
(2009) 09 OHC CK 0018
In the Orissa High Court

Purna Chandra Sahu and Lochan Sahu	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 307, 323, 34

Citation : (2009) 108 CLT 672 : (2009) 2 OLR 177 Supp

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Judgement

S.C. Parija, J.—This Criminal Appeal is directed against the Judgment dated 05.07.2004, passed by the Adhoc Addl. Sessions Judge (FTC), Gunupur, in CrI. Trial No. 13 of 2002, holding the accused-Appellant No. 1 guilty of offence u/s 302 IPC & the other accused-Appellant No. 2 guilty of offence under Sections 307/34 IPC & accordingly convicting them thereunder.

2. The case of the prosecution, in brief, is that the informant Hajari Sahu (P.W.9), brother of deceased Ashok Sahu of village Gundriguda submitted a written report (Ext. 10) before the A.S.I. of Police, Muniguda P.S. (P.W.10), alleging that he has paddy lands in Nuakhamara Chhak & he had raised paddy & on the date of occurrence, i.e., 27.06.2001 at about 10 A.M., he & his brother Ashok Sahu (deceased) went to see their paddy crops & on reaching their lands, they found accused Purna Sahu & his father Lochan Sahu were cultivating their lands with a pair of bullocks & with a pair of buffalo & they had let loose their another buffalo, who had entered into the land of the informant & was eating away the paddy crops. Seeing this, brother of the informant, Ashok Sahu, asked the accused Purna Sahu & his father Lochan Sahu as to why they had allowed their buffalo to enter into the land of the informant. On hearing this, accused Purna Sahu got angry & abused the informant & his brother & an altercation ensued. It was further alleged that accused Purna Sahu, his father Lochan Sahu, Kati Sahu, mother of Purna Sahu & their farm servant Jhitika Gagarenga, came running & caught hold of Ashok Sahu & accused Purna Sahu gave a tangia blow on the

head of Ashok Sahu with the tangia which he was holding & when the informant went near his brother, accused Lochan Sahu gave a tangia blow on the left side head of the informant with the tangia, which he was holding & the informant ran towards the road side to save himself & shouted for help. It was also alleged that the occurrence had been seen by Gourahari Bhatta (P.W.8) & Hare Krushna Kanhar (P.W. 11) & on coming to know about the occurrence, the co-villagers & the informant brought Ashok Sahu to Muniguda in a vehicle for treatment but on the way Ashok succumbed to the injuries. Hence, they returned back to the village & kept the dead body of Ashok at the spot of occurrence. The informant having suffered grievous injury & as there was profuse bleeding from his head, he went to Muniguda hospital for treatment & after coming back from the hospital, he went to Muniguda P.S. for submitting the written report.

3. On receipt of the report, as the same revealed commission of cognizable offence under Sections 302/34 IPC, the A.S.I. of Police registered Ambadola P.S. Case No. 48 dated 27.06.2001 & took up the investigation. During investigation, the I.O. (P.W.10) proceeded to the spot along with a constable & the informant "Hajari Sahu, conducted inquest over the dead body of deceased Ashok in presence of the witnesses & seized sample earth & blood stained earth from the spot. The I.O. sent the dead body of deceased Ashok to Ambadola Govt. Hospital for post- mortem examination, seized one old rose colour "gamuchha" (towel) & issued requisition to the doctor of Ambadola Govt. Hospital for submitting the injury report of the informant. P.W.10 examined the other witnesses & on 26.06.2001 he handed over charge of investigation to the O.I.C. (P.W.12).

4. P.W. 12 after taking charge of the investigation, examined the informant & other witnesses including the accused persons i.e. Purna Sahu, Lochan & Kati Sahu & arrested & forwarded them to the custody. He also seized wearing apparels of accused Purna Sahu suspected to be stained with blood & also the wearing apparels of accused Lochan Sahu. It was further alleged that during interrogation, accused Purna Sahu stated to have concealed the weapon of offence (tangia) in the bushes near banana plantation situated in the bari (back side) of his house & led the I.O. (P.W. 12) & the witnesses to the bari or his house & brought out two tangias & produced the same before the I.O., which were seized under seizure list (Ext. 15). The seized tangias were also sent to the doctor of Muniguda C.H.C. for examination & opinion & on 30.06.2001, the other accused Jhitikia was arrested & forwarded to the Court & the seized articles were sent for chemical examination. After completion of investigation, the charge sheet was submitted against all the accused persons.

