
(1999) 01 OHC CK 0006
In the Orissa High Court
Case No : Criminal Appeal No. 218 of 1990

Lokanath Kalo and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 299, 300, 302

Citation : (1999) 01 OHC CK 0006

Hon'ble Judges : P.K. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : R.K. Mohapatra, B. Routray, K.B. Kar, S.K. Nayak, R.K. Dash, N.K. Sahu, S. Patiand and S. Swain, for the Appellant; Addl. Govt., for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—In this appeal, the six Appellants (hereinafter referred to as "accused" by their respective names) have questioned the legality of the judgment of conviction and sentence passed by the learned Sessions Judge, Sundargarh, in Sessions Trial No. 47 of 1989. Appellant Lokanath Kalo has been convicted for offence punishable u/s 302, Indian Penal Code, 1860 (in short, the "I.P.C.") while the other Appellants have been convicted for the offences punishable under Sections 148 and 324/149, I.P.C.. While Lokanath has been sentenced to undergo imprisonment for life, others have been sentenced to imprisonment for one year's rigorous imprisonment for the offence punishable u/s 148, I.P.C: and for one year and six months" rigorous imprisonment for the offence punishable u/s 324/149, I.P.C.

2. The Appellants along with several others totalling 25 in number faced trial for having allegedly committed homicidal death of one Shibaprasad Patel (hereinafter referred to as the "deceased") and injuries to others. Prosecution case, as unfolded in the trial, is that one Amrutlal Naik (P.W.15) belongs to village Tikilipada within Hemgir Police Station limits, to which place the accused persons also belong. Informant Amrutlal and his relatives have got landed

properties in the village which they were possessing. In the year of dispute i.e. 1988, they had raised paddy crop. On the date of occurrence, i.e. 1.11.1988 at about 8.99 a.m. informant got information that accused persons and some others numbering about fifty armed with deadly weapons had entered into their land to cut paddy. On getting such information, informant and Ors. namely, Kasiram, Jagmohan, Laxminarayan, Shibaprasad and some others went to the field and requested the accused persons not to cut the paddy, but the accused persons did not pay any heed to their request and rushed towards them and assaulted them by lathis and shot arrows at them; as a result of which several persons received injuries.

The condition of Shibaprasad (deceased) became serious and he was shifted to Gopalpur Government Hospital¹. Information was also lodged with Officer-in-charge, Hemgir Police Station, who came to village Tikilipada and a plain paper F.I.R. was drawn. Investigation was taken up after registration of the case. Shibaprasad, the deceased, who was admitted to Sundargarh Govt. Hospital, breathed his last on 2.11.1988. After completion of investigation, charge sheet was placeholder the accused persons faced trial. Plea of the accused persons was denial of the allegations against them. On the contrary, they took the plea that they were the victims of assault made by the informant and other prosecution witnesses. Learned trial judge held the present Appellants guilty, as aforesaid, but acquitted the other accused persons.

3. In support of the appeal it has been submitted that the case suffers from lot of exaggerations and since large number of other accused persons have been acquitted, it would not be proper to place reliance on the evidence of such witnesses to find the present Appellants guilty. The witnesses were related to the deceased and No. reliance should have been placed on their version. Additionally it is submitted that considering the background, a case u/s 302, I.P.C. is not made out in respect of Appellant Lokanath.

4. It cannot be laid down as a rule of universal application that whenever a person who is related to the deceased is examined as a witness, his version has to be viewed with suspicion. A relation is more often than not a truthful witness who would not shield the culprit and falsely implicate an innocent person. However, where hostility is pleaded, the Court is to carefully consider the evidence and find out whether a truthful version has been presented by the concerned witness. In the case at hand, undisputedly there was hostility and, therefore, the Court was required to analyse the evidence with care. That appears to have been done and after elaborately analysing the evidence of the witnesses, the conclusion of guilty has been arrived at. We find No. reason to discard the evidence of the witnesses.

