

(2003) 07 OHC CK 0003

In the Orissa High Court

Case No : Criminal Appeal No. 105 of 1992

Baban alias Gouranga Mohanty

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2003) 07 OHC CK 0003

Hon'ble Judges : Sujit Barman Roy, C.J.;Laxmikanta Mohapatra, J

Bench : Division Bench

Advocate : P.K. Mohanty and Additional Government Advs., for the Respondent

Final Decision : Allowed

Judgement

Sujit Barman Roy, C.J.—This appeal is directed against the judgment dated 20.1.1992 passed by the First Additional Sessions Judge, Cuttack convicting the Appellant u/s 302, I.P.C. and accordingly sentencing him thereunder to undergo imprisonment for life.

2. Prosecution case, in brief, is that Dr. K.C. Mohapatra (P.W.12) being the Medical Officer attached to the S.C.B. Medical College Hospital, Cuttack sent a written intimation to the officer-in-charge of Mangalabag Police Station stating, inter alia, that a dead body with spear injury on the chest was received in the Casualty of the said hospital and accordingly P.W.12 requested the Officer-in-charge of the said Police Station to take necessary action. On the basis of the said written intimation, a case u/s 302, I.P.C. was registered at the said Police Station against unknown accused persons. After usual investigation, Police submitted charge sheet against the Appellant only u/s 302, I.P.C. In due course of time the case was committed to the Court of the Sessions Judge, Cuttack. On transfer, the case was ultimately tried before the learned First Additional Sessions Judge, Cuttack. On perusal of the materials on record charge u/s 302, IPC was framed against the Appellant to which he pleaded not guilty.

3. On behalf of the prosecution as many as 12 witnesses were examined. None was examined on behalf of the Appellant. In course of his examination u/s 313, Code of Criminal Procedure the Appellant stated before the trial Court that on the day of occurrence he was in the house of one Gangadhar Barik (P.W.4), but at that time the deceased came and assaulted the Appellant. When the Appellant went to his master (employer) the deceased followed the Appellant and he could see in the darkness that the deceased was holding something like a knife and the deceased started shouting. Noticing this, the Appellant left that place. Except as aforesaid, the Appellant denied the prosecution story as alleged. On completion of trial, the Appellant was found guilty, convicted and sentenced as already stated.

4. We have heard Mr. Mohanty, learned Additional Government Advocate on behalf of the State. None is available for the Appellant. This appeal is pending in this Court since 1972. However, during pendency of the appeal on 23.8.1996 the Appellant was directed to be released on bail. As it is a very old appeal, we took the responsibility to go through the evidence ourselves and dispose of the appeal without the assistance of the learned Counsel for the Appellant as he is not available in the Court. We have, of course, heard learned Additional Government Advocate for the State.

5. P.W.1 Smt. Bhagabati Thappa is wife of the deceased. She stated in her evidence before the trial Court that she along with her husband (the deceased) was staying in a rented house of one Rajendra Singh. At that time the Appellant was serving as a servant in the house of the landlord of this witness. The incident occurred during the night hours some eight months before she gave her evidence before the trial Court. She could not remember the date. However, the occurrence took place in the night after about 10 P.M. her husband Man Bahadur Thappa (Since deceased) upon returning from his duty took his dinner and was washing his hand just outside the house. When he was so washing his hand after taking the dinner, the deceased could see that the Appellant was talking with Gangadhar Barik (P.W.4). However, the deceased asked the Appellant as to why the Appellant was wasting time by gossiping with the neighbour at such hour of the night. An altercation ensued between the two. Immediately after that, this witness could further see that the Appellant went inside the cow-shed of his master Rajendra Singh and the deceased also went ahead following the Appellant. He could further see that the Appellant rushed at the deceased with a spear in his hand locally called Tenta. This witness also saw that immediately after this, the Appellant dealt a blow with the said spear on the left side of the chest of the deceased and on receipt of such blow the deceased fell down on the ground in a pool of blood. This witness came forward to help the deceased and raised an alarm for help. Her brother, namely, Amar Bahadur Thappa (P.W.3) and Purna Chandra Thappa being P.W.2 came there. P.W.1 also called her neighbour, namely, Gangadhar for water. P.W.3 Amar Bahadur Thappa pulled out the spear from the chest of the deceased when the deceased was lying on the ground by cutting it by means of a knife. The deceased was conscious on receiving the

injury. However, she carried the deceased to the hospital with the help of P.W.3 Amar Bahadur Thappa and P.W.2 Purna Chandra Thappa in a rickshaw. From the said hospital the deceased was referred to the S.C.B. Medical College Hospital, Cuttack in the very night of occurrence and accordingly, the deceased was taken to the said hospital in an Ambulance. However, she did not accompany the deceased to the S.C.B. Medical College Hospital as she had three small children back in her house. Accordingly, she returned to her home from the said hospital when her deceased husband was carried in an Ambulance from that hospital. Next day at about 10 A.M. she could learn the news about death of her husband. We have also scanned the cross-examination part of her evidence. But, her trustworthiness could not be affected nor anything could be brought out to affect her credibility.

