

(1962) 03 OHC CK 0015
In the Orissa High Court
Case No : Criminal Appeal No. 133 of 1961

Bising Saura and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-03-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (1962) 28 CLT 337

Hon'ble Judges : R.K. Das, J;G.K. Misra, J

Bench : Division Bench

Advocate : P. Roy, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—Bising Saum & Gansu Saura are the Appellants. They were accused Nos. 1 and 3. The prosecution case is that these two Appellants, and Mangada Soura (accused No. 2) and Somanath Soura (Accused No. 4), who have not appealed, and the deceased persons are the residents of village Lade in Gunpur Taluk. Deceased Arambha and Sarina were the sons of Lachhman Soma (P.W. 1). Puyang Sonrani (p.w. 6) and Jaguni Sourani (p.w. 7) are the widows of Sarina. Arambha's widow Jagali died before here examination. Accused Bising and Gansu are brothers. Mangadu is their sister's husband and Somanath is the cousin of accused Nos. 1 and 3. P.Ws. 1 and 3 to 7, accused persons and the deceased are all neighbours.

2. On April 6, 1960 Jagali, wife of deceased Arambha, complained to P.W. 1 that her cow was maimed by Gansu. P.W. 1 asked her to report the matter to her husband after his return. Armbha returned in the evening and on hearing the matter from his wife demanded Gansu (accuse No. 3) as to why he maimed his cow. Gansu got annoyed and asked Arambha to go to the Gomang for a decision. So saying he dragged Armbha by hand. P.W. 1 protested against the conduct of Gansu who threw a stone (M. O. II) at P.W. 1 who sustained a bleeding injury on

his head and fell down senseless. Arambha protested against this dastardly act whereupon Gansu gave two blows on his fore-head and cheek with his axe (M. O. I). Arambha fell down. Somanath Soura snatched away M. O. I from the hand of Gansu and gave two more blows on the back of Armbha resulting in his instantaneous death. On hearing Armbha's cry when he fell down, P.W. 1 came to the spot and cried. On hearing his cries Sarina came to the spot accompanied by p. ws. 6 and 7. On seeing is brother dead, Sarina picked up a wooden post (M.O. V) lying nearby and gave a blow with it on too left hand of Gansu. Bising gave a blow on Sarina's left ear with an axe (M.O. III). Sarina fell down and Mangada stabbed his abdomen with his knife (M.O. IV). Sarina was taken home as he was not dead and he died the next day.

3. P.Ws. 3, 4 and 5 who are neighbours are eye-witnesses to the murder of Arambha and p.ws. 3 to 7 are eyewitnesses to Sarina's murder. On April 7, 1960 accused Nos. 1, 3 and 4 appeared before P.W. 8 with blood stained axes M.Os. I to III. P.W. 8 took possession of the axes and took the three accused persons to the police station where they were arrested. The Assistant Sub-Inspector went to the spot, held inquest over the dead bodies and sent them for post mortem examination through P.W. 9. P.W. 12 held the post mortem examination and examined Gansu and Bising who had injuries on their person. P.W. 11 arrested Mangada who produced the knife (M.O. IV).

4. The defence does not deny the occurrence. The defence of Somanath and Mangada need not be given as they have not filed any appeal Bising in his statement u/s 342, Code of Criminal Procedure, stated that the injuries sustained by him were the result of attack of Ammbha on him by axe and that he killed Sarina. Gansu admitted that he hit Arambha with M.O.I, and he was not attacked by Sarina with a lathi but that (sic) bha hit him by an axe on his hand.

5. The learned Sessions Judge convicted Bising Soma u/s 302 Indian Penal Code for having murdered Sarina Soura and sentenced him to imprisonment for life. He convicted Gansu Soura under sections 302 and 323 Indian Penal Code for having murdered Arambha and caused hurt to Lachhman Soura and sentenced him to imprisonment for life and R.I. for four months under Sections 302 and 323 respectively both the sentences to run concurrently. Somanath and Mangada were acquitted of the charge u/s 302/34 Indian Penal Code. Mangada was convicted u/s 323 Indian Penal Code for having caused hurt to Sarina and was sentenced to R.I. for six months. Somanath was converted under Action 324 Indian Penal Code for having caused hurt to Arambha and was sentenced to R.I. for six months.

6. The only point urged in this appeal is that the prosecution is guilty of suppression of a material part of occurrence and has failed to explain the injuries on Bising Soura and as such the entire prosecution as to how the occurrence took place must be discarded.

