

(2021) 03 OHC CK 0017
In the Orissa High Court
Case No : Criminal Appeal No. NO.5 Of 2002

Bahadur Singh Majhi And Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 432
Indian Penal Code, 1860 — Section 34, 300, 302, 304I

Citation : (2021) 03 OHC CK 0017

Hon'ble Judges : S. Panda, J;S.K.Panigrahi, J

Bench : Division Bench

Advocate : D.K.Mishra, S.C.Mohanty, G.K.Nayak, R.Mahalik

Final Decision : Disposed Of

Judgement

1. This appeal is directed against the judgment and order of the learned Additional District and Sessions Judge, Nuapada dated 21.12.2001 in S.C No.16/5 of 2001 convicting the appellants for commission of offences under Sections 302 / 34 of Indian Penal Code and sentencing them to undergo imprisonment for life.

2. The prosecution case in brief is that on 20.08.2000 at about 11. 00 A.M. when the informant-Kamaraj Majhi was grazing the cattle in his own field found that appellant No.1-Bahadur Majhi and one Dhanraj Majhi quarreled with each other in the field of appellant No.1 and during such quarrel appellant No.1 made Dhanraj Majhi lie on the ground, overpowered him by sitting over his chest and called to appellant No.2-Santarama Majhi to assault him. Appellant No.2 who was present at nearby place came with an axe in response to call of appellant No.1 and chopped both the hands and legs of Dhanraj Majhi, as a result of which there was severe bleeding injuries and consequently Dhanraj Majhi succumbed to the injuries. Even though the informant objected to the action of the appellants, the later did not pay any heed, rather they threatened him to face the similar consequences. The informant who is the brother of the deceased lodged a

written report in Jonk Police Station on the same day. On the basis of such information Jonk P.S. Case No.51 of 2000 was registered for commission of offences under Sections 302 /34 of I.P.C., which was subsequently converted to G.R. Case No.176 of 2000. After completion of investigation, charge sheet was submitted for commission of the said offences against the appellants.

3. In order to prove the charges during trial the prosecution examined fifteen witnesses. Out of whom P.Ws.1 and 2 are the eyewitnesses to the occurrence who are also brother and wife of the deceased. P.W.3 is the scribe of the F.I.R. and a witness to the inquest as well as the seizure. P.Ws.4 and 5 are the witnesses to the occurrence but they turned hostile. P.W.6 is the seizure witness. P.W.7 is the Revenue Inspector demarcated the disputed land.

P.Ws.8, 9 and 10 are the witnesses who turned hostile to the prosecution. P.Ws.11 and 14 are the Doctors. P.Ws.12 and 13 are the Havaladar and Constable respectively and P.W.15 is the Investigating Officer.

The plea of the defence was complete denial of the prosecution case and accordingly no witness was examined on behalf of the defence.

4. The learned Additional District and Sessions Judge after threadbare discussion of the materials available on record, convicted the appellants for commission of offences under Sections 302 / 34 of I.P.C. and sentenced them to undergo imprisonment for life.

5. Perused the L.C.R. and gone through the evidence on record carefully. It appears that the prosecution has basically relied on the testimony of two eyewitnesses to the occurrence, who are P.Ws.1 and 2 that prior to the date of occurrence there was ill feeling and hostile attitude between appellant No.1 and the deceased. Appellant No.2 was staying in the house of appellant No.1 as the later was issueless. On the date of occurrence a quarrel ensued between appellant No.1 and the deceased. The prosecution story further goes that while appellant No.1 overpowered the deceased, appellant No.2 dealt axe blows and chopped up the four limbs of the deceased. The injuries noted by the Doctor-P.W.14 in the Postmortem report does not give any doubt that the deceased had received the injuries on the date of occurrence by means of axe and his death was caused due to such injuries. P.Ws.4 and 5 who are independent witnesses were turned hostile. P.Ws.1 and 2 are the most natural and trustworthy witnesses and there cannot be any reason to disbelieve their testimony. P.W.15, the Investigating Officer has proved the disclosure statement of appellant No.2 under Ext.7/1, which reveals that the weapon of offence was discovered from the place of concealment in consequence to the information given by appellant No.2. The oral testimony of P.Ws.1 and 2 corroborated by the medical evidence and further corroborated by the chemical examination report under Ext.17 leaves no room for any doubt that both the accused persons were the perpetrators of the crime. Both the accused persons had intended and known that the injuries on the body of the deceased would cause death. On the basis of the aforesaid findings,

