
(2008) 04 OHC CK 0020
In the Orissa High Court
Case No : Criminal Appeal No. 261 of 1994

K. Lachheya Patra and Others	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2008) 1 OLR 259 Supp

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : S.K. Nayak, 3, K.K. Das and B.K. Panda, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—Both the appeals arise out of judgment and order of conviction and sentence passed by the learned Second Additional Sessions Judge, Berhampur in Sessions Case No. 37 of 1993 (S.C. 255/93 G.D.C.). The Appellants in Criminal Appeal No. 261 of 1994 have been convicted for commission of offence under Sections 302/34 of the Indian Penal Code (in short "I.P.C.") and sentenced to imprisonment for life. They have also been convicted for commission of offence u/s 148 IPC and sentenced to imprisonment for two years. All the Appellants in Criminal Appeal No. 290 of 1996 have been convicted for commission of offence u/s 148 of the Indian Penal Code and each of them has been sentenced to imprisonment for two years.

2. As it appears from the record, twenty five accused persons faced trial being charged for commission of offences under Sections 148, 302/149, 326/149 and 379/149 IPC for being members of an unlawful assembly armed with deadly weapons and causing murder, grievous hurt and theft in furtherance of the common object of such assembly. The case of the prosecution is that the village in which both the deceased and accused persons were staying was divided into two rival camps. The deceased was leader of one faction whereas the accused

persons belonged to other faction. There used to be regular quarrels between the two groups. On 31.8.1992, accused A. Gurunath (Appellant in Criminal Appeal No. 290 of 1994) created some disturbance in the Pooja Pandal of Lord Ganesh and P.W.2, the son of the deceased cautioned him not to do so. Relating to the said incident, all the accused persons being variously armed shouted using abusive language and incited slogans in the village. The deceased being a leading member of the village tried to subside the matter. A meeting was convened on 1.9.1992 and it was conducted in the premises of the village deity. It is alleged by the prosecution that on 1.9.1992 at 12.30 P.M. while the informant was present near his house, the accused persons being armed with deadly weapons like sword, spear, farsa and lathis reached there and the accused Gajendra (Appellant in Criminal Appeal No. 290 of 1994) tied the neck of the informant with a napkin and the other accused persons surrounded him. The informant was dragged towards backyard of the Appellant Gajendra but he managed to free himself and ran away from the spot. P.W.2, the brother of the informant, who requested the Appellants to release P.W.1 was assaulted by means of a lathi by the accused Purusottam which hit on his legs. Out of fear, P.W.2 ran away from the spot. Thereafter, all the accused persons indiscriminately pelted stones at the roof of the house of the deceased and it is alleged that the accused Krishnama lifted a tape-recorder from the house of one Satyama. When they saw the deceased passing through that street, all the accused persons surrounded him and the Appellant Gajendra instigated the accused persons to assault the deceased. It is alleged that Appellant Gajendra assaulted the deceased by means of a sword, Appellant Purusottam assaulted the deceased by means of a Farsa and Appellant Gurunath assaulted the deceased by means of a spear whereas rest of the accused persons assaulted the deceased by means of lathis and as a result such assault, the deceased fell down unconscious and ultimately succumbed to the injuries within few minutes. On receipt of information about the said incident, police arrived at the spot and information was lodged by the informant, which was reduced to writing and a case was registered for commission of the aforesaid offences. On completion of investigation, charge-sheet was also filed for commission of the said offences.

The plea of defence was denial of the prosecution case.

3. Prosecution examined fifteen witnesses to support the charges and out of fifteen witnesses, P.Ws. 1 and 2 are the sons of deceased and P.W.1 is the informant. P.Ws. 3 to 6 were examined as eye-witnesses to the occurrence, out of whom, P.W.3 sustained injuries in course of incident. P.Ws. 8 and 9 are the doctors, who examined the injured persons namely, P.Ws. 3 and 2 respectively. P.W.11 is the doctor, who conducted post mortem examination. P.W.7 is a witness to the seizure and also claims to have seen the accused persons giving recovery of the weapons of offence while in police custody. P.W. 10 is a Police Constable, who accompanied the dead body of the deceased for post mortem examination. No witness was examined on behalf of defence. The trial Court accepting the evidence of eye-witnesses found the Appellants in both the appeals guilty for

commission of offences as stated earlier and convicted them thereunder. Rest of the accused persons were acquitted of the charges.

