
(2023) 08 OHC CK 0207
In the Orissa High Court
Case No : Criminal Appeal No. 483 Of 2016

Dhiren Dalei & Dillip Dalei

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 34, 302, 304I

Citation : (2023) 08 OHC CK 0207

Hon'ble Judges : D.Dash, J;Dr. S.K. Panigrahi, J

Bench : Division Bench

Advocate : Niranjana Lenka, S.K. Nayak

Final Decision : Disposed Of

Judgement

D.Dash, J

The Appellants, by filing this Appeal, has called in question the judgment of conviction and order of sentence dated 17th August, 2016 passed by the learned Sessions Judge, Mayurbhanj, Baripada in S.T. Case No.63 of 2014 arising out of G.R. Case No.425 of 2013 corresponding to Kaptipada P.S. Case

No.130 of 2013 of the Court of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Udala.

The Appellants (accused persons) thereunder have been convicted for committing the offence under section 302/34 of the Indian Penal Code, 1860 (for short, 8th IPC9). Accordingly, they have been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- (Rupees Ten Thousand) each in default to undergo rigorous imprisonment for one (1) year for the said offence.

2. Prosecution Case:-

On 04.11.2013, one Rasa Biswal (P.W.3), in the absence of the Officer-in-Charge of Kaptipada Police Station, presented a written report before the Assistant Sub-

Inspector of Police (ASI-P.W.11) of said Police Station. It is stated therein that on 17.10.2013 morning around 9.00 a.m., the accused persons were chasing the bull on the village road and then Narendra, who is the son of Rasa told them as to why they were chasing the bull towards that side instead of somewhere-else as the bull would damage then paddy crops grown by them. Hearing this from Narendra, accused Dillip abused him in obscene language by saying <SALA MAGIA99 and thereafter, it is said that accused Dhiren, who is the father of accused Dillip, assaulted the deceased brutally by giving kicks, slaps and fist blows and by means of a wooden plank. It is further stated that Narendra, receiving the injuries, lost his sense and with the help of villagers, was shifted to the Sub-Divisional Hospital at Udala wherefrom he was shifted to S.C.B. Medical College & Hospital, Cuttack being so advised by the Doctor for better treatment. The in-charge OIC, having received the said written report (Ext.4), treated the same as FIR and registering the case, directed A.S.I. (P.W.11) to take up investigation.

In course of investigation, the Investigating Officer (I.O.-P.W.11) examined the informant (P.W.3) and then proceeded to the spot and prepared the spot map (Ext.5). He also examined other witnesses and seized incriminating articles including the wooden plank on production by the accused Dhiren under seizure list. On 05.11.2013, he arrested the accused persons and forwarded them in custody to Court. He then on 08.11.2013 received information from the I.I.C., Mangalabag P.S. that Narendra met his death during his treatment in S.C.B Medical College & Hospital. He, having earlier issued requisition to the Medical Officer of Sub-Divisional Hospital, Udala Hospital, received the injury report. Thereafter, another police officer (P.W.13) took charge of investigation from P.W.11 by the order of the Superintendent of Police, Mayurbhanj. He collected all those papers including the post mortem report of the U.D. Case registered at Mangalabag P.S. on account of death of Narendra while undergoing treatment there. On 08.11.2014, that I.O.(P.W.13), being transferred, he handed over the investigation of the case to P.W.9, who was then the OIC of the P.S, who, completion of the investigation, submitted the Final Form placing the accused persons to face the Trial for commission of offence under section 302/34 of the IPC.

3. Learned S.D.J.M., Udala, on receipt of above Final Form, took cognizance of the said offences and after observing all the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing the charge for the aforesaid offences against this accused persons.

4. The defence has not tendered any evidence in support of the plea of denial and false implication.

5. Mr.N.Lenka, learned Counsel for the Appellants (accused persons), from the very beginning, without questioning the finding of the Trial Court that Narendra met a homicidal death, contended that even accepting the prosecution version, as presented through the evidence tender during trial, taking into account all the

surrounding circumstances such as the reason for which the trouble started so suddenly and for the role played by the accused persons as well as the act done by them when the death of the deceased has taken place after seventeen days of the incident in course of treatment, they ought not to have been convicted for commission of offence under section 302 of the IPC and instead, ought to have been convicted for commission of offence under section 304-I of the IPC. He, therefore, urged that alteration of conviction of the accused persons to under section 304-I of the IPC and for imposition of appropriate sentence.

