

Nani Gopal Panda Vs. State of Orissa

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Court : Orissa

Decided On : Aug-01-2003

Reported in : 2003(II)OLR598

Judge : Sujit Barman Roy, C.J. and ;Laxmikanta Mohapatra, J.

Acts : Indian Penal Code (IPC) - Sections 302 to 304

Appeal No. : Criminal Appeal No. 1 of 1993

Appellant : Nani Gopal Panda

Respondent : State of Orissa

Advocate for Def. : M.R. Dhal, Addl. Standing Counsel

Advocate for Pet/Ap. : Kiran Rout, Amicus Curiae

Judgement :

Sujit Barman Roy, C.J.

1. This appeal at the instance of the appellant Nani Gopal Panda is directed against the judgment dated 24.11.1992 passed by the learned Sessions Judge, Balasore in Sessions Trial No. 147 of 1991 convicting the appellant under Section 302, IPC and sentencing him thereunder to rigorous imprisonment for life.

2. The prosecution case, in brief, is that on 10.6.1991 at about 3.45 P.M., P.W.I Sakuntala Das lodged a complaint at Soro Police Station stating, inter alia, that her grand uncle- in-law Shyam Sundar Dash had a concubine by name Satyabhama Dash. After death of said Shyam Sundar Dash, Satyabhama Dash was enjoying her share of the property left behind by Shayam Sundar Dash. Said Satyabhama Dash had two daughters. Her elder daughter Basanti Panda died and her second daughter Damayanti Panda being the wife of appellant Nani Gopal Panda was staying in the said property. Litigations were pending between the parties.

3. On that very day at about 8. A.M. in the morning on the western part of their house which was in possession of the prosecution party a tubewell was being installed. At about 3 P.M. the appellant and his brother Ganda came and forbade installation of the tubewell. On the date of occurrence when P.W.4 Hrusikesh Mallik and one Mahendra Mallik were engaged in some work in the said house, Hrusikesh came and reported to Muktikanti that the appellant was not allowing them to sink the tubewell. By that time the deceased being the husband of the informant returned from the field and on being informed about this matter proceeded to the spot where the tubewell was being sunk. Along with him P.W.5 Trilochan Das and Pitabas panigrahi also went to the spot. P.W. 1 along with her mother- in-law and sister-in-law also went to the spot. At that time the said concubine Satyabhama Dash and her daughter Damayanti Panda being wife of the appellant were both urging the appellant to proceed and start assaulting. On being so bidden, the appellant came close to the deceased when the deceased told the appellant why he was unnecessarily creating problem Soon after this. the appellant and his brother Ganda chased the deceased and other members of his family. However, P.W. 1 and her brother in law were bringing the deceased towards their house and at that time said Satyabhama Dash and her daughter Damayanti Panda being the wife of the appellant again provoked the appellant and on being so provoked the appellant gave a blow with a bamboo stick on the back of the deceased causing bleeding injury on his head. There was profuse bleeding from the injury sustained by the deceased as a result of which he fell down senseless on the ground. As the brother in law of the informant objected against such acts, the accused Ganda (since acquitted) dealt a blow by a bamboo on his hand and the appellant caught hold of Trilochan and beat him on his back. The

mark of such beating was still visible. This incident was witnessed by other members of the family of P.W.I as well as labourers, namely, three tubewell mechanics and their neighbour Sarangadhar Moharana. P.W. 1 further stated in the aforesaid complaint that the appellant made an attempt to kill her husband. As the condition of her husband was found to be quite serious, he was shifted to Soro Hospital for treatment. The accused persons also threatened her brother in law and other family members. On the basis of the said complaint, a case under Sections 341/324/506/307/114/34, IPC was registered at the said police station against the appellant and another.

4. After usual investigation, police submitted charge sheet against the appellant and another under Sections 302/323/34, IPC. In usual course the case was committed to the Court of learned Sessions Judge whereupon the learned Sessions Judge upon perusal of the materials on record framed charge under Section 302, IPC against the appellant. The trial Court also framed charge against the appellant and another under Sections 323/34, IPC. In course of trial, prosecution examined in all ten witnesses. On behalf of the appellant only one defence witness was examined. It appears from the evidence of D.W.1 Narendra Prasad Raj that the defence of the appellant was that P.W.5 Trilochan Das being the brother of the deceased attempted to assault the appellant with a bamboo stick. The said blow accidentally missed its target and fell on the head of the deceased and for this reason the deceased sustained the injury. However, on completion of trial the appellant was convicted and sentenced as already stated.