7. The law on the point is well settled. In *Mir Amjad Ali v. King Emperor* 16

(1950) C.L.T. 59. 2 a Division Bench of the Patna High Court held that where in a fracas some of the accused bore some injuries and the prosecution evidence does not explain as to how the accused came by the injuries, the accused are entitled to acquittal, particularly when the prosecution is guilty of suppression of a part of the occurrence. In *Kashinath Patra v. State* 24 (1958) C.L.T. 23 a Division Bench of this Court observed that mere competence to depose as an eye-witness does not necessarily mean that the evidence should be taken as reliable. Once it is established that the eye-witnesses are suppressing a material portion of the occurrence, it is difficult to accept their evidence as to how exactly the fight took place. In certain circumstances it will be extremely hazardous for a Court to conjecture as to how the fight must have taken place. This was followed by another Bench decision reported in *Gangadhar alias Guhia Das v. State* 25 (1959) C.L.T. 358. These decisions lay down clear guiding principles in cases where there is suppression of a material part of the occurrence. This is, however, not to say that whenever discrepancies occur, the prosecution case must be discarded either as a matter of law or general probability. It is to be noted that the Court should make an effort to disengage the truth from the falsehood and to sift the grain from the chaff. It is an error to take an easy course of holding the evidence discrepant and the whole case untrue. The story given by the eye-witnesses has to be carefully scrutinised in every case and unless it can be said with reasonable certainty that a certain person took part in the riot, the benefit of doubt has to be given to him. Though the prosecution witnesses might not have told the whole truth and though it is not possible to get an absolutely true picture of the event from that evidence, where it is not possible to say that the prosecution case is a complete fabrication the Court should make an effort to disengage the truth from the falsehood *Abdul Gani and Others Vs. State of Madhya Pradesh*, .

8. In order to appreciate the contention of the Appellant it is necessary to give the nature of the injuries on the person of Bising. Dr. Parasuram Mohanty (P.W. 12) examined the injuries on Bising. He states as follows:

On police requisition I examined accused No. 1 Bising Soura on 8-4-1960 and found the following injuries:

One incised wound over the left side of the fore-head measuring 2"x?" skull deep. The injury was grievous in nature and could be caused by a sharp cutting weapon like the Tangia (M.O.I). Ext. 21/1 is my injury report.

In his examination u/s 342 Code of Criminal Procedure Bising took the plea that Arambha Soum gave the cut injuries on him with an axe.

9. All the witnesses examined in the case fully support the prosecution version as given in the narrative. But none of them had given any explanation how the grievous injuries possible with a sharp cutting weapon like the Tangia (M.O.I) could be found on the body of Bising. The prosecution has nowhere stated that Arambha had any quarrel with Bising. As a matter of fact, according to the

prosecution case, Bising gave the fatal blow to Sarina when the latter gave a hit to Gansu with a lathi.

The version of Bising that Arambha effected the grievous injuries on his body with a sharp cutting weapon is not excluded by the evidence of the prosecution witnesses. So if the truth of Bising's version u/s 342 Code of Criminal Procedure is not ruled out then it is difficult to accept the prosecution version in the manner it is narrated that Bising came to the picture after the death of Aram bha. This amounts to a material suppression of a part of the story and with the best of efforts the falsehood. cannot be disengaged from the truth so far as this case is concerned if the prosecution had given some indication as to how the injuries occurred un Bising, some efforts could have been made to reconcile the discrepancies between the two versions. Bising is therefore entitled to the benefit of doubt.

10. The nature of injuries on Gansu is consistently explained by the prosecution and Gansu's admission of attacking Arambha with the axe is also supported by the prosecution version. Gansu makes a further statement that the attack on his left hand with a lathi was not made by Sarina but was caused by Arambha with an axe, and this is contrary to the prosecution story. But so affair as this particular accused is concerned the entire transaction was one and occurred in a short span of time. If the chronology of event as given by the prosecution is not accepted for suppression of a material part of the story, the same cannot be accepted as establishing the prosecution case as against Gansu. If the events were slightly different or dissociated, the position would have been different that a part of the prosecution story could have been accepted and the other part rejected. On this principle Gansu is also entitled to benefit of doubt.

11. In the result the convictions and sentences passed against both the Appellants (Bising Soura and Gansu Soura) are set aside and the Appellants are acquitted and should be set at liberty forthwith he appeal is allowed.

Das, J.

12. I agree.