
(2010) 10 OHC CK 0023
In the Orissa High Court
Case No : Criminal Appeal No. 56 of 1998

Jagabandhu Mallik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 323, 34

Citation : (2011) CriLJ 1334 : (2011) 1 OLR 362 Supp

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order passed by the learned Additional Sessions Judge, Kendrapara in S. T. No. 44/477/96 holding the Appellants Jagabandhu Mallik (Appellant No. 1), Bimbadhar Mallik (Appellant No. 2), Kailash Mallik (Appellant No. 3) and Anjana Mallik (Appellant No. 4) guilty u/s 302 read with Section 34 of the Indian Penal Code and further convicting the Appellant Anjana Mallik u/s 323 of the Indian Penal Code. All the Appellants have been sentenced to imprisonment for life and in addition Appellant No. 4 Anjana Mallik for his conviction u/s 323 of the Indian Penal Code (in short I.P.C.) has been sentenced to imprisonment for six months. However, the sentences have been directed to run concurrently.

2. Case of the prosecution is that on 4-6-1996 at about 6.30 a.m., the informant Amulya (P.W. 5) was going to attend his office and at that time the deceased Kalakar Mallik was proceeding 50 to 60 feet ahead of him in a bicycle. When the deceased Kalakar reached near Raisarpur chhak, suddenly all the accused persons came out from a nearby pond side and Appellant Jagabandhu first dealt a blow by means of a sword on the head of the deceased as a result of which, he fell down from the cycle on the right side of the road. When the deceased was trying to run away from the spot, other Appellants, namely, Kailash, Bhimdhar and Anjana being armed with farsa, thenka chased him and assaulted. While

trying to escape from the spot, the deceased entered inside the open shop of one Hari Das and Ram Das but there also he was assaulted by the aforesaid Appellants. The accused persons, who have been acquitted were shouting to kill the deceased. The informant seeing the incident tried to rescue the deceased but he was prevented by the Appellant Anjana and was also assaulted by means of a sword. After the incident was over, the deceased was taken to Aul P.H.C. for treatment where he was declared dead. P.W. 5 thereafter lodged the written report at about 8.25 a.m. in Aul P.S. and investigation was taken up. On completion of investigation, charge-sheet was submitted against nine accused persons for commission of offence under Sections 302/149/148 of the I.P.C. Since some of the accused persons had absconded, the case had been split up and ultimately after commitment, both the sessions cases were heard together and were disposed of in a common judgment.

The plea of defence is complete denial of the prosecution allegation.

3. In order to prove the charges, the prosecution examined ten witnesses. Out of ten witnesses examined on behalf of the prosecution, P.Ws. 1, 2 and 3 turned hostile and did not support the prosecution case. P.W. 4 is the doctor, who medically examined the informant (P.W. 5) on the date of occurrence and P.Ws. 5 and 6 are the brothers of the deceased and are also eye-witnesses to the occurrence. P.W. 7 is the widow of the deceased, but she is a post occurrence witness. P.W. 8 is a witness to seizure but he has been declared hostile. P.W. 9 is the doctor, who conducted postmortem examination and P.W. 10 is the I.O. The trial Court relying on the evidence of the eye-witnesses, namely, P.Ws. 5 and 6 corroborated by the evidence of the doctor, P.W. 9 found the present Appellants guilty of the charge u/s 302/34 of the I.P.C. and convicted them thereunder. Appellant No. 4 Anjana Mallik having assaulted the informant (P.W. 5) by means of a sword was also convicted for commission of offence u/s 323 of the I.P.C.

4. Shri Ragad, the learned Counsel appearing for the Appellants assails the impugned judgment on the ground that though independent witnesses were available, only one of them was examined and he turned hostile. The entire judgment is based on the evidence of the two interested witnesses and therefore, the Court is required to examine the evidence of the two interested witnesses carefully before placing reliance on them. According to the learned Counsel, these two witnesses are inconsistent in their version with regard to role played by each of the Appellants and therefore, no reliance could have been placed by the trial Court on the evidence of these two eye witnesses. Learned Counsel for the State referring to the evidence of these two witnesses submits that there is absolutely no inconsistency or contradiction in their evidence and therefore, the trial Court was justified in placing reliance on them while finding the Appellants guilty of the charges.