4. Learned Counsel appearing for the Appellants in both the appeals assails the impugned judgment on the ground that the genesis of the prosecution case is doubtful, the F.I.R. having been manufactured at a belated stage. According to the learned Counsel, there was some information with the police, which led them to reach the place of occurrence where the dead body of the deceased was lying. The I.O. P.W.14 stated that on reaching the village, the villagers including the informant showed the place where the dead body of the deceased was lying whereas P.W.1 in his evidence has stated that immediately after the occurrence, he lifted the deceased to the outer verandah of B. Mahalaxmi and till arrival of the police, he had not left the place. Referring to the said evidence of P.W. 1, it was contended by the learned Counsel that there was no scope for P.W.1 to help the police in looking for the dead body of the deceased and, therefore, the evidence of I.O. to the extent is not acceptable and the source of information on the basis of which, police came to the village was not treated as F.I.R. and, therefore, the Investigating Officer has suppressed the real F.I.R. Referring to the evidence of eye-witnesses, it was contended by the learned Counsel that the version of the eye-witnesses suffers from inconsistencies and such inconsistencies are clear from the injuries found in course of post mortem examination and, accordingly, the trial Court should not have placed reliance on the said eye-witnesses. The learned Counsel for the State referring to the evidence of eye-witnesses submits that all the eye-witnesses are consistent in their statements with regard to role played by each of the Appellants and in course of post mortem examination, the injuries found corroborate the testimony of this eyewitnesses.

So far as F.I.R. is concerned, the learned Counsel appearing for the State submits that the evidence of P.W.14 clarifies the entire position as to from which source he received information about the incident and where the F.I.R. was accepted. So far as the first point raised by the learned Counsel for the Appellants is concerned, we find from the evidence of P.W.14 the I.O. that on 1.9.1992 at about 2 P.M., he received a telephonic information from Sarpanch Chamakhandi G.P. that a serious rioting is going on at Ghadagadapali. The said information was entered into the P.S. station diary vide S.D.E. No. 10 on 1.9.1992 and, thereafter, he along with I.I.C. Chatrapur Police Station and other staff proceeded to the village where the occurrence took place. On reaching the village at about 2.15 P.M., P.W.1 orally reported about the incident, which was reduced to writing and the case registered for commission of offence under Sections 147, 148, 149, 302, 326, 323 and 379 IPC. The learned Counsel for the Appellants referred to cross-examination of this witness and submitted that after receipt of information, this witness came to the village at about 2.45 P.M. and the villagers including the informant pointed out where the dead body of the deceased was lying. Learned Counsel in this connection referred to the evidence of P.W.1 who stated to be all along with the dead body of the deceased.

Therefore, according to the learned Counsel, P.W.1 to be one of the villagers, who had pointed out the place where the dead body of the deceased was lying cannot be correct.

Be that as it may, the first point raised before this Court is as to whether the I.O. had disclosed the source of information and made any inquiry in the case or not. P.W. 14 in the very first paragraph of his deposition has clearly stated that he had received a telephonic information from the Sarpanch Chamakhandi G.P. about the incident and the said information was entered into the P.S. station diary vide S.D.E. 10 dated 1.9.1992 and after receipt of the F.I.R. from P.W.1 at about 2.15 P.M., some witnesses were examined and after coming back to the police station, F.I.R. was registered at 4.30 P.M., which was despatched on 2.9.1992 and records were received by the learned S.D.J.M. on the very same day. On consideration of the evidence of P.W.14 as well as on perusal of the documents, such as F.I.R., we do not find any reason to accept the submission of the learned Counsel for the Appellants that the first information on the basis of which police proceeded to the spot had been suppressed. It is a fact that the Sarpanch of Chamkhandi G.P. was not examined in the case as a witness on behalf of the prosecution but the evidence of P.W.14 in this regard cannot be brushed aside considering the fact that the information received by him was entered into the station diary.

