
(1992) 07 OHC CK 0034

In the Orissa High Court

Case No : Criminal Revision No. 281 of 1991

Golak Chandra Nayak and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(4), 482
Penal Code, 1860 (IPC) — Section 322, 324, 326

Citation : (1992) 74 CLT 449 : (1993) CriLJ 274 : (1992) 2 OLR 201

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : L. Mohapatra, for the Appellant; J.M. Mohanty, A.S.C., for the Respondent

Judgement

D.M. Patnaik, J.—The only question raised in this revision is whether the High Court in" exercise of its revisional as well as the inherent power can direct the lower Court to compound an offence not permissible u/s 320 of the Code of Criminal Procedure (for short the Code).

2. Prosecution case is, deceased Pranakrushna Panda had purchased a piece of land from the petitioners situated near his Bari side and the deceased had put a fence on the boundary Vine. On 3-6- 1987 at about 8 p. m., hearing petitioner Golak removing the fence put by the deceased, the latter reached the spot and protested. There was an altercation. Thereafter, petitioner Golak dealt a blow with a spade on the head of deceased Pranakrushna causing a bleeding injury. Pranakrushna was removed to the hospital in an unconscious state and was treated as an indoor patient, but died on 24-6-1987. The petitioners faced trial for the offence punishable u/s 326 I.P.C. and nine p. ws. were examined from the side of the prosecution when a petition was filed on 20-4-1991, signed by the son of deceased Pranakrushna and the petitioners, making a prayer therein to the Court to permit to compound the offence. It was also stated in the said petition that the counter G.R. Case No. 141 of 1987 at the instance of the

present petitions had already been compromised.

The Subordinate Judge-cum-Judicial Magistrate, First Class, rejected the prayer for compromise holding that the same was not permissible u/s 320 of the Code and secondly, the compromise petition was not signed by the injured as provided in the appropriate column of Section 320 of the Code.

3. Mr. L. Mohapatra, learned counsel for the petitioners relying on the case of Mahesh Chand and Anr. v. State of Rajasthan AIR 1983 SC 2111, submitted that this Court can permit the parties to compound the offence since amity between the two parties has been brought out by way of compromise in the counter-case.

Mr. J. M. Mohanty, learned Additional Standing Counsel appearing for the State, on the other hand, submitted that this Court has no jurisdiction to direct compounding of the offence since it is not permissible u/s 320 of the Code. He referred to the case of Sanatan Ram and Ors. v. State and Ors. , (1991) 4 OLR 25.

I am of the view that because the Supreme Court allowed an offence u/s 307, I.P.C. to be compounded, this Court cannot in exercise of its inherent powers u/s 482 of the Code direct compounding an offence not permissible u/s 320 of the Code. Following the decision reported in AIR 1980 SC 1200 Rajinder Singh v. The State (Delhi Admn.), and also accepting the view taken by the Court in the case of Sanatan (supra) I am unable to accept the contention of Mr. Mohapatra.

Therefore, it has to be examined whether in the facts and circumstances of the present case, a case u/s 326 I.P.C. has been made out.

4. Admittedly, the deceased was an old man of 70 years. The occurrence took place during the night hours. Petitioner Golak was there at the spot and removing the fence when the deceased reached. Thus Golak did not come armed with a spade, but the spade was there at the spot. Golak dealt the blow with the spade during the altercation. He gave only one blow with the spade which is a heavy instrument. The doctor who first examined Pranakrushna stated confirming his injury report (Ext. 2) that there was a single incised wound of the size of 3" x 1/2" scalp deep extending antero-posteriorly over the left fronto-parietal area 3" above the left supra-orbital margin. The opinion with regard to the nature of the wound was reserved. The x-ray reports (Exts. 3 and 4) revealed along with the evidence of the Radiologist (PW 9) that there was only a linear fracture of the left frontal bone. Thus, it is amply clear that the Doctor (PW1) who first examined Pranakrushna did not find fracture of the skull bone on his external examination of the injury on the head. This shows that Golak did not give a violent blow. Had he intended to give a violent blow, instead of a linear fracture of the skull bone (which could not be noticed by external examination by the Doctor, PW 1) there would have been crushed injury of the skull.

Taking into consideration the above circumstances, I am of the view that petitioner Golak did not deal the blow with the intention of causing a grievous

hurt or with the knowledge that the likely result of his act would cause a grievous hurt as defined u/s 322 IPC. Since the essential elements "voluntarily causing grievous hurt" as defined under the section is wanting in this case, this cannot be a case u/s 326 IPC. This view of mine is supported by the following decisions :
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In AIR 1939 Madr 507 In re Nataraja Goundan, the Court held that it could not be said for certain that the hurt, intended or known to be likely to be caused, was grievous. The conviction u/s 326 was unsustainable and the case was converted to a case u/s 323 IPC.

In the case reported in AIR 1941 Mad 560 in re Marana Goundan, the Court found that the appellant did not intend or that he knew that by kicking on the abdomen he is likely to endanger the life. In that case the conviction one u/s 304-U IPC was converted to one u/s 323 IPC.

In a case of our own High Court reported in 53 (1982) CLT 106 Dalapati Majhi v. State, the Court while dealing with a case u/s 325 IPC succinctly with reference to the definition of "grievous hurt" held that, to constitute grievous hurt it must be held that the assailant intended to cause a grievous hurt or that he knew himself that he was likely to cause a grievous hurt. The Court held that in such circumstance, the assailant, if intended or knew that he was likely to cause a simple hurt, he could not be convicted for the offence of grievous hurt.

In another case reported in Mathew Omalt and Another Vs. State of Orissa, , when the Court found that although the weapon of offence was a knife and the blow was given on the head, taking into consideration that the injury was 5 c.m.x1/2 c.m. and further taking into consideration the genesis of the occurrence the case should not have been one u/s 307 IPC, quashed cognizance of the offence u/s 307 but directed the Magistrate to take cognizance u/s 324/34 IPC.

In a similar-case reported in 1984 (I) Cri 722 Lokanath Behera " Khokan v. State, although the appellant was convicted u/s 304-I IPC, since he had no intention or knowledge that his act was likely to cause death, he was convicted u/s 325 IPC.

A case akin to the present case at hand is one reported in Mohinder Singh Vs. State (Delhi Administration), . The apex Court held that in the facts and circumstances of the case and taking into account that the medical examination of the deceased had not indicated any external injury on the forehead and since admittedly the occurrence took place during the night time, the case cannot be one punishable u/s 304-11, IPC and, therefore converted the conviction to one u/s 325 IPC.

5. As already mentioned above, nine witnesses from the side of the prosecution have already been examined in the case. There are hardly any other witnesses to be examined except of course the 10. The case is found to be one u/s 324 and not Section 326 IPC. In that view of the matter it becomes necessary to alter the

charge from u/s 326 to one Section 324 IPC as provided u/s 216 of the Code and this can be done by relying on the decision reported in Kantilal Chandulal Mehta Vs. The State of Maharashtra and Another, .

6. I may point out that the lower Court misled itself that the legal representative of the deceased cannot enter into a compromise. This is erroneous,, since Section 320(4)(b) of the Code provides that the legal representatives of the deceased persons are competent to compound such offence. Therefore the lower Court is directed to alter the charge as indicated above and proceed to dispose of the case according to law. The parties if they still insist to compromise the case on the basis of the petition already filed, the Court shall permit them to compound the offence.

In the result, the criminal revision is disposed of accordingly. The lower Court records be sent back immediately.