5. As is evident from the prosecution case, the deceased after assault tried to escape and entered inside the open shop of one Hari Das and Ram Das. However, these two persons, namely, Hari Das and Ram Das have not been examined by

the prosecution. There is also no evidence that Hari Das and Ram Das were present at that time in the shop. P.W. 5 is the informant and is also brother of the deceased. He in his deposition stated that on the date of occurrence he was going to attend his office and the deceased was going in a bicycle 50 to 60 feet ahead of him. The accused persons suddenly attacked the deceased and at that point of time Appellant No. 1 was armed with a sword whereas Appellant No. 3 was armed with a farsa, Appellant No. 2 was also armed with a farsa and Appellant No. 4 was armed with a lathi. The Appellants and the other accused persons came from the Badi of Ram Das and Hari Das of village Raisaipur, and they saw the deceased moving in a bicycle. Appellant No. 1 first dealt a blow by means of a sword on the head of the deceased as a result of which, the deceased fell down from his bicycle. When he was attempting to run away from the spot, Appellant No. 3 assaulted him by means of a farsa from his back side. Thereafter, Appellant No. 2 assaulted the deceased by means of a farsa on his back side and Appellant No. 4 dealt lathi blow on the back side of the deceased. The other accused persons were shouting to kill the deceased. When this witness saw the occurrence, he rushed to the place of occurrence to rescue his deceased brother. However, Appellant No. 4 snatched away the sword from the hands of Appellant No. 1 and dealt a blow near the left knee of this witness as a result of which, he sustained injury and fell down on the ground. P.W. 6, who is the other brother of the deceased arrived at the spot along with others and also witnessed the occurrence. This witness has further stated that when the deceased was trying to escape, the accused persons chased him and inside the open shop of Hari Das and Ram Das, the four Appellants again assaulted the deceased by means of farsa and sword. They also assaulted P.W. 6. P.W. 6 in his deposition has also fully corroborated the evidence of P.W. 5 and on careful examination of the evidence of these two witnesses, we find no inconsistency in relation to the manner in which all the Appellants participated in assaulting the deceased, the weapons used by them as well as the number of blows given by each one of them. One of the so-called eye-witnesses P.W. 3 turned hostile and did not support the case of the prosecution. Merely because of one of the independent witnesses turned hostile and the prosecution relied on the evidence of P.Ws. 5 and 6, who are the brothers of the deceased, their evidence cannot be discarded merely because of their relationship with the deceased. Their evidence being consistent, reliable and trustworthy, there is no reason for the Court to discard their evidence. The evidence of P.Ws. 5 and 6 also gets corroboration from the evidence of P.W. 9, who conducted post-mortem examination. The deceased had sustained more than twenty injuries and almost all the injuries are incised wounds, which could be caused by tangia and farsa. P.W. 9 was of the opinion that the injuries were ante mortem in nature and all the wounds except injury No. 16 might have been caused by sharp cutting weapons. The death was also due to shock and hemorrhage because of the multiple injuries specifically brain injuries. The evidence of P.Ws. 5 and 6 with regard to the assault on them is also corroborated by evidence of P.W. 4, who had examined P.W. 5 on police requisition. In view of the evidence of P.Ws. 5 and 6 coupled with the evidence of

P.W. 9, we do not find any justification to interfere with the impugned judgment.

6. The appeal being devoid of merit is dismissed.

It appears that during pendency of the appeal, the Appellant No. 4-Anjana Mallik had been granted bail by order dated 17-4-2001 passed in Misc. Case No. 147 of 2001. The trial Court is directed to take steps for apprehending the said Appellant to serve the rest of the sentence.