

(2022) 07 OHC CK 0169

In the Orissa High Court

Case No : Jail Criminal Appeal No. 93 Of 2006

Panchu @ Panchanan Mohapatra

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304I, 304II
Evidence Act, 1872 — Section 32

Citation : (2022) 07 OHC CK 0169

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Manasi Das, J. Katikia

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the judgment dated 31st August 2006 passed by the learned Additional Sessions Judge, Talcher in C.T. No.3 of 2003 convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentencing him to undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) and in default to undergo rigorous imprisonment for six months.

2. At the outset, learned counsel for the Appellant, who is a panel counsel of the High Court Legal Services Committee informs the Court that by order dated 5th October, 2012 the Appellant was directed to be released on bail subject to the satisfaction of the trial Court. By this time, the Appellant who had been admitted to the Special Sub-Jail, Talcher on 2nd July, 2002 as an undertrial prisoner had continued in jail custody for more than ten years. At the hearing on 20th October, 2020 this Court stayed the realization of the fine. Since it was not clear whether the Appellant had been released on bail, a report was called for from the Special Sub-Jail, Talcher. A report dated 12th November, 2020 was received from

the Superintendent, Special Sub-Jail, Talcher confirming that the Appellant had indeed been released on bail on 20th October, 2012 and was residing in his village with his family. Pursuant to the order passed by this Court on 7th April, 2022, the Appellant was present in Court on 28th June, 2022.

3. This Court has heard the submissions of Ms. Manasi Das, learned counsel for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the Respondent-State.

4. The case of the prosecution in brief is that the Appellant had a quarrel with the deceased Punia and his wife and had borne a grudge. On 30th June, 2002 at about 11:30 am when PuniaDehuri was walking down on the village road, the Appellant was sitting nearby, went and stabbed Punia by a knife on his right chest. The victim then shouted that the Appellant had assaulted him and held a napkin on the wound and tried to go towards his house. However, the victim fell down on the ground after a few yards. The wife and the brother (PW 2) of the victim and certain others rushed to the spot. The victim stated that the accused had assaulted him and died at the spot. The brother of the victim submitted a written report at the Rengali Dam site Police Station at around 12:15 pm. Then PS Case No.24 of 2002 was registered under Section 302 IPC.

5. The very next date the Appellant was arrested and while in police custody, he made a statement which led the police to recover the knife used in committing the offence which he had concealed in the room used for keeping statues belonging to one Abhi Mohapatra. The opinion of the autopsy doctor was obtained. Charge sheet was filed against the accused for the offence under Section 302 IPC. The prosecution examined 17 witnesses whereas none were examined for the defence.

6. The principal witnesses were Dolagobinda Mohapatra (PW 1) who was the occurrence witness and TirthaDehury(PW 2), the brother of the victim, who is stated to have witnessed the occurrence. The post occurrence witnesses were Kusa Samal (PW 3), and Rukmuni Dehury (PW 4) the wife of the deceased. Of the remaining witnesses, PWs 5 to 8 turned hostile. Dr. Purnima Udgata (PW 10), was the doctor who conducted the post-mortem examination. Saraswati Dhir (PW 11) was the seizure witness and Maheswar Patra (PW 13) the witness to the statement made by the Appellant while in custody which led to recovery of the weapon of offence. PW 14 was another seizure witness. Both Prasanna Kumar Rout (PW 16) and Nirod Kumar Nayak (PW 17), were the Investigating Officers (IOs).

7. The trial Court has on an analysis of the evidence concluded that the prosecution was able to establish the guilt of the accused Appellant beyond all reasonable doubt. It proceeded to convict him and sentence him by the impugned judgment in the manner already noticed.

8. Learned counsel for the Appellant focused on the credibility of the eye witnesses who were both chance witnesses and interested witnesses. According

to her, unless they were corroborated by independent witnesses their testimonies could not form the basis of conviction. Secondly, it was urged that the prosecution had failed to prove the motive for the crime and therefore an important link in the crime was missing.

9. The Court proposes to first examine the evidence of PW 2 the younger brother of the deceased. No doubt he is an interested witness but as will be seen, he is consistent and reliable and his evidence has been fully corroborated by the medical evidence. He states that the deceased was returning home from East to West and the accused was sitting near the house of Butu Majhi. The accused gave a knife blow on the chest of the deceased near Mangala KothiChhak on the village road. The deceased then shouted saying that the accused had assaulted him. The deceased fell on the ground near the cabin of Arjuna Dhir. PW 2 was standing at Mangala Chhak and saw the accused assaulting the deceased. He then rushed to the place where the deceased had already passed away by the time he arrived.