5. The plea of the accused persons was of complete denial. They further took the plea that on 27.06.2001 at about 10 A.M., while accused Purna Sahu ft his father Lochan Sahu were cultivating their land, the informant & his brother Ashok rushed to their land alleging that the buffalo of the accused persons was damaging their paddy crops & saying so, Ashok Sahu pushed Lochan & assaulted him with a "thenga" & pressed the neck of Lochan & seeing this when accused

Purna went there, Ashok & Hajari (informant) assaulted Purna, for which Purna sustained injuries on his left fore head & accused Lochan sustained injuries due to assault by Ashok & that an FIR to that effect had been lodged by accused Purna at Ambadola P.S. against Hajari Sahu (informant) & deceased Ashok Sahu. Accordingly, the plea of the defence was that a false case has been foisted against them.

6. The prosecution in order to establish the charges against the accused persons, examined 12 witnesses, out of whom, P.W.9 is the informant & eye witness to the occurrence. P.W.8 Gourahari Bhatta & P.W. 11 Hare Krushna Kanhar are said to be the eye witnesses to the occurrence & P.W.1 is a witness to the inquest & also to the seizure of blood stained wearing apparels of the informant. P.W.2 is also a witness to the inquest & to the seizure of umbrella of the informant from the spot P.W. 3 is also a witness to the inquest & to the seizure of blood stained earth & gamuchha P.W. 4 is the doctor of Muniguda CHC, who had examined the informant P.W. 5 is the doctor of Ambadola Govt. Hospital who had conducted post-mortem examination on the dead body of Ashok Sahu & also examined the seized tangias & gave his option. P.W. 6 is the constable, who is a witness to the seizure of wearing apparent of accused Puma & accused Lochan Sahu. P.W.7 Jayaram Pedhy is the betel shop owner of Ambadola, who had scribed the FIR.

7. The defence, on the other band, examined two witnesses, namely, doctor of Ambadola Govt. Hospital as D.W.1 & the O.I.C., Ambadola P.S. at D.W.2 & also relied upon the injury report issued by D.W.1 in respect of the injuries sustained by accused Puma Sahu & Lochan Sahu.

8. P.W. 9, who is the informant, has fully supported & corroborated the FIR story with regard to the occurrence, which took place on 27.06.2001, resulting in the death of his brother Ashok Sahu. He reiterated that he & his brother Ashok Sahu had gone to their land on 27.06.2001 at about 10 A.W. to see the paddy crops & they found accused Purna Sahu was ploughing his land with buffalo & accused Lochan Sahu was ploughing his land with bullocks & accused Keta, wife of Lochan Sahu was standing near them. P.W. 9 further stated that he & his brother Ashok found another buffalo of the accused persons was eating away their paddy crops & seeing this Ashok asked the accused as to why they had allowed their buffalo to damage the paddy crops of the informant & who will pay the compensation for such damage . He further stated that on hearing this, accused Purna, Lochan, Keta & their farm servant Jhitika, who was also present there, caught hold of Ashok & accused Purna assaulted on the head of Ashok Sahu with the sharp side of the tangia, as a result of which Ashok Sahu sustained bleeding injuries & fell down. On seeing this, informant (P.W.9) rushed to his rescue holding an umbrella in his hand but accused Purna prevented him by catching hold of his baniyan from the behind & accused Lochan attempted to assault him with sharp side of tangia on his head & when he raised his hands to protect himself, the blunt side of the tangia hit on the left side of his head, on the left ear, causing bleeding injuries & he cried for help. Me further stated that at that time, P.W. 8 & 11, who

were passing on the main road, near the land, seeing the occurrence & on hearing the cries of the informant, came to the spot & when they reached the spot, the accused persons fled away. P. W.9 further stated that with the help of the villagers, who had reached the spot by that time, they carried injured Ashok Sahu to Muniguda hospital for treatment but on the way his brother Ashok succumbed to the injuries. He further stated that thereafter he brought the dead body of his brother to the place of occurrence & kept it at the spot, where he was lying after the assault & thereafter he went to the Muniguda hospital for treatment of his injuries. After returning from the hospital he went to Ambapada P.S. to lodge the FIR, which was scribed by P.W.7.