6. Mr.S.K.Nayak, learned Additional Government Advocate for the Respondent-State, placing the evidence of the informant (P.W.3) and the other eye witnesses (P.W.4) as well as that of the Doctor (P.W.12), who had conducted the post mortem examination over the dead body of the deceased, submitted that for the role played by the accused persons and the overt act done by them upon Narendra (deceased), the Trial Court has rightly held them guilty for commission of offence under section 302 of the IPC.

7. Keeping in view the submissions made, we have carefully gone through the impugned judgment of conviction. We have also travelled through the depositions of the witnesses examined from the side of the prosecution as P.Ws.1 to 13 and have perused the documents admitted in evidence marked as Exts.1 to 9.

8. The informant (P.W.3), in her FIR (Ext.4) has in a general manner, stated that when the accused Dillip was chasing one bull on the road, her son Narendra stated as to why he was so driving the bull towards their area as thereby the bull would damage their paddy crop. It has further been indicated in the FIR (Ext.4) that accused Dillip then got enraged and having abused Narendra, he, with his father began to assault Narendra mercilessly by means of split wood and by giving kicks, fist blows and slaps and then thrashed him on the ground. In her evidence, she has stated that at the relevant time, she saw the accused persons driving the bull towards their village and when her son Narendra told them to drive the bull to another side, the accused persons assaulted him and then thrashed him on the ground. The wife of the deceased (P.W.4) has, however, stated that she had seen the accused persons quarreling with her husband Narendra and then accused Dhiren assaulted Narendra by means of a wooden plank and she further states that accused Dillip also assaulted and then both of them thrashed Narendra on the ground whereafter he lost his sense. It has also been stated during cross-examination that accused Dillip assaulted Narendra by giving fist blows. So, it appears that there was no prior planning for the incident and it happened all of a sudden when the accused persons are said to have been chasing the bull on the road by the side of the house of the deceased and it was only when deceased asked them to drive the bull towards another side, a quarrel ensued. It is not stated as to whether the accused persons were chasing the bull holding the split wood or lathi whatever we may say. The death, in the case, has taken place seventeen days after the incident when the deceased was undergoing treatment at S.C.B. Medical College & Hospital, Cuttack. It is the

evidence of the Doctor (P.W.10), who had first examined the deceased that he had noted a hematoma on the occipital region. The Doctor (P.W.12), who had conducted autopsy over the dead body of the deceased says to have noticed multiple abrasions on the left side front of his chest and circular shaped surgical hole of the size of 0.5 cm diameter each present on scalp at both side temporal area. According to him, the cause of death was due to complications arising out of injury to the spinal cord at the level of C-4 and C-5. The accused persons as well as the deceased hail from rural background and are the members of Scheduled Tribe. Judicial notice can be taken of the fact that ordinarily their temper run high and for silly reason, they too may a time exhibit the behaviour and response which is not ordinarily expected.

9. Taking a cumulative view of all these above circumstances appearing in the evidence, as discussed; we are of the view that the offence could be properly categorized as one punishable under section 304-I of the IPC. We are thus of the considered opinion that for the role played by the accused persons and the act done, they would be liable for conviction under section 304-I of the IPC.

10. In that view of the matter, this Court, alters the conviction under section 302 of the IPC to one under section 304-I of the IPC. Consequently, the Appellants (accused persons) are sentenced to undergo rigorous imprisonment for a period of ten (10) years for the said offence.

11. With the above modification as to the judgment of conviction and order of sentence dated 17th August, 2016 passed by the learned Sessions Judge, Mayurbhanj, in S.T. Case No.63 of 2014, the Appeal stands disposed of.

Since both the accused persons, namely, Dhiren Dalei and Dillip Dalei are on bail, the Trial Court is directed to take further necessary steps in accordance with law so that the accused persons served out the sentence, as has been awarded hereinabove.

.....