
(1977) 04 OHC CK 0006
In the Orissa High Court

Mangobinda Swain and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 12-04-1977

Acts Referred:

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

Citation : (1978) CriLJ 127

Hon'ble Judges : S.K. Ray, J;P.K. Mohanti, J

Bench : Division Bench

Judgement

P.K. Mohanti, J.—The appellant along with one Chintamani Naik stood charged u/s 302 read with Section 34, IPC for having caused the death of Bharamar Khuntia and his wife Harsa Dei on the midnight of 27-8-1974. After trial, the learned Additional Sessions Judge of Cuttack convicted all the four accused persons u/s 302/34, IPC and sentenced each of them to undergo imprisonment for life. The convict Chintamani Naik died during the pendency of this appeal.

2. The prosecution case may be briefly stated as follows :?

The deceased and the accused persons are co-villagers. There were several litigations between their families for some years prior to the incident. On 27-6-1974 P. W. 5 Banshidhar Khuntia along with his two sons Brjaya and Bharamar (the deceased) had been to Banki to attend to a criminal case brought against them by appellant No. 1 Managovinda Swain. On that date judgment in the criminal case was delivered and P. W. 5 and his two sons were acquitted. They returned home at about dusk and offered Bhog to the village deity for their victory in the criminal case. On the same day the appellants were released on bail in a criminal case brought against them by the deceased Bharamar on the allegation that they had committed dacoity in his house.

3. In this background, it was alleged that at about midnight on the date of occurrence the appellants along with the said Chintamani Naik entered into the house of the deceased persons by scaling over the stone-wall lying in between

their house and the house of one Ainthia Dalai. P. W. 2 (the wife of P. W. 5) was sleeping on the inner verandah along with her grand-son Biranchi (P. W. 6). The accused persons enquired from her as to where Bhramar and Bijaya were sleeping. When she denied her knowledge about the same they proceeded towards the Barighar and caused the death of Bhramar. When his wife Harsa raised an alarm, they gagged her mouth by cloth and killed her. They severed the heads of both the deceased persons from their trunks and placed the severed heads together near the back door and left the spot.

4. F. I. R. was lodged by P. W. 5 Banshidhar Khuntia on the next day i. e. 28-8-1974 by about 8.30 a.m. at Banki P. S. which is about 14 kilometres away from the place of occurrence. The accused persons were arrested on 29-8-1974. After usual investigation the charge-sheet was submitted on 3-10-1974.

5. At the trial, the accused persons denied their alleged complicity in the crime and contended that they were falsely implicated out of previous enmity.

6. That the death of the deceased persons was homicidal admits of no doubt. This is also not disputed by the appellants. The Medical Officer (P. W. 8) who conducted autopsy over the severed heads and trunks of both the deceased persons on 29-8-1974 opined that death of each of the deceased was caused by severing the head from the trunk by means of deadly weapons.

7. The order of conviction is based mainly on the evidence of P. Ws. 2, 5 and 6. They are, no doubt, relations of the deceased but that itself is no ground to disbelieve their evidence. The place and the time at which the offence is alleged to have been committed were such that presence of persons who were not relation of the deceased may least be expected.

8. The evidence of P. Ws. 2, 5 and 6 shows that there had been longstanding enmity between the families of the deceased and the appellants. This fact is also admitted by the appellants. It is in evidence that on the date of occurrence P. W. 5 and his two sons Bhramar and Bijaya were acquitted in the criminal case brought by appellant No. 1 Managovinda and that on the same day the appellants were released on bail in another criminal case started by the deceased Bhramar. Thus it appears that after their release on bail the appellants wanted to take revenge against the family of the deceased Bhramar. This motive must have led to the commission of the offence.

9. There is no direct evidence about the factum of murder. But the circumstantial evidence of P. Ws. 2, 5 and 6 is in our opinion, sufficient to sustain the convictions. P. W. 6 Biranchi is a young boy aged 13 years and he is the son of deceased Bhramar. It is in evidence that on the night of occurrence P. W. 6 had slept with P. W. 2 on the inner verandha of the house and his mother had slept on the verandha attached to the granary. P. W. 5 had slept in the cowshed and the deceased Bhramar had slept in the Barighar. At about midnight P. W. 6 was awakened by P. W. 2. On waking up, he found the four accused persons inside his courtyard. Then he saw the accused persons proceeding towards the Barighar