9. P.W.8, who is said to be an eye witness to the occurrence, stated in his evidence that while passing on the road adjacent to the paddy lands belonging to the informant & accused Lochan, he heard hulla & on looking to that side, he found informant Hajari Sahu & his brother Ashok Sahu were standing on their land & all the accused persons were running towards the land of the informant & at that time, accused Purna & accused Lochan were each holding a tangia. P.W.8 further stated that accused Purna assaulted Ashok Sahu on the middle of his head with the tangia, as a result of which, Ashok sustained bleeding injury & fell down. He further stated that he saw the informant Hajari Sahu protesting to the accused persons & he also saw bleeding injuries on the left side head of the informant near the left ear. Seeing this, he went to the spot & the informant Hajari Sahu told him that accused Lochan caused the injuries by assaulting him with his tangia. P.W. 8 further stated that the accused persons after assaulting Ashok & Hajari fled away from the spot carrying the tangias & that the injured Ashok was taken in a vehicle to Muniguda hospital for treatment, but as he died on the way, they brought back the dead body to the place of occurrence & kept it at the spot.

10. P.W.11, who is another witness to the occurrence stated in his evidence that while he was going to Kumudaballi from his village Badamudra by a cycle, he heard hulla from Nuakhamara Chhak, where the lands of the informant & the accused persons are situated & on hearing the hulla, he went to the spot & found Ashok was lying with bleeding injuries on his head & also found bleeding injuries on the back of the ear of informant Hajari. P.W.11 further stated that he also found the accused persons there & the informant Hajari told him that accused Purna had assaulted Ashok by a tangia & caused injuries. P.W.11 further stated that accused Purna, during interrogation by the police, had admitted to have assaulted Ashok by means of a tangia & on further interrogation he had disclosed that the tangia had been concealed by him behind the banana plantation of his house & gave recovery of the same in his presence & in the presence of the I.O. & other police officers. P.W.11 further stated in his evidence that the disclosure made by the accused Purna leading to discovery of the weapon of offence (tangia) was recorded by the I.O. in his presence, as per Ext. 14, which he had signed as a witness.

11. P.W. 1 who was a witness to the inquest stated that the deceased Ashok was murdered on 27.06.2001 at about 10 A.M. in his paddy field situated near Nuakhammar Chhak & that the police came to the spot for investigation at about 4 P.M. & the inquest over the dead body of deceased Ashok was conducted by the police in his presence. He further stated that on the same day at about 5 P.M. informant Hajari Sahu produced the blood stained gamuchha (tangia) which was seized by the police in his presence. P.W.2 stated about the police coming to the spot & holding inquest over the dead body of Ashok in his presence & that the police also seized an umbrella belonging to informant Hajari in his presence, which was lying at the spot.

12. P.W.3 in his evidence stated that he was present at the spot when the police arrived & conducted the inquest over the dead body of Ashok & prepared the inquest report as per Ext. 1. He further stated that the police seized the blood stained earth & sample earth from the spot & sent the dead body to Ambadola hospital for post mortem, which was conducted by the doctor on the following day & that he identified the dead body of Ashok Sahu at the time of post-mortem examination.

13. P.W.7 in his evidence stated that on 27.06.2001 at about 2 P.M. to 3 P.M., informant Hajari Sahu came to him & requested him to scribe a report,(FIR) to be presented at the Police Station regarding the occurrence & that he scribed the report as narrated by the informant.

14. P.W.4 is the doctor of Muniguda CHC who stated that on police requisition, he examined Hajari Sahu & found on his person one lacerated wound of size 1" x 2" x 1/4" on the left side of scalp 1" behind the left ear & opined that the injury is simple in nature & might have been caused by a hard & blunt weapon & proved the injury report as per Ext.5. He also stated that such injury might be caused by blunt side of a tangia. P.W.5 is the doctor of Government Hospital Ambadola, who conducted the post-mortem examination on the dead body of Ashok Sahu. He stated that during post-mortem examination, he found an open fracture of 2" x 1" length on the skull about 2" external occipital protuburce along with the middle of the skull through which brain matters were coming. P.W.5 further stated that on dissection & internal examination of this skull, the membrane teared at the side of the fracture with multiple hemorrhages, spots remaining brain matters. He further stated that the cause of death was due to coma, as a result of injury to skull by sharp cutting weapon & that the injuries were ante-mortem in nature & sufficient to cause death in the ordinary course of nature & that the death may be homicidal in nature. He further stated that subsequently on 12.07.2001 on the request letter of OIC, Ambadola P.S. he had examined two tangias produced before him & opined that the said two tangias may cause injury & death. He identified the tangias as M.Os. I & II.

15. In his cross-examination, P.W.5 stated that the external injuries found on the dead body of Ashok Sahu may be possible by fall. If a person falls & that portion of backside of the head hits on a sharp stone of injury size or falls on an iron

portion of that size of a plough but in such cases there must be ancillary injuries. He also stated that there was mud (earthen matters) on the dead body.

