
(2008) 06 OHC CK 0016
In the Orissa High Court
Case No : JCRLA No. 81 of 2005

Mangal Singh Majhi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2008) CLT 1248 (Suppl Crl) : (2008) 2 OLR 350 Supp : (2008) OLR 1248 (Suppl Crl)

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : Dillip Kumar Mohanty, for the Appellant; Additional Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard arguments from both the sides and the Judgment is as follows:

2. The Appellants challenged the order of conviction u/s 302/34 of the Indian Penal Code recorded against them by learned Additional Sessions Judge, Nuapada in Sessions Case No. 63/6 of 2003 arising out of G.R. Case No. 267 of 2002 of the Court of the learned J.M.F.C., Khariar.

3. As it reveals from the lower Court record, prosecution case is that on 11.9.2002 Nuakhai (Navarna) was elaborated in the locality. On 12.9,2002, i.e. the date of occurrence in the afternoon at about 4 to 5 p.m. deceased Hapua alias Sujan Majhi and accused Dukhiram Majhi were amongst four players playing cards on the village street.

In course of the playing cards, a quarrel ensued between deceased Sujan and accused Dukhiram and the later retaliated and assaulted Sujan by using his chapal. Bharat Majhi (P.W.5), the younger brother of Sujan came upon that spot. From the house of the deceased Sujan, Sujan and his elder brother Asbal Majhi

went to the house of accused persons and reported the incident to accused Mangal Singh Majhi, He is the father of all the three remaining accused persons. When the aforesaid named Asbal Majhi and Sujana questioned the conduct of accused Dukhram in assaulting Sujana by Chapal, all the accused persons being variously armed with axes and knives attacked and assaulted both the brothers and as a result of that sustained bleeding injuries, Asbal died at the spot and Sujana Majhi died at the place to which he was shifted by P.Ws. 5, 10, 11 and 13, the eye witnesses to the occurrence. The incident was reported at the P.S. and investigation was undertaken. In course of investigation, the I.O. (P.W. 17) held inquest over the dead bodies, forwarded them for Post mortem examination, visited the spot, prepared the spot map, seized incriminating materials including the blood stained and sample earth and also weapon of offence on being given discovery by the accused persons. All incriminating seized articles were sent for chemical analysis and serological report to R.F.S.L., Berhampur, sent the weapon of offence for the opinion of the Doctor (P.W.15), who conducted the Post mortem Examination and on completion of investigation submitted charge sheet.

4. In course of trial, accused persons pleaded their innocence and claimed for trial. They took a defence plea that both the deceased came to the house of the accused persons and throttled the neck of accused Mangal. Thereafter accused Khirasindhu had intervened and separated them and drove them out from their house. Because of that occurrence, both Mangal and Khirasindhu sustained injuries and the matter was reported to the Police and they were medically examined. The other two accused persons took the plea of alibi on the ground that they were not present in the house, one having gone to tend the cattle and the other to agricultural land. In furtherance of the defence plea the accused persons examined one witness i.e. the Doctor who granted injury certificate, Exts. B & C and also proved the F.I.R. (Ext, A).

5. In course of trial, to substantiate the charge the prosecution examined 17 witnesses, out of 25 charge sheeted witnesses and relied on the documents marked Exts. 1 to 35 and exhibited the weapons of offence. M.Os. IV to VI and IX and XIII. Besides the wearing apparels of the accused persons and the deceased, other materials objects were marked as M.Os. I to III, VII and VIII and X to XIII.

6. On assessment of evidence of P.W.15, the post mortem report of Asbal Majhi, Ext. 14, post mortem report of Sujana Majhi, Ext. 15 and opinion report of the Doctor on the weapons of offence Exts. 17 to 21, learned Additional Sessions Judge recorded the findings that multiple injuries, i.e. incised and stab wound, found on the dead bodies of the deceased persons corroborate the opinion of P.W.5 that death of each of the deceased was homicidal. That finding and conclusion of the learned Trial Court is not challenged before us regarding homicidal death of both the deceased persons.

7. Learned Additional Sessions Judge assessed the evidence of P.Ws. 5, 10, 11 and 13, as they are the eye-witnesses to the occurrence and determined that

accused persons are the authors of the injuries, which resulted in homicidal death of each of the deceased. In that process while assessing oral evidence, he found relevant corroboration from the documentary evidence like the post mortem reports, the opinion reports and evidence of the Doctor on the weapons of offence, seizure thereof at the behest of the accused persons, report from R.F.S.L., Berhampur, Ext. 35 relating to the presence of human blood, Group-B on the wearing apparels of the deceased and the accused persons. He also considered and rejected the contention of the accused persons to discard the evidence of P.Ws. 5, 10, 11 and 13 on the ground that they are close relatives of the two deceased and held that such relationship does not disentitle those persons to be eye witnesses to the occurrence, nor their evidence is to be rejected on the ground of such relationship. He accordingly perused and appreciated the evidence of P.Ws. 5, 10, 11 and 13 and found such evidence to be reliable and credible notwithstanding minor discrepancy. Thus taking into consideration such evidence together with other evidences learned Additional Sessions Judge found the accused persons guilty of the charge u/s 302/34 of the Indian Penal Code and accordingly convicted them. In that context, learned Additional Sessions Judge also considered the defence plea of attack by the deceased persons and found it to be not reliable factor under the given circumstances that minor injuries were found on their persons and that too F.I.R. was lodged on the following day at 9 A.M. i.e. at a very belated stage. For the aforesaid conviction, learned Additional Sessions Judge imposed punishment for imprisonment of the life against each of the accused persons.

