

(2022) 09 OHC CK 0101
In the Orissa High Court
Case No : Criminal Appeal No. 188 Of 2016

Nakhia @ Laxmidhar Dehury

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 294, 302, 307, 324

Citation : (2022) 09 OHC CK 0101

Hon'ble Judges : Dr. S. Muralidhar, CJ; Chittaranjan Dash, J

Bench : Single Bench

Advocate : S.N. Mishra, Janmejaya Katikia

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. This present appeal is directed against the judgment dated 9th March, 2016 passed by the learned Additional Sessions Judge, Athgarh in S.T. Case No.56 of 2015 convicting the Appellant for the offence punishable under Sections 302 and Section 324 of the IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment (RI) for three months for the offence under Section 302 IPC and to undergo RI for one year for the offence punishable under Section 324 of IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution is that on 12th April 2015, the informant Lova Behera (PW-7), the wife of the deceased Sugribara Behera of Bailo, was spreading green gram in the farmyard. At that time, the accused-Appellant abused PW-7 in filthy language protested against the spreading of green gram there. PW-7 then returned to her house. On the same day at around 6 pm, while PW-7 and the deceased were stacking green gram in the farmyard, the Appellant being armed with sword came there; abused the deceased in filthy language and assaulted him with a sword on his head, neck and hand. When PW-7 came to the

rescue of her deceased-husband, the Appellant also assaulted her by means of a sword on her head causing bleeding injury. Thereafter, both the deceased and PW-7 were removed to Athgarh hospital, where the deceased was declared dead. The matter was then reported to the Police Station (PS) and registered as P.S. Case No.80 of 2015.

3. The Investigating Officer (IO) (PW-15), Gangadhar Panigrahi, reached the spot and took up the investigation. He seized the wearing apparels of the deceased, blood samples and one certificate on production by Constable Sribatsha Padhan. Upon arrest, the accused made a statement on the basis of which the police were able to recover, upon his showing, his black colour pant, one white colour check shirt and one yellow colour napkin, all of which were seized by PW-15.

4. Meanwhile, the report of the postmortem conducted by the Medical Officer (MO) (PW-11) was made available. PW-11 also confirmed that the sword shown to him could cause the injuries found on the body of the deceased.

5. On completion of investigation, a charge sheet was laid against the Appellant for the offences punishable under Sections 302, 307 and 294 of IPC. The accused then pleaded not guilty and claimed for trial.

6. For the prosecution, as many as fifteen witnesses were examined and none for the defence.

7. On an analysis of the evidence, the trial Court concluded that the prosecution had proved the guilt of the Appellant for the offences punishable under Sections 302 and 324 of IPC beyond all reasonable doubt. The trial Court acquitted the Appellant of the offence punishable under Section 294 of IPC. The trial Court then proceeded to sentence the Appellant in the manner indicated hereinbefore.

8. This Court has heard the submissions of Mr. S.N. Mishra, learned counsel appearing for the Appellant and Mr. Janmejaya Katikia, learned Additional Government Advocate for the State.

9. This was a case based on direct evidence and the star witness to the prosecution was the wife of the deceased, i.e., PW-7 who was also the injured eye-witness and informant of this case. Besides her, PWs-1 to 4, 8 and 9 were witnesses to the occurrence. PWs-5, 6, 12 and 13 were the witnesses to the seizure. The MO, who examined the informant, was PW-10, whereas the MO, who conducted the postmortem examination of the deceased, was PW-11. PW-14 was the Scientific Officer.

10. PW-7 narrated that while she was spreading green gram adjoining to her house, the Appellant came and abused her in filthy language protesting against her spreading of green gram there. She returned to her house without replying. She narrated the incident to her husband. Later, in the evening at around 6 pm, when she and her husband were stacking green gram near Kothaghara, the Appellant armed with a sword came there, quarreled with them, dealt blows on the dead, neck and right hand of her husband. When she intervened to rescue

her husband, she too was attacked by the Appellant by a sword. When she raised hulla, the villagers came to the spot and the accused-Appellant fled away throwing the sword there. Then she and her husband were taken to the Athgarh hospital, where her husband was declared dead. She was medically treated and lodged an FIR at the PS at around mid-night.