16. P.W.16 is the police constable attached to Ambadola P.S., who stated that he knows accused Purna Sahu & Lochan Sahu & that on 28.06.2001, on production by accused Purna, the OIC seized one old towel, stained with blood at places & one old deep blue colour banyan stained with blood at places & prepared the seizure list as per Ext. 8. He also, stated that on the, same day on production by accused Lochan Sahu, the I.O. seized one lungi stained with blood at places & one old gamuchha stained with blood at plages & prepared the seizure list as per Ext.8. He identified the towel as M.O. III & seized blue colour banyan as M.O.IV & also the old check lungi & gamuchha as M.O.V & M.O.VI respectively.

17. P.W.10 is the A.S.I. of Police of Ambadola P.S., who stated that on 27.06.2001 at about 3 P.M., informant Hajari Sahu presented a written report scribed by Jayaram Padhy (P.W.7), regarding the alleged occurrence & as the report revealed commission of cognizable offence, he registered the same as Ambadola P.S. Case No. 48 dated 27.06.2001 under Sections 302/34 IPC & took up investigation. He stated about the investigation carried out by him & the steps taken by him during the investigation of the case. P.W.12 is the OIC of Ambadola P.S., who took charge of the investigation of the case from P.W.10, He stated in his evidence that after taking charge of the Investigation on 28.07.2001, he examined the witnesses, prepared the spot map, arrested the accused persons, seized the wearing apparels of the accused Purna Sahu & also the wearing apparels of accused Lochan Sahu. He further stated that at about 3 P.M. in presence of the witnesses, on interrogation, accused Purna stated to have concealed the weapon of offence (tangia) in the bushes under the banana plantation situated in the Bari of his house & led the police & others & gave recovery of the tangia which was seized.

18. The Chemical Examination Report (Ext. 19) revealed that human blood was found on the seized blood stained earth, napkin of the informant & the napkin of the deceased & also found blood of "A" group on one of the tangias, check lungi & napkin seized from accused Lochan Sahu & also found human blood of "A" group on the seized wearing apparels of the deceased. The Chemical Examination Report also revealed, that Exts. A to L were stained with human blood & Exts. D, H, I, J & K tallied with each other with regard to "A", "B" & "O" blood group system.

19. The accused examined the doctor of Government Hospital, Ambadola as D.W.1, who stated that on 28.06.2001, on police requisition, he examined accused Purna Sahu & found abrasion of size 1" x 1/2" situated over the forehead, 2" above the medial left to the route of the nose & it looked like bruise of black colour. The said Injury was simple in nature & might have been caused by a hard & blunt object. He further stated that on the same day, on police requisition, he examined accused Lochan Sahu & found one abrasion about 1" x 1/2" size situated on the tip of the nose & one abrasion about 2" x 2" situated

over the dorsum of the right fore arm, 2" below the right elbow joint. D.W.1 opined that both the injuries were simple in nature & might have been caused by a hard & blunt object. He further stated that the said injuries may be possible by thenga or fist blows & kicks.

20. D.W.2 is the OIC of Ambadola P.S., who stated that on 28.06.2001 at about 2 P.M., he received a report from the injured Purna Sahu (accused) A as the same disclosed commission of cognizable offence, the report was registered as Ambadola P.S. Case No. 49 of 2001, u/s 341/323/34 IPC & instigation was taken up. On completion of the investigation, he submitted the charge sheet against Hajari Sahu & Ashok Sahu, who was dead by that time.

21. On analyzing the evidence on record, both oral & documentary, Learned Adhoc Additional Sessions Judge, came to hold that the prosecution has successfully established that the accused Purna had caused the death of Ashok Sahu by assaulting him with tangia on his head & causing injuries. So far as the charge under Sections 307/34 IPC is concerned, Learned Adhoc Additional Sessions Judge, on the basis of the evidence on record came to find that accused Lochan attempted to assault Hajari Sahu (informant) with the sharp side of tangia on his head & when he raised his hand, the blunt side of the tangia hit on the left of his head & on the left ear, causing bleeding injuries. Accordingly, Learned Adhoc Additional Sessions Judge proceeded to hold accused Purna Sahu guilty of offences under Sections 302 IPC & accused Lochan Sahu guilty of offence u/s 307 IPC & convicted them thereunder.