6. Now coming to the evidence of eye-witnesses to the occurrence, it was contended by the learned Counsel for the Appellants that there are material inconsistencies in the evidence of eye-witnesses. P.W. 1 is the son of the deceased and informant in this case and also an eye witness to the occurrence. He, in his deposition, has stated that when meeting was in progress on the date of occurrence, the Appellant Gajendra met with him and tied the neck by napkin and, thereafter he was also surrounded by the other accused persons. Appellant Gajendra dragged him towards his bari near coconut tree and instigated the other accused persons to assault him. However, he escaped. Thereafter, the second part of the story developed where the deceased was assaulted. P.W.1 has also stated that the Appellant Gajendra assaulted on the head of the deceased by means of a kati in front of the house of B. Chinaya and when his father raised hands to ward off the assault, he suffered a deep cut injury on his right hand. Thereafter, the Appellant Gajendra again assaulted on his left leg and deceased sat down out of pain. When B. Mahalakshmi tried to intervene, she was given a push, whereafter the Appellant Purusottam assaulted on the head of the deceased by means of Farsa and the Appellant Gajendra also assaulted on the right side of the head of the deceased. Appellant Gurunath assaulted the deceased on the back side head of the deceased by means of a spear. This witness had seen the assault on the deceased from a distance of 25 cubits. P.W.2 is the brother of P.W.1 and the second son of deceased. He, in his evidence, has stated that while the meeting was in progress, a neighbour informed him that accused persons were assaulting P.W.1. Thereafter, he and the wife of P.W.1 as well as his mother rushed to the spot and found the Appellant Gajendra to have

detained P.W.1 in the backyard of the house of Loknath Reddy and had tied a napkin around the neck. He has further stated that P.W.1 managed to free himself and ran away from the spot. This witness has not stated anything about the assault on the deceased. P.W.3 is an eye witness to the occurrence, who also received injuries in course of incident. He has stated in his deposition that on the date of occurrence, he heard a hue and cry from the school side, came out from the verandah and saw the accused persons taking away the cattle of the villagers. Appellants Gajendra was holding a kati, Purusottam was holding a farsa and Gurunath was holding a spear and rest of the accused persons were holding lathis. He has further stated in his deposition that Appellant Purusottam came and assaulted on his left hand by means of a farsa, Appellant Gurunath assaulted him on the chest by means of spear and out of fear, he entered inside the house of one Tataya. Though this witness has not seen the assault on the deceased, he has implicated the above three Appellants in his evidence as the assailants of the deceased. P.W.4 is an eye-witness to the occurrence and he has vividly described the entire incident, which corroborates the evidence of P.W.1. Similarly, P.Ws. 5 and 6 have also stated about the role played by the accused persons and the evidence of P.Ws. 1, 4, 5 and 6 corroborates each other and even on examination of cross-examination of these witnesses, we do not find any kind of material inconsistencies so as to discard their evidence. P.W.11, the doctor, who conducted post mortem examination, found several injuries on the body of the deceased. P.W.11 also found eleven cut injuries on different parts of the body of the deceased including vital part and also found fracture of two parietal bones. The statements of eye witnesses that the Appellants in Criminal Appeal No. 290 of 1994 namely, Gajendra, Purusottam and A. Gurunath had assaulted the deceased by means of Kati, Farsa and Spear clearly corroborate the medical evidence. P.W.11 was of the view that all the injuries are ante mortem in nature and the injuries described on serial No. 2 are causes of death. He was also of the view that each one can cause death and also combinedly. On production of the weapon of offence, he was also of the view that the injuries could be caused by the same weapons of offence. Apart from the said evidence of eyewitnesses as well as the doctor, who conducted post mortem examination, we find from the evidence of P.W.7 that on 12.11.1992 accused Gopal and Endeya while in police custody disclosed to have concealed the weapons of offence and led the police party near a cashew nut tree in the village cremation ground. Accused Gopal himself removed earth and gave recovery of farsa, kati, spear and lathi. It further appears from the chemical report that the farsa, iron balama and sword contained human blood.

7. On overall consideration of the evidence as discussed above, we do not find any infirmity in the impugned judgment. The appeals having no merit are dismissed.

It appears from the record that the Appellants are on bail. If they have not served the sentence imposed by the trial Court, steps be taken to apprehend them to serve the rest of the sentences.

B.P. RAY, J.

8. I agree.