6. Next important witness is P.W.4 Gangadhar Barik as he has figured in this case as an eye-witness. In his evidence P.W.4 Gangadhar stated that the incident in question took place at about 10 P.M. some 7/8 months prior to the time when his evidence was recorded. In the night of occurrence when this witness was taking dinner the Appellant came up and gossiped with him in a loud voice. At that time the deceased came outside his house and entered the house of P.W.4 and challenged the Appellant asking him as to why the Appellant was talking in such a loud voice at that odd hour of the night. However, the Appellant replied that it was none of the business of the deceased to say this. At this, the deceased slapped the Appellant which resulted in an altercation between the two. The deceased again slapped the Appellant. Being slapped, the Appellant came out of the house of P.W.4 and ran towards the cow-shed of Rajendra Singh, the master of the Appellant. At that time the deceased also came out of the house of P.W.4. The Appellant was then armed with a spear and rushed towards the deceased and inflicted a piercing blow on the chest of the deceased with the said spear. The deceased fell down. Then the Appellant ran away after giving the blow on the chest of the deceased with the said spear. There was bleeding from the chest of the deceased. P.W.1, the wife of the deceased raised an alarm. Her brother reached the spot after she cried out for help. There was a gathering at that place. P.W.3 Amar Bahadur Thappa also came there later on. The spear was pierced on the chest of the deceased. P.W.3 Amar Bahadur Thappa pulled out the spear from the chest of the deceased. The deceased was then carried to the hospital by P.W.1 and her other relations. On the following day morning, this witness could learn that the deceased died in the hospital. P.W.4 further identified the said spear which was marked as M.O.I. we have also read and thoroughly scanned the cross-examination part of the evidence of this witness. On perusal of the same, we could not find anything to disbelieve this witness. All through the testimony of this witness is found to be fully trustworthy.

7. We are not referring to the evidence of other witnesses. However, it needs to be stated here that the evidence of other witnesses on record lend ample corroboration to the testimony of the aforesaid two eye-witnesses, namely, P.W.1 and P.W.4.

8. After considering the entire evidence on record, we do not have even an iota of doubt in our mind that the Appellant himself was the author of the injury to which the deceased succumbed on the next day morning. Therefore, we have no hesitation to hold that with the spear in question the Appellant inflicted the sole injury being a punctured wound on the left side of the chest of the deceased.

9. After considering the evidence on record, we further find that it was the deceased first who entered into an altercation with the Appellant on the ground that 10 P.M. appeared to the deceased to be an odd hour of the night and questioned the Appellant as to why he was gossiping in a loud voice in that odd hour of the night. On this, when the altercation started between the two, it was the deceased who slapped the Appellant twice or thrice. Now, doubtedly the offence committed by the Appellant is culpable homicide. However, the material question that arises in this case for our decision is whether the Appellant is guilty of culpable homicide amounting to murder or not. The trial Court held that the Appellant committed the offence of murder. It should be noted that the Appellant inflicted only one injury. Surely, the Appellant had no knowledge of human anatomy that the blow with a pointed weapon on the left side of the chest is dangerous. Now, the question is when such a single injury was inflicted by the Appellant on being provoked, whether one can infer the intention to commit the murder. To us, it appears that the act attributed to the Appellant is covered by the First Exception as contemplated u/s 300, I.P.C. The First Exception to Section 300, I.P.C. reads that the culpable homicide is not murder if the offender, whilst deprived of power of self-control by grave and sudden provocation, causes death of the deceased who gave the provocation or causes death of the deceased who gave the provocation or causes death of any other person by mistake or accident. Surely, the provocation was not sought or voluntarily provoked by the Appellant himself inasmuch as the deceased who first interfered in the matter and when an altercation started he slapped the Appellant twice or thrice. Therefore, such provocation was not invited by the Appellant.

10. In the circumstance, it appears to us that being provoked by the deceased in the aforesaid manner, the Appellant was deprived of power of self-control. There was certainly no pre-meditation on the part of the Appellant. It further appears to us that there being only one injury inflicted by the Appellant he did such act with the knowledge that such act was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death. In view of the aforesaid circumstances and the inferences we have drawn, we are of the view that the offence committed by the Appellant did not amount to culpable homicide amounting to murder but it amounted to culpable homicide not amounting to murder within the meaning of Section 304, Part II, I.P.C. Accordingly, we allow this appeal partly and alter the conviction of the Appellant from Section 302, I.P.C. to one u/s 304, Part II, I.P.C. and sentence him to undergo rigorous imprisonment for eight years.

11. The Appellant, who is on bail at present, shall surrender before the learned

trial Court within one month from today to serve out the remaining part of the sentence. If he does not surrender before the trial Court, it shall take such steps as may be considered necessary for arrest and production of the Appellant and to commit him to prison serve out the remaining part of the sentence, if any. The Registry is directed to transmit the trial Court records with a copy of this judgment to the trial Court within a fortnight.

The Appeal is thus partly allowed and disposed of.