regarding recovery of the weapon of offence could not have been utilized against the convict as the circumstance under which recovery was made does not come within the ambit of Section 27 of the Evidence Act. His further argument is that Exts.7 and 8 being the carbon copies of the post mortem reports, are not admissible in evidence and could not have been utilized against the convict Niranjan. He accordingly, prayed that the order of conviction and sentence should be set aside.

7. Learned Standing Counsel, on the other hand, while supporting the judgment Of the trial Court, submitted that P.Ws.1, 5, 6 and 7, as eye witnesses have corroborated each other in all material particulars and their evidence is credible and reliable. He further submitted that weapon of offence was recovered mainly on the statement of the convict Niranjana and, therefore, the circumstance of recovery of the weapon of offence can be utilized against the convict. He also submitted that Exts. 7 and 8 are carbon copies, which bear the original signatures of the doctors concerned and so, they are admissible in evidence as per Section 62 read with Section 61 of the Evidence Act.

8. P.Ws.1, 5, 6 and 7 are eye witnesses. P.W. 1 stated that on 16.9.2000 there was a quarrel between the convict Niranjana and deceased Pravat on the issue of goat of the convict destroying some paddy, which were there on the thrashing floor and on the very same day when the deceased Pravat was carrying harvested paddy bundles on bamboo Bahungi (M.O.I.) from his land to the thrashing floor, convict Niranjana who was there behind a bush suddenly attacked Pravat with Katuri. He stated that convict Niranjana dealt several blows on the neck and back of the deceased Pravat, as a result of which the neck of Pravat was completely severed causing his instantaneous death. P.W.1 further stated that after killing Pravat, convict Niranjana rushed to the common thrashing floor where the deceased Kasinath and his labourer Dasaratha were stacking paddy bundles and there he dealt two katuri blows on the back side of the neck of Kasinath, thereby causing instantaneous death to Kasinath. P. W. 5 is the labourer of Kasinath, who was there with deceased Kasinath at the ill-fated time. He also stated that convict Niranjana suddenly came to the thrashing floor and dealt two katuri blows on the neck of Kasinath causing his death. P.Ws. 6 and 7 stated that while they were returning after answering the call of nature, they found Pravat carrying paddy bundles from his land towards the common thrashing floor and then saw the convict Niranjana suddenly coming out from behind the kia bush and attacking Pravat with katuri blows. They both stated that the convict dealt 3 to 4 blows on the neck of Pravat, as a result of which the neck of Pravat was totally cut and he died at the spot. These witnesses further stated that a few moments thereafter, P.W.5 came running from the thrashing floor and told them that the convict Niranjana killed Kasinath by means of a katuri.

9. Argument of the convict-appellant is that the above named eye witnesses could not have seen the alleged occurrence as they were at a considerable distance from the spots of occurrence and as the bushes were there obstructing their views. In spite of extensive cross-examination, the above named eye witnesses have maintained that they were available nearby when the convict carried his murderous attack on Pravat and Kasinath. In cross-examination, P.W.1 has clarified that he was working in a land which is close to the place of attack on Pravat and that the thrashing floor where the attack on Kasinath was carried was only 70-80 cubits away. P.W.5 has made it clear that he was there with Kasinath on the thrashing floor and saw the occurrence from very close quarters. P.Ws.6 and 7 in their evidence described that they were only 20-25 cubits away from the thrashing floor when the occurrence took place. It is to be borne in mind that the occurrence took place in broad day light and that the assailant and the victims were intimately known to the witnesses being co-villagers. In such backdrop, identification of the assailant or the victims or seeing the occurrence would not have been a problem. Presence of some bushes nearby is admitted, but no evidence was led about the height and size of those bushes or if those bushes obstructed the view of the witnesses in any manner. In such a situation, the Court is not permitted to draw a presumption that the bushes obstructed the views of the witnesses. A close reading of the narration given by the eye witnesses would reveal that they were all natural witnesses, who were available nearby and saw the occurrence in normal course. The convict Niranjan took a plea that eye witnesses have given false evidence against him, but nowhere in the evidence there is any indication that any of these witnesses had any ill-feeling or enmity with him or that any of them had any cogent reason to falsely implicate him in a murder case.

10. P. W.8 is the doctor, who conducted the post mortem examination on the dead body of Kasinath and prepared the post mortem report, copy of which has been marked as Ext.7. According to the evidence of this doctor there were sharp cutting injuries on the neck of the deceased Kasinath and his spinal cord at the neck level had been severed. The doctor has clearly opined that death of Kasinath was homicidal in nature. P.W.9 is the doctor, who conducted post mortem examination on the dead body of Pravat, and prepared the post mortem report, copy of which

has been marked as Ext.8. This witness has clearly stated that there were cut injuries on the neck and back of the deceased and that the spinal cord had been cut into two pieces at the level of base of the skull and that the death of the deceased Pravat was homicidal in nature. Evidence of both the doctors leave no room for doubt that deceased persons suffered homicidal death and that such death resulted from attack with sharp cutting weapons. Such evidence of the doctors thus thoroughly corroborate the evidence of the eye witnesses.