8. Mr. Mohanty, learned Counsel for the Appellants, as noted above without disputing to the homicidal death of the deceased persons, argues that so far as evidence on record is concerned, that clearly indicates that there was a quarrel between the deceased Sujan and Dhukiram and according to the evidence of P.W.5., both of them were in drunken condition and that too in intoxicating condition, deceased Sujan with his elder brother Asbal went to the house of the accused persons for a confrontation and also attached accused Mangal and Khirasindhu. Keeping in view, that circumstance, which is emerging on record and absence of any evidence on preconcert against the accused persons for causing the murder of either of the deceased persons or both of them, the order of conviction the murder of either of the deceased persons or both of them, the order of conviction for the offence u/s 302 of the Indian Penal Code be modified to a conviction u/s 304-Part-II of the Indian Penal Code, if the contention of the Appellants about lack of credibility of P.Ws. 5, 10, 11 and 13 because of contradiction and their close relationship with the deceased, is not accepted.

9. Mr. Mishra, learned Standing Counsel on the other hand argues that there is not an iota of evidence to draw inference that both the deceased went for a confrontation with the accused persons. On the other hand the unchallenged prosecution evidence is that both the deceased persons went and reported about the misconduct of the accused Dhukhiram before his father accused Mangal and in the absence of any provocation from the side of the deceased they were

brutally assaulted by use of dangerous weapons like axes and knives when admittedly both the deceased had gone unarmed. Accordingly he argues that even if there was no preconcert amongst them, but at the spur of moment, their conduct is sufficient to constitute an offence and in furtherance of that they committed assault which resulted in homicidal death of both the deceased at the spot and under such circumstances this cannot be a case of culpable homicide not amounting to murder. He further argues that so far as P.Ws. 5, 10, 11 and 13 are concerned, they are all neutral witnesses to the occurrence inasmuch as the houses of the accused persons and the witnesses including deceased situate nearer to each other on either side of the village road and therefore, their relationship with the deceased cannot be a ground to reject their credibility. He further argues that the minor discrepancies in their evidence regarding the occurrence which are rightly noticed and ignored by the learned Trial Court are not fatal to the prosecution and therefore by giving any standard of assessment the evidence of P.Ws. 5, 10, 11 and 13 stands the test of scrutiny so as to be accepted as reliable evidence and under such circumstances, the homicidal death is not being disputed and the plea of alibi of two of the accused persons being not proved and the injury which was found being not connected with the occurrence, the order of conviction and sentence imposed by the learned Trial Court be maintained.

10. On consideration of the aforesaid contentions and going through the evidence on record, both oral and documentary, we find that indeed both the deceased suffered homicidal death. The oral evidence of P.Ws. 5, 10, 11 and 13 are consistent on all material particulars relating to the occurrence of assault. The wearing apparels of the accused persons contained the same group of human blood, which has been found from the dead body of the deceased. The aforesaid tale tell circumstances together with the conduct of the accused persons in giving discovery of the weapon of offence are sufficient enough to record the finding that the accused persons committed the crime in the manner it has been stated by P.Ws. 5, 10, 11 and 13. It appears from the post mortem report noted in Paras-7 & 8 of the impugned Judgment that Asbal Majhi sustained two stab injuries and four incised wound, stab injury on the right and left side chest between 8th and 9th ribs space and the incised wound were on the chest, left arm above the elbow joint and over right leg. P.W.15 found that because of the aforesaid injuries there was punctured of the liver and intercostals muscles of the chest were cut. Similar evidence of P.Ws. 5 and 15 indicate that Sujan had received 5 injuries. Out of the said, two of the incised wounds on the skull and just between 9th and 10th ribs, whereas two lacerated injuries on vault (skull) and an abrasion on the right side back. In his case also the impact of the aforesaid assault resulted in perforation of peritoneum and injury to the liver, besides the right plura. An act of assault to armless persons by four persons, who were armed with dangerous weapons like axes and knives cannot be regarded as an uncontrolled act due to hit of passion and that too in the absence of any evidence to that effect and therefore the arguments advanced on behalf of

the Appellants for acquittal on the basis of contradiction in the evidence of eye witnesses does not bear any merit because minor contradiction in their evidence does not shake their credibility. Similarly the alternative argument for convictions u/s 304 Part-II is devoid of merit because the deceased persons had gone to the house of the accused to protest and not to attack or assault any of the accused persons.

11. In the result, we find nothing to interfere with the impugned order of conviction and accordingly, the Criminal Appeal is dismissed.