
(2004) 02 OHC CK 0024

In the Orissa High Court

Case No : Criminal Appeal No. 12 of 1995

Gainthabuda alias Satyanarayan Gainta

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2004) CLT 512 (Suppl CrI) : (2004) CriLJ 1569 : (2004) 27 OCR 611 : (2004) 1 OLR 310 : (2004) OLR 512 (Suppl CrI)

Hon'ble Judges : Sujit Barman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : S.K. Nayak, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A.S. Naidu, J.—The appellant along with six others faced trial for alleged commission of offences under Sections 148/302 read with Section 149 and Section 323 read with Section 149 of the Indian Penal Code and alternatively and separately for commission of offence u/s 302 of the Indian Penal Code having committed the murders of one Padmalochan Putel and another Trinath Putel on 2-12-1993 at the thrashing floor of deceased Padmalochan Putel and at village Dumerchuan on the road by the side of a nursery, respectively.

2. On the basis of an FIR lodged on 2-12-1993 at Kantabanji Police Station in the district of Balangir, G. R. Case No. 179/93 and 180/93 were registered. Both the said cases on commitment to the Court of Session were registered as Sessions Case Nos. 5012 of 1994 and 51/13 of 1994. As both the cases related to the same occurrence, the same were tried together and disposed of by the learned Addl. Sessions Judge, Titilagarh by a common judgment.

3. Bereft of unnecessary details, the short facts of the case were that on 2-12-1993 in the morning deceased Padmalochan Putel with his son Chandradhwaja Putel (P.W. 1), Biswanath Hans (P.W. 2) and Gajindra Sipka (P.W. 4) went to cut paddy crop from his land. After cutting paddy, all the four

returned to the thrashing floor of deceased Padmalochan Putel and sat there. Deceased Padmalochan sat near a straw shed in the thrashing floor and the other three sat nearby that and they were gossiping. The wife of deceased Padmalochan then arrived at the thrashing floor with food for her husband and she also sat there. At this time, the accused persons, namely, Ganapati Gainta (since acquitted), Puina Gainta (since acquitted), Thurli alias Jogi Gainta (since acquitted), Jogeswar Gainta (since acquitted), Bhagaban Gainta (since acquitted), Braja Gainta (since acquitted) and Gainthabuda alias Satyanarayan Gainta, the present appellant, came in a body and out of them it was alleged that the appellant Gainthabuda alias Satyanarayan was armed with a "Tabal", the acquitted accused Jogeswar was armed with an axe and others were armed with lathis. The accused persons entering into the thrashing floor, broke down the straw shed and, the appellant by means of the Tabal dealt two to three blows on the neck of deceased Padmalochan and the latter fell down on the ground and succumbed. After deceased Padmalochan fell down on the ground the other accused persons went on assaulting him by their respective arms and as Chandradhwaja Putel (P.W. 1), son of deceased Padmalochan, protested, accused Bhagaban Gainta (since acquitted) who was armed with a lathi dealt a lathi blow on his right leg and accused Puina Gainta (since, acquitted) dealt a lathi blow on the right leg of Biswanath Hans (P.W. 2). Both P.Ws. 1 and 2 got injuries on their legs and out of fear they ran away to the nearby thrashing floor of Sajani Hans (P.W. 5). Thereafter, the accused persons chased Gajindra Sipka (P.W. 4) towards village Samarsingha. On receiving information about the murder of Padmalochan Putel, his elder brother's wife Rukmini Putel (P.W. 6) arrived at the thrashing floor and sent Biswanath Hans (P.W. 2) to Dumerchuan in search of her husband Trinath Putel. Biswanath Hans (P.W. 2) came back from Dumerchuan after about ten minutes and intimated that he found the dead body of Trinath Putel lying near Dumerchuan Nursory side. Dhanurjay Sipka (P.W. 11), brother of Gajindra Sipka (P.W. 4) went in search of Gajendra Sipka. On the way they met the Gramrakshi and along with him proceeded to Turekela Police Station and informed the incident of murder of two persons to the O.I.C. The O.I.C. made a Station Diary Entry, proceeded to the spot, took up investigation treating the oral statement of Chandradhwaja Putel (P.W. 2) as FIR and arrested the accused persons. During the course of investigation, he learnt that the spot where the dead body of Trinath Putel was lying was under the jurisdiction of Kantabanji Police Station and therefore the I.I.C. of Kantabanji Police Station who was assisted by the O.I.C. of Turekela Police Station drew up an FIR on his own information, registered Kantabanji P. S. Case No. 92 of 1993, took up investigation, examined the witnesses and submitted charge-sheet. As the accused persons were common in both the cases which took place within one kilometre and within half an hour's duration, both the cases were clubbed together and tried.