the learned trial court convicted the appellants for commission of offences under Sections 302 / 34 of I.P.C. and sentenced them to undergo imprisonment for life.

6. There is no dispute that due to ill feeling between the deceased and appellant No.1, appellant No.1 provoked with sudden anger at the spur of the moment and on the pit of such uncontrollable anger, he overpowered the deceased by sitting over his chest and called appellant No.2 to assault him. Appellant No.2 who was present at the nearby place came with an axe and chopped up the four limbs of the deceased. There was no premeditation since the appellants had not come prepared particularly for the said incident. However, the Trial Court had not taken into consideration the same while passing the sentence.

7. A Division Bench of this Court in the case of Sania Dora alias Badnaik v. State reported in 1984 (1) OLR 665 considered the facts of that case where there had been a sudden quarrel between the wife of the deceased on one hand and the appellant on the other and in course of which the co-accused had shot arrows at the deceased and his wife, and the deceased had shot an arrow at the co-accused. On the spur of moment, without any premeditation and being incensed, the appellant belonging to an aboriginal tribe dealt a blow which landed on the head of the deceased, who survived for some time and then succumbed to the injury. In those circumstances the order of conviction and sentence passed against the appellant under Section 302 IPC was altered to Section 304, Part-I I.P.C. Similar view has also been taken in a Jail Criminal Appeal by another Division Bench of this Court in the case of Mandangi Samburu v. State, 1985 (1) OLR 271. Further in the case of Ram Autar and others Vs. State of Uttar Pradesh reported in (2017) 2 SCC 449 the Apex Court held that culpable homicide not amounting to murder - incident happen on the spur of the moment, quarrel and heated exchanges and in an uncontrollable, embittered and agitated state of enragement, thus depriving accused persons of their power of self control. Hence on consideration of totality of circumstances, it was held a case under Section 304, Part-I I.P.C.

8. The appellants were the author of the crime and due to sudden quarrel in the heat of passion, they assaulted the deceased. Such an attack was without premeditation, for which the appellants are entitled to the benefit of Exception-4 of Section 300 IPC. For better appreciation, Exception-4 of Section 300 IPC is quoted hereunder.

"Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner."

9. In the ultimate analysis having regard to the root cause of the incident and the event sequentially unfolded thereafter, we are of the view that the appellants were overpowered by an uncontrollable fit of anger so much so that they were deprived of their power of self control and being drawn in a web of action

reflexes, assaulted the deceased. The facts do not commend to conclude that the appellants had no premeditation to commit murder. The incident happened on the spur of the moment and in an uncontrollable and agitated state of enragement, the appellants losing their self control. The evidence demonstrates no criminal back ground as well.

10. Be that as it may, on an overall consideration of the facts and also the time-lag in between, the conviction of the appellant ought to be moderated to one under Section 304, Part-I of I.P.C. and it would meet the ends of justice, if the sentence for the offence reduced to the period already undergone. Accordingly, we set aside the order of conviction under Sections 302 /34 I.P.C. and sentence of rigorous imprisonment for life passed by the learned Additional District and Sessions Judge, Nuapada in S.C. No.16/05 of 2001 and convict the appellants under Section 304, Part-I of the I.P.C. and sentence them to undergo R.I. for the period already undergone.

11. Learned Additional Government Advocate on instruction submitted that in the meanwhile both the appellants have been released prematurely in view of the orders passed by the Government in exercise of the power under Section 432 of the Code of Criminal Procedure, 1973.

The Criminal Appeal is accordingly disposed of.