
(1995) 07 OHC CK 0023
In the Orissa High Court
Case No : Criminal Appeal No. 41 of 1991

Mahabir Harro	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 299, 300, 304

Citation : (1996) CriLJ 158 : (1995) 2 OLR 328

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

Bench : Division Bench

Advocate : Pradip Mohanty, B.P. Ray and A.K. Dalai, for the Appellant; R.P. Mohapatra, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—Accusation of commission of offence punishable u/s 302 of the Indian Penal Code, 1860 (in short, "IPC") having been accepted, and conviction made by the learned Additional Sessions Judge, Rourkela. Mahabir Harro (hereinafter referred to as the "accused") has preferred this appeal. Challenge in this appeal is to the conviction made and sentence of imprisonment for life as awarded.

2. Background facts as projected by the prosecution lies within a very narrow compass.

On 11-4-1989 in the night, the accused came and threw abuses at one Rambalad Jha standing in front of the latter's house. At that time said Rambalad was not present in his house. His wife Urmila Jha (PW 1) came out of the house, and asked the accused as to why he was shouting and abusing in the absence of Rambalad. While exchange of words between the accused and Urmila was going on, parents of Urmila and some other people of the locality arrived there. They drove the accused away from that place. While Urmila and her father Gopal Bhoi (hereinafter referred to as the "deceased"), mother Mukta and sisters Bijuli (PW

3) and Bimala (PW 7) were discussing, the untoward behaviour of the accused, he suddenly appeared there with a sword and dealt a blow off the head of the deceased as a result of which He sustained grievous cut bleeding injuries on his head and his brain matters also came out. When the accused attempted to deal a second blow on the deceased with the sword, the Matter's daughters caught hold of the accused as a result of which the sword caused injuries on the left hand of Urmila (PW 1) and right hand of Mukta (PW 2), the widow of the deceased. Hearing their shouts people of the locality arrived, the deceased was removed to Rourkela G. R. P. S. where information was lodged by Urmila (PW 1). A case was registered, and deceased Gopal, his wife Mukta (PW 2), and daughter Urmila (PW 1) were sent to Rourkela General Hospital for medical examination and treatment. The doctor examined the injured persons and finding condition of deceased Gopal to be very serious, referred him to Ispat General Hospital, Rourkela. After admission in the said hospital Gopal breathed his last. Investigation was undertaken and on completion thereof charge-sheet Was submitted.

3. The accused pleaded innocence and false implication.

4. In order to establish its case prosecution examined seventeen witnesses, out of whom PWs 1, 2, 3 and 7 claimed to be eye witnesses to the occurrence. As indicated above PW 1 is the daughter, PW 2 is the widow, and PWs 3 and 7 are also daughters of the deceased. Placing reliance on their evidence, the learned trial Judge found the accused guilty, convicted and sentenced him as aforesaid.

5. In support of the appeal Mr. Pradip Mohanty, the learned counsel submitted that the learned trial Judge should not have placed reliance on the evidence of PWs 1, 2, 3 and 7 who were closely related to the deceased. It is further submitted that even if the version of prosecution about presence of certain other persons is accepted, no reason has been indicated as to why they were not examined. Additionally it is submitted that only one blow as alleged was given and therefore, a case u/s 302, IPC is not made out. Mr. R.P. Mohapatra, learned counsel for State on the other hand submitted that merely because PWs 1, 2, 3 and 7 are related to the deceased, same cannot be a ground to discard their evidence. It is also submitted that the injury inflicted on the deceased was on the head of the deceased, and the doctor (PW 15) has spoken about the brutality involved in Inflicting it and Section 302, IPC has been applied rightly.

6. Where a grievance is made that only the persons who are related to the deceased are examined, Court has to weigh their evidence more cautiously. Relationship per se is not a ground for discarding the evidence of a credible and truthful witness. Relationship guarantee's truthfulness of the witnesses to certain extent as a relative would not normally shield the guilty and falsely implicate an innocent person. Relationship is often a sure guaranteed truth. In the absence of any special reason of general unreliability relation witnesses should not be disbelieved, though their evidence has to pass the test of close and critical scrutiny. A witness is normally to be considered independent unless he or she

springs from sources which are likely to be tainted and that usually means, unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would not do so, thereby sparing the real offender free. Presence of PWs 1, 2, 3 and 7 at the spot is quite natural because they are related to the deceased and the occurrence took place near their house. Relationship is not sufficient to suspect credibility, specially when presence at the spot is normal and natural. It is not the number of witnesses which is material, but the equality of evidence. "Section 134 of the Indian Evidence Act 1872 (in short, the Evidence Act) clearly stipulates that no particular number, of witnesses is necessary to be examined to prove a fact. In the case at hand no material could be placed to show as to how the evidence of PWs 1, 2, 3 and 7 lack credibility. Elaborate analysis has been made of their evidence by the learned trial Judge. His conclusion that the accused was the author of crime is irreversible.

7. Coming to the question whether offence punishable u/s 302, IPC is made out, the learned counsel for the accused submitted that only one blow was given. As rightly submitted by the learned counsel for State, the witnesses have clearly deposed about two blows. Number of blows is really irrelevant. What is material is the intention of accused, the nature of weapon used, the place of body where the injury, was inflicted, and the gravity of injury are some of the aspects which would show about intention of the accused.

In the scheme of the IPC, "culpable homicide" is genus, and "murder" is the specie. All "murder" is "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 of fixing punishment, proportionate to the gravity of this generic offence, IPC 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.....

Subject to certain exceptions culpable homicide is murder if the act by which the death is done.....

INTENTION

(a) with the intention of causing death; or (1) with the intention of causing death; or

(b)

with the intention of causing such bodily injury as is likely to cause 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 body 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 the act is likely to cause death.

(4)

with the knowledge that the act is so imminently dangerous that it must in all probability cause death or suchbodily 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)

Evidence of the witnesses shows that assault was given by a sword on the head with such force that grievous cut bleeding injuries occurred on the head of the deceased and his brain matters came out. There can be no manner of doubt that the intention of the accused was to cause death of the deceased. The learned trial Judge has rightly completed 1 le accused for the offence punishable u/s 302 IPC and sentenced him to rigorous imprisonment for life.

We find no merit in this appeal which is dismissed.

P. Ray, J.

I agree.