10. PW 2 was subjected to extensive cross-examination. In the cross-examination, he was confronted with the previous statement of the police. It was suggested to him that he had not told the IO that the deceased was coming from the East to West; that the Appellant had sat in the house of Butu Majhi and that PW 2 was standing at that time at Mangala Chhak. He denied these suggestions. The IO (PW 16) in his cross examination, did admit to the fact that PW 2 did not make the above statements before him. However, this Court does not consider the above deviations in the deposition of PW 2 to be material deviations which have the effect of impeaching his credibility. The fact that the PW 2 in fact witnessed the occurrence has come through clearly in the deposition and that portion of the deposition has not been shaken in the cross-examination.

11. Attention of the Court was drawn to the statement of PW 2 in his cross-examination that "there was no ill feeling between the family of the accused and our family" concerning the landed property. However, as is well settled, in a case of direct evidence, as the present one, the absence of proof of motive will not weaken the case of the prosecution.

12. Turning to the deposition of PW 1, he too said that he was sitting near the premises of ManaglaThakurani and all of a sudden the accused coming from the place of the sitting assaulted the deceased on the chest. He too states that the deceased fell down on the road near the cabin of Arjun Dhir. On these aspects, he corroborates the deposition of PW 2. Although suggestions were put to PW 1 regarding the statements made by him, these contradictions were not elicited from the IO (PW 16). What is significant is that the IO states "there are no inimical terms between the accused and Dolagobinda Mohapatra (PW 1)". However, PW 1 states that "it is a fact that there was a dispute between the accused and the deceased concerning the landed properties". He denied the suggestion that the deceased while coming in a drunken state fell over a sharpest stone causing injury in his person which became fatal. PW 1 also denied

the suggestion that he had any political rivalry with the Appellant.

13. Turning next to the evidence of PW 4 after she reached the spot and inquired from her husband, he told her that it was the accused who had stabbed, so this is just prior to his expiring. It satisfies the test of Section 32 of the Indian Evidence Act read with Section 6 thereof. The cross-examination of this witness did not yield much for the defence. In *Prakash v. State of M.P.* (1992) 4 SCC 225 it was observed by the Supreme Court as under:

"11.... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with."

14. All the three witnesses have spoken consistently about the accused stabbing the deceased on the chest with a knife. This is corroborated by the evidence of PW 10, the doctor who conducted the post-mortem. She found the following single wound:

"Punctured wound elliptical in size 3" x 6" on 1" lateral to sternum of right side. Chest cavity has been filled with blood pericardium congested and full of blood. Right atrium is lacerated left and right ventricles were empty."

15. PW 10 opined that the cause of death was due to shock on account of the peripheral circulatory failure due to the lacerated injury of right atrium caused by external injury. In other words, this was a single stab at the heart which is a vital part of the body.

16. Learned counsel for the Appellant, faced with the difficulty of overcoming the direct eyewitness testimonies of the above witnesses, sought to argue that the recovery of the knife was not proved beyond reasonable doubt. This Court is however satisfied from the evidence of PW 16 that the recovery was made pursuant to the statements made by the deceased. The knife itself was sent for serological examination. It contained human blood but the grouping could not be established. However, when viewed together with the medical evidence and the evidence of the eyewitnesses, it is plain that it was the Appellant who stabbed the deceased on his chest and murdered him.

17. It was argued both before the trial Court and before this Court that there was no motive for the crime. While PW 2 has said in his cross-examination that there is no ill feeling between the family of the accused and the deceased family concerning the landed property, PW 1 thus says that there was such a dispute. In

any event, when there are eyewitnesses the fact that the motive may not be clearly proved pales into insignificance.

18. In *Bikau Pandey v. State of Bihar* (2003) 12 SCC 616 it was explained that absence of motive "is of no consequence and pales into insignificance when direct evidence establishes the crime." With there being clear and cogent evidence of the eye-witnesses, the burden of the prosecution to prove the motive is not significant. Again, in *State of U.P. v. Kishanpal* (2008) 16 SCC 73 it was held as under:

"39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

19. Coming now to the actual nature of the offence, it was sought to be argued that this being a single stab blow, the offence should be categorized as one falling under Section 304 Part I or Part II IPC. However, there was no occasion for any sudden provocation. The deceased was walking down the road and the accused suddenly got up and ran towards and stabbed him on the vital part of the body i.e. on the chest. Death was instantaneous. It cannot be said that the accused was not aware of the consequences of his act. He had both the knowledge and the intention to kill the deceased. He attacked a defenseless man with a sharp weapon on the vital part of the body. This was not an act under sudden or grave provocation. Consequently, the Court is not persuaded that the offence that is attracted is one punishable under Section 304 Part I or Part II. In other words, this is not culpable homicide not amounting to murder.

20. For the aforementioned reasons, the Court finds no reason to interfere with the impugned judgment of the trial Court. The appeal is dismissed.

21. The bail bonds of the accused are hereby cancelled. He is directed to surrender on or before 16th August, 2022 failing which the IIC of the concerned police station will take immediate steps to have him brought back to custody to serve out the remainder of his sentence.

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