11. PW-7 was subjected to cross-examination on behalf of the defence, but nothing could be elicited from her to doubt the veracity of her testimony. The law is well-settled that the testimony of an injured eye-witness deserves the highest consideration as it is the most natural testimony of a person present at the scene of crime.

12. In this connection, the following observation in *Abdul Sayeed v. State of Madhya Pradesh* (2010) 10 SCC 259 is relevant:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide *Ramlagan Singh v. State of Bihar*, AIR 1972 SC 2593, *Malkhan Singh v. State of U.P.*, AIR 1975 SC 12, *Machhi Singh v. State of Punjab* (1983) 3 SCC 470, *Appabhai v. State of Gujarat* AIR 1988 SC 696, *Bonkya v. State of Maharashtra* (1995) 6 SCC 447, *Bhag Singh* (1997) 7 SCC 712, *Mohar v. State of U.P.* (2002) 7 SCC 606 (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* (2008) 8 SCC 270, *Vishnu v. State of Rajasthan* (2009) 10 SCC 477, *Annareddy Sambasiva Reddy v. State of A.P.* (2009) 12 SCC 546 and *Balraje v. State of Maharashtra* (2010) 6 SCC 673).

29. While deciding this issue, a similar view was taken in, *Jarnail Singh v. State of Punjab* (2009) 9 SCC 719, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own

relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

13. This has been reiterated by the Supreme Court in *Sadakat Kotwar v. State of Jharkhand* (2021) SCC OnLine SC 1046, where it was observed as under:

"2.... As held by this Court in the case of *State of M.P. v. Mansingh*, (2003) 10 SCC 414 para 9, the evidence of an injured eye-witness has great evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly."

14. The evidence of PW-7 has been corroborated by the testimonies of the other villagers, i.e., PWs-1 to 4, PW-8, the husband of PW-3 and PW-9. The eye-witness testimony of PW-7 has been fully corroborated by the post-mortem report of PW-11 who found incised wounds over the left side of the parietal region of the deceased over his neck and hand and one abrasion over the abdomen. He also found incised injury in the left jugular vein and right radial vein. He also proved that the injuries could have been caused by the sword that was seized.

15. That this was a pre-meditated murder is not in doubt since the incident involving PW-7 and the Appellant took place earlier in the day and then later at 6 pm, the accused came armed with a sword with an intention of attacking the deceased, which he did on his vital parts of the body like the head, neck etc. In other words, this was not, as sought to be contended by the learned counsel for the Appellant, a crime as a result of the grave and sudden provocation.

16. PW-10, the MO who examined PW-7 confirmed that she suffered from a 1/2" x 1/4" scalp deep bleeding injury on the left parietal area. Only because the attack on her was not intentional, but, accidental as she tried to protect her husband, the trial Court converted the offence in this connection from Section 307 IPC to 324 IPC.

17. It was then contended by Mr. Mishra, learned counsel appearing for the

Appellant that while lodging the FIR, PW-7 did not mention any of the eye-witnesses. Even in the statement before the police or her evidence in Court, she did not name the other eye-witnesses. Accordingly, it was contended that these other eye-witnesses were all set up by police. It was further contended that the testimonies of these so-called eye-witnesses suffered from inconsistencies and contradictions and made them unreliable.

18. While there may be a few inconsistencies in the narration of the eye-witnesses, this was natural as they were not expected to repeat parrot-like the description of the crime as it happened. However, in the present case, the unimpeachable testimony of PW-7 who was the injured eye-witness and whose evidence has not been shaken in cross-examination, and whose evidence has been corroborated fully by the medical evidence, lends full assurance to the Court that the conviction of the accused for the offence punishable under Section 302 IPC can be based on her evidence alone.

19. For all of the aforementioned reasons, the Court finds no reason to interfere with the well-reasoned judgment of the trial Court. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

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