4. Prosecution, in order to bring home the charges, examined as many as fourteen witnesses of whom P.W. 1 was the informant, the son of deceased

Padmalochan Putel, and an eye-witness. P.W. 2 was also another eye-witness to the occurrence. P.W. 3 Bichen Putel was the widow of deceased Padmalochan. She also claimed to have witnessed the occurrence, P.W. 4 was a neighbour of Padmalochan Putel and had gone with him to cut paddy and was present at the place of occurrence. P.W. 5 was the mother of P.W. 2 and claimed to be an eyewitness to the occurrence. P.W. 6 Rukmini Putel was the widow of deceased Trinath Putel, the elder brother of deceased Padmalochan Putel and was a post-occurrence witness. P.Ws. 7 and 8 were witnesses to Inquest and seizure including the seizure of the weapons of offence i.e. Tabal and lathi at the instance of accused Gainthabuda alias Satyanarayan Gainta and accused Punia Gainta on their leqaqding to the place of concealment. P.W. 9 was the doctor who had examined injured P.Ws. 1 and 2 on police requisition. P.W. 12 was the doctor of Kantabanji C.H.C. who had conducted postmortem over the dead bodies, had examined the weapons of offence produced before him and had rendered his opinion regarding infliction of the injuries and possibility of the injuries having been caused by the said weapons on the deceased persons as well as the injured persons. P.W. 13 was a Police Constable who had accompanied the dead bodies to Kantabhanji C.H.C. for postmortem. P.W. 14 was the O.I.C. of Turekela P.S., one of the Investigating Officer in the case. P.W. 11 had given information to P.W. 14 at the first instance. P.W. 10 was the I.I.C. of Kantabanji P.S., one of the Investigating officers. The plea of defence was one of complete denial of the occurrence. The accused persons chose not to examine any witness in their defence.

5. The trial Court on a threadbare discussion of the evidence, both oral and documentary arrived at the conclusion that in course of trial there were embellishment and additions and not only the real culprit, but also others had been roped in order to satisfy the vengeance of the prosecution witnesses. Separating grain from the chaff, the trial Court came to the conclusion that there was cogent, consistent and conclusive evidence against the present appellant to be the author of the murder of deceased Padmalochan Putel. It was also held that the appellant had intentionally cause the said murder by dealing Tabal blows on the neck of Padmalochan and found him guilty u/s 302, IPC.

6. So far as the murder of Trinath Putel was concerned, the trial Court observed that the evidence in that regard was shaky and not free from doubt. That apart, there was concoction of evidence and accordingly the trial Court gave benefit of doubt to the accused persons so far as the charge of murder of Trinath Putel was concerned and acquitted them of the said charge.

7. On the basis of its conclusion, the trial Court convicted the present appellant u/s 302 of Indian Penal Code for the charge of commission of murder of deceased Padmalochan Putel and sentenced him to undergo imprisonment for life. The said order of conviction and sentence is impugned in the present Criminal Appeal.

