
(2008) 11 OHC CK 0066

In the Orissa High Court

Case No : Jail Criminal Appeal No's. 17 and 27 of 1992

Gajendra alias Gajia Dehury and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2008) CLT 168 Supp

Hon'ble Judges : Sanju Panda, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : Gouri Sankar Pani and Ors, for the Appellant; A.K. Mishra, Standing Counsel and Ors., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard.

2. Each of the two accused facing Sessions Trial No. 67 -D of 1996 in the Court of Sessions Judge, Dhenkanal have preferred the above-noted two Jail Criminal Appeals challenging to the common order of conviction and sentence for the offence u/s 302/34, I.P.C. Thus, on consent of the parties, both the Jail Criminal Appeals are heard analogously and disposed of by this common Judgment, which shall abide the result in both the appeals.

3. According to the prosecution, accused persons bore grudge against Sahadeb Pradhan (hereinafter referred to as "deceased") for the reasons that the deceased was making negotiation of a transaction of sale of property on which the accused persons were residing and Artatrana Tripathy (P.W.I) was the prospective purchaser. The act of the deceased enraged the accused persons and they wanted to learn the deceased and P.W. 1. Even on the date of occurrence, i.e., on 08.04.1996 it was seen and heard by P.W. 6 that accused-Appellant Gajendra was shouting to kill either the deceased or Artatrana (P.W.I). It is the further case of the prosecution that, on the aforesaid date of occurrence at about

11 a.m. in furtherance of their common intention both the accused chased and assaulted the deceased and caused bodily injury on his person on the "Taila" land of one Jaya Sahu. Accused persons used "Bhujali" and "Farsha" to inflict multiple bleeding injuries. On sustaining such injuries, the deceased succumbed at the spot. This act of assault of the accused persons was witnessed by P.W. 4 - Arjuna Pradhan and P.W. 6?Prakash Chandra Pradhan. P.W. 4 went and intimated the family members of the deceased about the incident, whereas P.W. 6 went and lodged F.I.R., Ext.4, which set the investigating agency to undertake investigation. Both the accused persons absconded after the occurrence, but they could be arrested by police on different dates. After his arrest, accused Gajendra led the police and gave discovery of the weapon of offence used by him for commission of the crime, from the place of concealment. After completion of the routine investigation, charge-sheet was submitted by police, and Learned S.D.J.M., Dhenkanal committed the case to the Court of Session for Trial.

4. Learned Sessions Judge framed charge under Sections 302/34, I.P.C. Accused persons denied to the charge and claimed for Trial. To substantiate the charge, prosecution examined eight witnesses and relied on the documents marked Exts.I to 15 besides the Material Objects, out of which M. Os. I and II are the iron and handle portion of the "Farsha" seized u/s 27 of the evidence Act. Accused persons did not adduce any defence evidence in support of their plea of denial or alibi by accused Bhagaban Dehury.

5. Amongst the witnesses P. Ws.4 and 6 deposed as eye? witnesses to the occurrence, whereas P.W. 7 as a witness who heard the shout of accused Gajendra and P.W. 5 as a witness to the recovery of weapon of offence u/s 27. P.W.I - Artatrana Tripathy and P.W. 2 - Guru Charan Behera, who were respectively examined to prove the motive and seizure of articles from the spot, did not support the prosecution and thus they were declared hostile. In course of the Trial, defence admitted the post-mortem report, Ext. 6 and, therefore, on the options of the defence examination of the doctor was dispensed with.

6. On assessment of the Post-mortem Report, Learned Sessions Judge held that 14 incised injuries found on different parts of the dead body of the deceased clearly speaks about homicidal death. In course of hearing of these appeals, Appellants do not challenge to that findings of the Trial Court.

7. Learned Sessions Judge found the evidence of P. Ws.4 and 6 to be clear and clinching in giving ocular account of the occurrence in detail. He also found such evidence to be flawless to prove complicity of the accused persons with the alleged crime. Learned Sessions Judge found the evidence of P.W. 5 to be corroborative in nature on recovery of one of the weapons of offence and evidence of P.W. 7 to be corroborative on the motive of the accused in publicly declaring to cause bodily harm to the deceased. He found all such evidences to be credible and reliable. Learned Sessions Judge rejected the contention of the Appellants for grant of benefit of doubt on account of contradictions in the evidence of P. Ws.4 and 6 suggesting for absence of P.W. 6 at the seen of

occurrence, for grant of benefit to the accused in view of non-examination of independent witness to corroborate the evidence of P. Ws.4 and 6, to grant benefit to the accused Bhagaban for absence of his name in column No. 9 of the Inquest Report, Ext. 5 and the conduct of P. Ws.4 and 6 in remaining inactive during the course of occurrence as improbable human conduct to reject their evidence. On each of the aforesaid sequences Learned Sessions judge has taken aid of the positive evidence available on record so as to discard the argument of the accused persons. For example, when the defence argued that in view of the evidence of P.W. 4, P.W. 6 could not have been at the scene of occurrence in as much as after the occurrence P.W. 4 reached the house of the deceased and informed the incident to the father and family members of the deceased and at that time P.W. 6 was present there. Learned Sessions Judge, on proper reading of the evidence on record, rightly held that the person named Prakash Pradhan available in the house of the deceased has not been proved to be P.W. 6 - Prakash. On perusal of the lower court's record we find that P.W. 6 is neither a brother of the deceased from the same parents nor a member of that family and therefore evidence of P.W. 4 that he intimated the matter to the father and family members of the deceased does not establish presence of P.W. 6 at the spot.

8. Learned Sessions Judge also took into consideration the conduct of the accused persons absconding after the occurrence, the false plea advanced to get rid of the charge as the additional circumstances against the accused and in favour of the prosecution. Thus, on making a synopsis of the findings, Learned Sessions Judge found the Appellants guilty of offence of murder punishable u/s 302/34, I.P.C. and accordingly sentenced each of them to undergo imprisonment for life.

9. Mr. Pani, Learned Counsel for the Appellants, after placing the judgment and evidence on record, only reiterates the same points which were urged by the defence Counsel in the Trial Court. Repetition of similar finding is not necessary, the same being point-wise noted in the impugned Judgment. The reason ascribed to reject such contentions in the impugned judgment being found valid and applicable, we find no merit in the contention of the Appellants as against the findings recorded by the Trial Court on the other hand, on perusal of the evidence and the findings recorded by the Trial Court, we find that Learned Sessions Judge has not committed any illegality or perversity in course of assessing the evidence and does not suffer from any other infirmity or illegality. Thus, we do not find any merit in these appeals and therefore both the Jail Criminal Appeals are dismissed.