11. Argument is offered by the appellant that Exts.7 and 8 are carbon copies and are not admissible in evidence. First of all, Section 62 of the Evidence Act allows copies of documents prepared by uniform process to be accepted as primary documents. In course of cross-examination of either of the doctors, defence has brought no circumstance on record to discredit the credibility of Exts. 7 & 8. P.Ws.8 and 9 proved Exts.7 & 8 in accordance with law. Thus, such evidence are not liable to be excluded.

12. The I.O., P.W. 11 in his evidence stated that the convict after his apprehension disclosed that he gave the weapon of offence, i.e., Katuri, to one Bira Kishore Ghadei and Bira Kishore Ghadei on being confronted by the I.O. led the police to the paddy field and gave recovery of katuri, which had been hidden inside the mud and that katuri was seized under seizure list, Ext.6. According to the appellant, since the recovery of weapon was given by. Bira Kishore Ghadei, the weapon of offence should not have been linked to the convict under the provisions of Section 27 of the Evidence Act. The trial Court has dealt with similar submission in the judgment.

After closely analyzing the evidence and circumstances, learned trial Judge observed that basing on the information given by the convict that after the incident he gave the katuri to Bira Kishore, the I.O. recovered the weapon through Bira Kishore and for that reason a link was established between the weapon and the convict. The reasoning cannot be said to be far-fetched or illegal. Be that as it may, clear and direct evidence of the eye witnesses are there to show that the convict dealt katuri blows on the deceased persons and caused their death and such evidence of the eye witnesses is supported by medical evidence. With such

evidence at hand, there was every reason for the trial Court to hold the appellant Niranjana guilty under Sections 302, and 201, IPC. We, therefore, find no reason to interfere with the order of conviction recorded by the trial Court.

13. Learned Standing Counsel pressing the death sentence reference made by the learned Trial Judge submitted that the way the convict brutally beheaded the deceased father and son in cold blood over a simple issue shows that he is not possessed of the basic humanness, completely lacks psyche of mind set, which can be amenable for any reformation. According to him, such persons with brutal and perverse mind are menace to the society and have no right to live as they are likely to destabilize the security and discipline of the society. To support his contention, he drew our attention to the judgment of the apex Court in the case of *Sushil Murmu v. State of Jharkhand* : 2004 CriLJ658 .

Learned Counsel for the convict-appellant, on the other hand, contented that death sentence is to be awarded only in the rarest of rare cases, where the convict is found to have committed the death of the victim in such gruesome and grotesque manner that it revolts the conscience of the society. According to him, the ratio of *Sushil Murmu* (supra) will never apply to the present case as the convict in the case at hand allegedly killed the deceased out of anger at the spur of the moment and there was no mental perversity involved in the said act. Learned Counsel for the appellant submitted that the present case cannot be termed as the rarest of rare one and therefore, death sentence is not at all warranted. In this regard, he drew analogy between the present case and the cases of *Lehna v. State of Haryana* (2002) 22 OCR (SC), 424 and *Gyasuddin Khan alias Md. Gyasuddin Khan v. State of Bihar* : 2004 CriLJ395 .

14. It has been consistently held by the apex Court that only in rarest of rare cases where the collective conscience of the community is so shocked that it will expect the holders of the judicial power to inflict death penalty only irrespective of their personal option as regards desirability or otherwise, of such penalty. In *Bachan Singh v. State of Punjab* : 1980 CriLJ636 , the circumstances under which death penalty can be awarded were elaborately indicated. The principle was further streamlined in the case of *Lehna* (supra), wherein their Lordships indicated

objectively some of the circumstances, which can shock the collective conscience of the community and can be taken as rarest of rare cases. The circumstances indicated in that case are noted below :

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority, etc., is committed not for personal reasons but in circumstances which arouses social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion, for instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

15. In *Gyasuddin Khan (supra)*, the accused police constable caused death of three police personnel including a superior officer by firing gun shots. Since the killing of the superior officer was the result of anger, frustration and panic and the killing of two constables was in the state of frenzy without premeditation, the apex Court held that it was not rarest of rare cases. It was also indicated that the number of victims does not automatically make a case rarest of rare and that the mind set of the killer and the manner of killing are relevant factors to decide if the

base is the rarest of rare one. The act of the convict in the present case cannot be brought under the ratio of Sushil Murmu's case where an innocent child of 9 years was beheaded as a measure of sacrifice before Goddess to achieve prosperity and the severed head was carried by the accused in a gunny bag and

was thrown into a pond. Such act was clearly grotesque and revolting. The present case comes virtually under the ratio of the case of Gyasuddin Khan, as basing on a quarrel over damage of some paddy by a goat, convict Niranjan dealt katuri blows on the victims in a fit of anger to take revenge for the insult.

16. Taking all the above noted legal propositions and the factual aspects into consideration, we are of considered opinion that the complained act of the present convict does not come within the category of rarest of rare cases. Therefore, we decline to confirm the death sentence awarded by the trial Court and instead, we sentence him to undergo imprisonment for life for the said offence in accordance with the provisions of Section 354(3) of Cr.P.C. In view of the aforesaid conviction and sentence, no separate sentence is awarded for the offence under Section 201, IPC.

17. Accordingly, the Death reference is discharged and the Criminal Appeal is allowed in part by awarding the punishment of life imprisonment instead of death penalty.

P.K. Tripathy, J.

18. I agree.