5. Coming to the plea that the evidence of the witnesses suffers from exaggerations as evident from the fact of acquittal of some of the accused persons, it has to be noticed that there are minor discrepancies in the evidence. Exaggerations do not per se render evidence of witnesses unworthy or

unacceptable. In their anxiety to be accepted as truthful witnesses, sometimes witnesses exaggerate and embroider their version. Unless the exaggeration is of such proportion that it renders the entire evidence improbable or unworthy of acceptance, the Court has a duty to trim off the unnecessary" embroidered and exaggerated portion to fide "out the truth.

6. Coming to the plea that acquittal of 19 out of the 25 accused persons shakes the foundation of the prosecution version, reliance is placed on the well-known maxim of *falsus in uno falsus in omnibus*. Coming to applicability of the principle of *falsus in uno falsus in omnibus*, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the Court has to carefully screen the evidence. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has No. application in India and the witnesses cannot be branded as liar.

The maxim "*falsus in uno falsus in omnibus*" (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (*Nisar Ali Vs. The State of Uttar Pradesh*,). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate the accused who had been acquitted from those who were convicted. (See, *Gurcharan Singh and Another Vs. State of Punjab*,). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. The witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See, *Sohrab and*

Another Vs. The State of Madhya Pradesh, , and Ugar Ahir and Others Vs. The State of Bihar,). An attempt has to be made to, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (SCC. Zwisolae Ariel v. State of Madhya Pradesh : AIR 1954 SC 14; and Balaka Singh and Others Vs. The State of Punjab,). As observed by the apex Court in State of Rajasthan Vs. Smt. Kalki and Another, , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. In the case at hand, the separation of chaff from grain results in leaving an acceptable version clearly establishing guilt of the accused.

7. Coming to the plea as to whether Section 302, I.P.C. is applicable, the stand of the Appellants needs careful consideration. In the scheme of the I.P.C., "culpable homicide" is genus and "murder" is the species. All "murders" are "culpable homicide" but, not vice versa. Speaking generally "culpable homicide" sans special characteristics of murder is "culpable homicide not amounting to murder". For the purpose affixing punishment, proportionate to the gravity of this generic offence, I.P.C. practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined as "murder" in Section 300. The second may be termed as "culpable homicide of the second degree". This is punishable under the First part of Section 304 then there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under Second part of Section 304. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the Courts for long. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299 Section 300 A person commits culpable homicide if the act by which the death is caused is done....

Intention

(a) with the intention of causing death; or

(b) with the intention of causing such bodily injury as is likely to cause death; or Subject to certain exceptions culpable homicide is murder if the act by which the death is done.....

(1) with the intention of causing death; or

(2) with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or Knowledge (c) with the knowledge that

(4) with the knowledge that the act is likely to act is so imminently dangerous cause death that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

(underlining for emphasis)

8. It appears that an arrow was shot from a fairly long distance and it hit the lower portion of the belly of the deceased. Clause Thirdly of Section 300 postulates that a particular injury which resulted in death should have been intended. Considering the background facts and more specifically the fact that one arrow was shot, in the circumstances, we are of the considered opinion that No. particular injury was intended. Though it cannot be laid down as a rule of universal application that whenever one arrow is shot or one blow is given, Section 300, I.P.C. is ruled out, yet in the circumstances we feel that Appellant No. 1 did not intend a particular injury which resulted in the death. But he can certainly be attributed the knowledge to bring in Section 304, I.P.C. Therefore, the conviction u/s 302, I.P.C. is scaled down to Section 304, Part-II, I.P.C. and custodial sentence of eight years would meet the ends of justice. It is stated that the accused-Appellant No. 1 is in custody for more than eight years. If that be so, and if he is not required to be in custody in any other case, he shall be released forthwith.

9. So far as other Appellants are concerned, who had suffered injuries, there is No. manner of doubt that they were guilty of the offences alleged. The conviction is accordingly maintained. We, however, find substance in the plea of the Appellants that the occurrence took place more than a decade back and it would not be proper to send back them to serve residual custodial sentence. Considering the background facts highlighted above, we reduce the sentence to the period already undergone.

10. The appeal is allowed to the extent indicated above.

P.K. Misra, J.

11. I agree.