where Bhramar was sleeping. Out of fear he stood between the wall and a charpoy and looked towards the Barighar, He heard the groaning sounds of his father. He also saw his mother going towards the Barighar with a burning lantern. Then he heard his mother abusing the accused persons and telling them that she would get them killed next morning as they had killed her husband. He went on to say that when his mother shouted as "father, come running" the appellants Chintamanj and Jadu gagged her mouth by a cloth and dragged her to the verandah. The appellants Managovinda and Rupendra alias Rupia also came there from the side of the Barighar, He stated that he could not see what happened thereafter. After the accused persons left the place he saw both his father and mother had been beheaded and their severed heads had been placed near the Barj. door. Thus it appears from his evidence that none else but the accused persons are responsible for the murders of both the deceased persona. His evidence shows that a burning lantern was kept on the verandah and he saw all the accused persons from a distance of 20 to 22 cubits. The evidence on record also shows that the occurrence took place in a bright fortnight and Chintamani was carrying a torchlight at the time of occurrence. There was therefore no difficulty for the witness to identify the culprits who are his co-villagers. The witness narrated the incident before P. Ws. 2 and 5 immediately after occurrence and on the next day he was examined by the police. It is not shown that he made any previous contradictory statement before the police. Nothing substantial has been brought out in his cross-examination on which it could be said that his evidence is false or improbable. His evidence does not favour of any attempt being made by him to supply details which would in any manner strengthen the prosecution case. The witness frankly stated what he had actually seen with out weighing the consequences of his statements. This is not the sign of false witness but is a characteristic of a truthful witness,

10. The evidence of P. Ws. 2 and 5, clearly establishes the presence of all the accused persons at the scene of occurrence. P. W. 2 stated that at about midnight he saw the accused persons coming to her courtyard by scaling over the stone-wall and that they enquired from her as to where Bhramar and Bijaya were sleeping. When she expressed her ignorance they proceeded towards the Barighar. Out of fear she went inside a room taking a child with her and bolted the door from inside. She heard the deceased Harsa abusing the accused persons and crying out for help calling her father-in-law. After the occurrence she came out of the room being called by her husband and found the trunks of the dead bodies of Bhramar and Harsa lying in pool of blood and their severed heads lying together near the Barighar. P. W. 5 stated that at about midnight he woke up on hearing the alarm, raised by Harsa and came out with burning lantern. He found the four accused persons coming out of his main residential house through the sadar door way. He also found the trunks of the dead bodies of Bhramar and Harsa lying in pool of blood and their severed heads kept together near the Baridoor. Next morning he went to the Police Station and lodged the F. I. R. implicating all the four accused persons as the culprits. It was elicited in his

cross-examination that the F. I. R. was recorded at the village after he came back from the Police Station. This statement however appears to have been made out of some confusion of thought, in his examination at the Police Station and the samp had been reduced to writing by the A. S. I-This statement is corroborated by the A. S. I., P. W. 9.

11. On a careful scrutiny of the evidence of the witnesses we are not inclined to accept the appellants' contention that they were falsely implicated out of previous enmity. There is nothing inherently improbable in the evidence of the witnesses. If the witnesses were anxious to strengthen the prosecution case they would have ascribed to the appellants the actual commission of the murder. The fact that they were in inimical terms with the appellants does not appear to have influenced their testimony.

12. The learned counsel appearing for the appellants commented on the absence of foot-prints and blood marks in between the place where the trunks were lying and the Baridoor where the severed heads were kept. The evidence on record shows that it was raining in the night of occurrence and it is not unlikely that the foot-prints and the blood-stains might have been washed away by rain, The Investigating Officer (P. W. 10) seized some blood stained earth from the places where the trunks and the severed heads of the dead bodies were lying. The absence of blood marks in between the places where the trunks were lying and the place where the severed heads were kept does not affect the prosecution case. The fact remains that the trunks were severed from the heads of the deceased persons and the two severed heads were found near the Baridoor.

13. The admitted strained relations between the parties and the evidence just discussed, in our opinion, clearly establish the complicity of the appellants in the murders of both the deceased persons. The appellants appear to have acted in concert pursuant to a prearranged plan. Their conviction u/s 302/34, I. P. C is fully supportable on the evidence.

14. The appeal fails and is dismissed.

S.K. Ray, J.

15. I agree.