
(2008) 08 OHC CK 0045
In the Orissa High Court
Case No : Jail Criminal Appeal No. 103 of 2001

Alekha Naik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 302, 304

Citation : (2008) 2 OLR 261 Supp

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : J.K. Nayak, for the Appellant; Standing Counsel, for the Respondent

Judgement

P.K. Tripathy, J.—A trivial dispute resulted in unfortunate death of Hrushikesh Mishra, hereinafter referred to as the deceased. According to the case of the prosecution on 20.3.1998, at about 5.30 P.M. deceased and Madhu Barik, P.W.15 proceeded to village Rajdanga to see Jatra. On the way they met accused-Appellant Alekha Naik. The later was then in intoxicated condition, but he invited the deceased and P.W.15 and proposed to buy drink for them. They went the shop and consumed tadi. Before the deceased and P.W.15 could finish the drink, accused Appellant took excuse and went away to his house. On demand for the price of Tadi by the shopkeeper, deceased and P.W.15 replied that the accused-Appellant was to pay the price. That was not being agreed upon by the " shop owner, somebody else made payment. Then the deceased and P.W.15 came in front of the house of the accused-Appellant to express their dissatisfaction on the aforesaid conduct of the Appellant. Exchange of words at that place resulted in dealing of lathi blows by the accused-Appellant on the head of P.W.15 and chest of the deceased. P.W.15 could escape and deceased sustaining injury fell down and died at the spot. Police arrived at the spot on the following day. But then the skin, flesh and muscle on some parts of the dead body had been eaten by Jackal like beast. However in course of post mortem examination, it could be noticed that there was fracture of 10th and 11th ribs of chest and death was due to

shock and haemorrhage and that such injury was ante mortem in nature. Recording such opinion Dr. Pradipta Kumar Samantaray, P.W.13 submitted the post mortem report, Ext. 6 and therefore, the accused-Appellant together with the acquitted accused faced the trial in S.T. Case No. 113-A/28 of 1998/2000, arising out of G.R. Case No. 21 of 1998 of the Court of S.D.J.M., Pallahara. Prabhakar Naik, the acquitted accused was charged for the offence u/s 302/109 of the Indian Penal Code, whereas the Appellant was charged u/s 302 of the Indian Penal Code. Because of absence of evidence of abatement, the Trial Court acquitted co-accused Prabhakar Naik, but finding the evidence of the eye-witness P.W.2, injured witness P.W.15 and the pre-occurrence and post occurrence witnesses sufficient to prove the charge against Appellant, he recorded the finding that the Appellant is the author of the ante mortem injury which resulted in homicidal death of the deceased and, therefore, the Appellant is guilty of the offence of murder. Accordingly, he convicted the Appellant and sentenced him to imprisonment for life.

2. To substantiate the charge, prosecution examined 18 witnesses and exhibited series of documents marked Exts. 1 to Ext. 14 and a bamboo lathi and two knives as M.Os. II to IV.

3. While denying to the charge, the accused-Appellant faced trial and he also examined himself as D.W.1 and there he advanced the plea of acting in self-Defence in answering to the attack of P.W.15 and the deceased together with others.

4. While advancing argument before us, learned Counsel for the Appellant does not dispute credibility of evidence of P.W.13, who recorded the opinion on homicidal death of the deceased and opined that the bamboo lathi could be the possible weapon of offence. Accordingly, he proved the post mortem report Ext. 6 and the opinion report Ext. 7. It transpires from the post mortem report and the evidence of P.W.13 that there was loss of skin, flesh and muscle from certain limbs and according to the opinion of the doctor, the aforesaid condition was due to flesh and skin being eaten away by animals like jackals and dogs. Therefore, the only injury, which could be produced by lathi, was resultantly caused fracture of 10th and 11th ribs leading to death of the deceased. We therefore, concur with the finding recorded by the trial Court regarding homicidal death of the deceased.

5. Learned Counsel for the Appellant argues that evidence of P.Ws. 1 and 15 is discrepant relating to the manner in which the occurrence took place and therefore, their evidence should be discarded. Such an argument is devoid of merit, inasmuch as in his defence evidence, Appellant himself has admitted about the occurrence. Apart from that, there is no noticeable or glaring contradiction so as to discredit the version of P.Ws. 2 and 15. At best, it can be commented that P.W.15 even after sustaining bleeding injury on his head remained callous till the following day morning. In that respect, as rightly learned Standing Counsel argues the intoxicated condition of that injured might have compelled him to behave in that manner. That condition is well taken by learned

Standing Counsel. Be that as it may, as stated earlier, when the occurrence is admitted by the Appellant, minor contradictions of the above nature are of no consequence, so as to doubt the veracity of P.Ws. 2 and 15 and for that purpose evidence of P.Ws. 9, 10, 12 and 16 as post occurrence witnesses.

6. Learned Counsel for the Appellant argues that on accepting the entire prosecution case, a case of murder is not made out against the Appellant, inasmuch as according to the evidence of P.W.15 by the time of occurrence, the Appellant had already got intoxicated and the deceased and P.W.15 went in front of the house of the Appellant to challenge him for non-payment of price of "Tadi" and under such circumstances, retaliation of the Appellant may not be given colour of intention to kill or the knowledge that the blow given by him is sufficient in ordinary course of nature, to cause death of the deceased. His point of contention is that for the death of the deceased at best a case of culpable homicide not amounting to murder is made out against the Appellant. Though learned Standing Counsel disputes the aforesaid argument of the Appellant, but virtually he fails to point out any material evidence on record to discredit the aforesaid contention of the Appellant. On the other hand, the contention of the Appellant relating to the offence of culpable homicide is fairly readable from the prosecution evidence. Thus, we accept that argument of the Appellant and accordingly set aside the order of conviction u/s 302 of the Indian Penal Code and the sentence of imprisonment for life. At the same time, we find the Appellant guilty of culpable homicide not amounting to murder, punishable u/s 304 Part-I, IPC because the Appellant dealt lathi blow, which fractured 10th and 11th ribs. For his conviction u/s 304 Part-I, IPC, we impose sentence of rigorous imprisonment for 10 (ten) years.

7. It is stated at the bar that in the meantime, the accused-Appellant has already spent such a period inside the jail. If that be so, then after appropriate calculation, the Jail authority may do well to release the accused-Appellant from Jail Custody, forthwith, if his detention in jail is not required in any other criminal case.

Jail Criminal Appeal is accordingly allowed in part.