22. Learned Counsel for the Appellants accused persons has forcefully submitted that as the evidence on record clearly revealed that there was scuffle between both the parties & during such scuffle deceased Ashok Sahu fell down & was hit on the iron portion of the plough & sustained injuries causing his death, non-consideration of the same has rendered the impugned order of conviction improper & illegal. It is further submitted that as the evidence of the alleged eye witnesses are not clear, cogent & consistent & there being material contradictions, the same should not have been accepted to base an order of conviction of the accused persons. Learned Counsel for the Appellants has further pleaded that as the injuries found on the accused Purna Sahu & Lochan Sahu clearly go to show that the acts, if any, committed by them, were done in exercise of right of private defence to protect their person & property, the same should have been taken into consideration while passing the impugned order of conviction. In the alternate, Learned Counsel for the Appellants submits that as the accused Purna had acted suddenly, on the spur of the moment due to quarrel between the parties & had dealt only one blow, without any intention or pre-meditation to kill the deceased Ashok Sahu, it can at best be a case u/s 304 Part-II IPC & not a case of murder u/s 302 IPC, With regard to accused Lochan Sahu, it is submitted that as the injuries inflicted by him on Hajari Sahu (informant) were simple in nature, as has been certified by the doctor, the same would, at best, amount to an offence u/s 323 IPC & not u/s 307 IPC.

23. On a perusal of the evidence of the eye witnesses P.Ws 8,9 & 11 coupled with the evidence of the doctors i.e. P.Ws 5 & 6, the case of the prosecution stands fully supported that the death of Ashok Sahu was homicidal in nature due to the injuries caused by accused Puma Sahu & that the accused Lochan Sahu dealt a tangia blow on the head of the informant Hajari Sahu. It is further seen that the evidence of the eye witnesses stands corroborated by the evidence of seizure witnesses & the seizure of weapon, of offences (tangia) being led by accused Purna Sahu & the seizure of other incriminating materials, including the blood stained wearing apparels of the deceased & the blood stained wearing apparels of the accused persons. The Chemical Examination Report (Ext. 19) clearly revealed that the human blood of Group "A" was found on the seized wearing apparels of the deceased as well as on the wearing apparels of accused Lochan Sahu & the two seized tangias (M.Os. I & II). Besides, human blood has also been found on the seized napkin of the informant Hajari Sahu. Moreover, the evidence of the eye witnesses & the opinion of the doctors as well as the post-mortem report clearly negatives the plea of the defence that the death of deceased Ashok Sahu & the injury to Hajari Sahu were accidental in nature. Hence, the evidence on record clearly shows that accused Purna Sahu was the author of the crime for causing the death of deceased Ashok Sahu. Similarly, accused Lochan Sahu is the author of the injury caused to the informant Hajari Sahu. Moreover, the accused persons had never taken the plea of their right of private defence nor any evidence has been adduced by them in support of such a plea.

24. On a re-analysis of the entire evidence on record, we find that, as per the evidence of the eye witnesses, the lands belonging to the informant & the accused persons are adjacent & due to objection by deceased Ashok Sahu regarding the accused persons allowing their buffalo to come upon the paddy field of the informant & damage the paddy crops, a quarrel ensued, which escalated into a fight & resulted in the death of Ashok Sahu & Injury to Hajari Sahu. Admittedly, from the sequence of events, as detailed by the witnesses, clearly goes to show that the accused persons, who were ploughing their land at that time, had no prior planning or intention or any pre-meditation to assault the deceased Ashok or the informant Hajari Sahu. The entire incident appears to have taken place due to sudden fight on the spur of the moment & no intention or any motive is attributed to the accused persons. Therefore, we feel, the interest of justice would be best served, if the conviction of accused Purna Sahu u/s 302 IPC is modified to one u/s 304 Part-II IPC, & keeping in view the nature of Injury sustained by the informant Hajari, the conviction of accused Lochan Sahu u/s 307 IPC is modified to one u/s 323 IPC.

25. Accordingly, the conviction of the accused Purna (Appellant No. 1) u/s 302 IPC is set aside & instead the said accused Purna is convicted u/s 304 Part-II IPC & sentenced to the imprisonment for the period already undergone & shall also pay a fine of Rs. 5000, failing which he shall undergo R.I. for a further period of one year. The conviction of other accused Lochan Sahu (Appellant No. 2) is set

aside & instead he is convicted u/s 323 IPC & sentenced to the imprisonment for the period already undergone by him & shall also pay a fine of Rs. 1000, falling which, he shall undergo R.I. for a period of two months. On realization of the fine amount the same shall be paid to the family members of deceased Ashok Sahu.

26. On deposit of the fine amount, the Appellants-accused persons be released forthwith, if their detention is not required in any other cases.

The Criminal Appeal is accordingly disposed of.

A.S. Naidu, J.

27. I agree.