5. We have heard the learned counsel for the appellant as well as Mr M.R. Dhal, learned Additional Standing Counsel for the State. Both of them have taken us through the evidence on record. After perusing the evidence, it appears that in all five eye-witnesses including the informant have been examined on behalf of the prosecution. Instead of discussing their evidence elaborately, we feel that it would be sufficient to observe here that nothing could be elicited during cross-examination of these eye-witnesses nor nothing could be brought to our notice for which the evidence of these eye-witnesses could be discarded. On perusals of the evidence of these eye witnesses, we are of the opinion that they are fully trustworthy and reliable and their evidence do not suffer from any serious infirmity

except some minor omissions here and there. All these omissions are of inconsequential nature mostly. Therefore, so far as participation of the appellant in the incident in question and the prosecution story that the appellant was the author of the injury suffered by the deceased are concerned, we have no doubt in our mind as to the veracity of the said story.

6. However, the question is whether in the context of the facts and circumstances of the instant case and in view of the medical evidence on record, is it possible to sustain the conviction of the appellant under Section 302, IPC P.W.9 Dr. Jitendra Kumar Balabantarai held post-mortem examination over the dead body of the deceased. We find that during autopsy P.W.9 could actually detect only one injury. As narrated by him, the injury found on the deceased is of the following nature:

(i) One stitched wound containing 5 black silk stitches, situate antero-posteriorly of 6 cm. long, along with the abrasions on both sides of the stitched wound, of size 2 cm. x scalp deep on the parietal aspect of the left side.

(ii) The left side of scalp tissue was contused with haematoma formation of 1/4 cm. thickness.

On dissection of the aforesaid external injury P.W.9 found the following internal injuries.

(i) Depressed fracture with convexity upwards of 16 cm. long, communicated in nature on the left temporo- frontal bones.

(ii) Extra-dural haematoma on the right side of the brain, containing about 250 grams of clotted blood 1/2 cm. thickness.

(iii) Intra-cerebral punctated haemorrhage present along with mid-brain injury containing about 5 grams clot.

P.W.8 was of the further view that all the aforesaid injuries were ante-mortem in nature. The cause of death was due to shock and haemorrhage due to the injuries on the vital organ like scalp and brain, which is consistent with homicide. Time of death was about 6 to 12 hours of the examination. He also opined that the injury

found on the person of the deceased could be caused by a bamboo lathi like Ext. M.O.I. The internal injuries described above corresponded to the external injury. He also expressed the view that these injuries in ordinary course could cause the death. This is the evidence given by P.W.9.

7. From the aforesaid analysis of the medical evidence on record, it appears that the appellant inflicted only one injury on the head of the deceased by a bamboo lathi. It is not in dispute by either side that such bamboos or bamboo lathis are available in our villages in every house. The very fact that only one injury was inflicted that too with a bamboo lathi clearly demonstrates that there was no such premeditation on the part of the appellant. In the morning the appellant objected against the sinking of tubewell on the land in question. We are not required to decide as to who is the lawful owner of the said plot. But, it appears that there is some genuine dispute between the parties as to who is entitled to the possession of the property. Be that as it may, after objection was raised on behalf of the appellant in the morning itself against the sinking of the tubewell, there was no occasion on the part of the prosecution party to forcibly sink the tubewell later on at that very spot instead of taking recourse to law as there was sufficient time for them to inform the law enforcing agency to prevent the appellant from interfering with the possession claimed by the prosecution party over the land in question where the tubewell was being installed. Instead of taking recourse to law, the prosecution party decided to instal the tubewell on their own. In these circumstances, we are of the view that there was sufficient provocation from the side of the prosecution party though equally there was no such occasion for the appellant to inflict such a blow on the head of the deceased. In these circumstances, it appears to us that the conviction of the appellant under Section 302, IPC and correspondingly his sentence as stated above cannot be sustained. In view of the fact that the deceased sustained only one injury, we are of the further view that the very intention to commit the murder of the deceased cannot be attributed to the appellant. At the most the knowledge that such injury was likely to cause death can be possibly attributed to the appellant and that being the position and in view of other circumstances of the case the conviction of the appellant under Section 304, Part II, IPC is alone possible. Accordingly, we alter the conviction of the appellant from one under Section 302, IPC, to Section 304,

Part II IPC and accordingly sentence him to seven years' rigorous imprisonment.

8. The trial Court is directed to issue warrant of arrest against the appellant for his arrest and production before the said Court and to commit him to prison to serve out the remaining part of sentence, as we are told that after serving out about little more than three years imprisonment he was released on bail pursuant to a direction issued by this Court.

9. The office is directed to transmit the records of the trial Court with a copy of this judgment to the trial Court immediately.

10. The appeal is thus partly allowed and disposed of.

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