8. It is pertinent to mention here that the order of acquittal passed by the trial Court so far as the other accused implicated in the murder of Padmalochan Putel

are concerned has attained finality as the State did not challenge the same in appeal. Similarly, acquittal of all the accused persons of the charge of murder of Trinath Putel has also attained finality as the same has also not been challenged in appeal.

9. Learned counsel for the appellant forcefully submitted that after acquitting all the accused persons, the conviction of the appellant alone on the basis of the same evidence was not justified. It was also submitted that as the prosecution had tried to exaggerate the incident and adopt falsehood by concocting the evidence, the trial Court acted illegally in accepting a part of such evidence to convict the present appellant. According to him, the trial Court has not properly appreciated the evidence and has proceeded more on surmises and conjectures and the order of conviction and sentence is not sustainable.

10. Learned counsel for the State, at the other hand, while supporting the order of conviction and sentence, submitted that the trial Court had in fact examined the evidence threadbare and the conclusion arrived at was just and proper and it is a fit case where the order of the trial Court should not be interfered with.

11. After hearing the learned counsel for both sides, being the final Court of facts, we once again examined the evidence, both oral and documentary. In the case at hand, two murders had taken place in close proximity. So far as the second murder was concerned, there was no eye witness. But then, the murder of Padmalochan Putel was caused in presence of his son P.W. 1, P.W. 2, P.W. 3, P.W. 4 and P.W. 5. All of them were present either at the spot or nearabout. Out of the aforesaid eye-witnesses, P.Ws. 1 and 2 had been injured. They had been medically examined which clearly reveals that they were present at the spot while the occurrence took place. The evidence of the aforesaid five eye-witnesses cannot be brushed aside lightly. No doubt there was prior enmity between the family of the accused persons and the family of the deceased relating to handed properties. It was alleged that being enraged by the fact that the deceased and his family members had forcibly entered into the disputed field and cut and removed paddy therefrom, the appellant and his party assaulted them. A perusal of the evidence of all the aforesaid prosecution witnesses reveals that they had clearly attributed the overt acts to the appellant. Law is well settled that it is the duty of the prosecution to establish all circumstances conclusively to hold that accused had committed the alleged offence. Witnesses due to previous enmity are prone to exaggerate the actual state of affairs, as has been done in the present case. But then, all the prosecution witnesses are consistent about statement that it was the appellant who had given blows on the neck of deceased Padmalohan Putel by means of a Tabal. Though the witnesses had been cross-examined at length, could be elicited to discredit, their statements. After going through the evidence, we find that there is no reason to interfere with or differ from the conclusion arrived at by the trial Court. But then, as the facts and circumstances reveal, there was long standing civil dispute between the parties. The sentiments attached to properties in our country sometimes crosses all

barriers or relationship. People are sentimentally more attached to properties than thinking about the life of others. The present case is one where the civil dispute among the parties has ended in criminal trial. A perusal of the evidence clearly reveals that due to conflicts existing among the parties, persons belonging to either camp were eager to see the persons of other camp were punished. The bitterness was so acute that the prosecution party tried to rope in several innocent persons.

12. After going through the materials on record and hearing the learned counsel for both sides, we feel that the murder committed by the appellant was not a pre-meditated one, but had occasioned due to sudden provocation as the deceased and his party cut away paddy from the disputed land. Thus, according to us, it is a case which is covered under Exception III to Section 300, IPC.

13. On a cumulative assessment of the facts and circumstances and for the reasons indicated above, we have no hesitation to set aside the conviction of the appellant u/s 302, IPC and instead convict him u/s 304, Part II of IPC,

14. In the result, we allow the Criminal Appeal in part. The conviction of the appellant u/s 302, IPC and the sentence of imprisonment for life are set aside. The appellant is convicted u/s 304, Part II of IPC. The appellant has already undergone imprisonment for about ten years. We therefore sentence the appellant to Imprisonment for the period already undergone by him which will serve the ends of justice. He be set at liberty forthwith if his detention is not required in connection with any other case,

Sujit Barman Roy, C.J.

15. I agree.