

(2009) 09 OHC CK 0031

In the Orissa High Court

Case No : Criminal Appeal No. 320 of 2000

Runu @ Girish Budek and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

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

Citation : (2009) 44 OCR 751

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

Bench : Division Bench

Advocate : N.C. Pati, for the Appellant; J.P. Patnaik, A.G.A., for the Respondent

Judgement

A.S. Naidu, J.—The judgment and order of conviction dated 4.12.2000 passed by learned Sessions Judge, Bolangir, convicting the Appellants for the offence u/s 302 read with Section 34, Indian Penal Code and sentencing each of them to undergo R.I. for life in Sessions Case No. 77(B) of 1999, is assailed in this appeal.

2. On the basis of the F.I.R. lodged by Barun @ Barna Bhoi at Larmbha Out-post under Patnagarh Police Station in the district of Bolangir, P.S. Case No. 38 of 1999 was registered on 14.5.1999. The A.S.I. of Larambha Out-post took up preliminary investigation, which Was subsequently handed over to O.I.C. Patnagarh Police Station. After completion of investigation and on fulfillment of all paraphernalias, charge-sheet was submitted against the Appellants for commission of offence u/s 302, read with Section 34, Indian Penal Code in the court of learned SDJM, Patnagarh in G.R. Case No. 81 of 1999. Learned SDJM after going through the police records and on being satisfied that a prima facie case was made out, took cognizance of the offences and committed the case to the Court of Session for trial.

3. In the F.I.R. it was alleged that on 14.5.1999 at about 1.00 P.M. Karuna Bhoi was returning after taking his bath in Ranikata of village Tamia. The accused persons Pad man Bhoi and Babulal Kalasi all of a sudden caught hold of him on

the village street and accused Runu @ Girish Chandra Budek inflicted axe blows on his legs, hands and face as if he was cutting a tree. Karuna lost his sense, fell down on the ground and succumbed to the injuries.

4. The plea of the defence was one of complete denial of the allegations and the charges levelled against them. Each of the accused apart from specifically denying the alleged occurrence pleaded that in view of past enmity, false case has been foisted against them.

5. In order to substantiate their case, the prosecution got examined as many as 11 witnesses. Out of them, P.W.1 is the informant and also an occurrence witness, P. Ws.3, 4, 5 and 6 were also witnesses to the occurrence, P.W.2 is a witness to the inquest and seizure of bloodstained earth and sample earth as well as weapon of offence and other materials, P.W.7 is the Medical Officer, who conducted autopsy on the dead body, P.W.8 is the A.S.I. of Police of Larmbha Out-post, who received the written F.I.R. and, also conducted inquest over the dead body and sent the dead body for post mortem, P.W.9 is the O.I.C. of Patnagarh Police Station and was the Investigating Officer, P.W.10 is another police officer, who arrested the accused Pad man and Babulal and forwarded them to custody. He had sent the seized materials for chemical examination. Besides the oral evidence, the prosecution relied on documents, which were marked as Exts.1 to 15 and the material objects which were produced in court.

6. Learned Sessions Judge after discussing the evidence in extenso, came to the conclusion that the prosecution has successfully able to prove the charges beyond all reasonable doubt and convicted the accused persons for commission of offence u/s 302, read with Section 34, Indian Penal Code.

7. Learned Counsel for the Appellants has assailed the order of conviction and sentence mainly on the ground that learned Sessions Judge has not properly appreciated the evidence and the conclusions arrived at are based on surmises and conjectures. It is further submitted that the F.I.R., Ext.1 was not the original F.I.R. and the same was subsequently created to entangle the accused persons. According to the learned Counsel for the Appellants, P. Ws.1, 3 and 4 being relatives and P. Ws.5 and 6 being caste men, the trial court should have discarded their evidence as they were interested witnesses. It is further submitted that number of discrepancies were noticed in the evidence of different eye witnesses and it is a fit case where their evidence should have been ignored. Further, according to learned Counsel for the Appellants, the ocular evidence is inconsistent with the medical report and the evidence of the doctor, P.W.7 and the said fact throws a cloud of suspicion.

8. All these submissions are strongly repudiated by learned Counsel for the State. Mr. Patnaik, learned Addl. Standing Counsel relying upon the medical evidence as well as other documents, submitted that learned Sessions Judge has rightly convicted the Appellants and the conclusions arrived at being just and proper, calls for no interference.

9. Heard learned Counsel for the parties at length. Being a final court of facts, this Court went through all the evidence meticulously. The oral evidence clearly establishes that enmity existed between the Appellants and Karuna since long. There were several disputes inter se between them in respect of landed properties. The evidence of P.W.7, the doctor, who conducted autopsy reveals that Karuna sustained the following injuries on his person:

(i) Incised wound over anterior aspect of left leg 8 cm x 3 1/2 cm x 7 cm with fracture and separation of both tibia and fibula with complete rupture and laceration of the peroneal muscle tibialis anterior and posterior partly of gastrocnemius and soleus muscle, popliteal artery, tibial artery, great saphenous vein and common peroneal nerve 4 cm below the lower end of patella.

(ii) Incised wound of size 5 1/2 cm x 2 1/4 cm x 5 1/2 cm over lateral aspect of left leg 4 cm below the knee joint.

(iii) Incised wound 6 cm x 3 1/2 cm x 6 cm, 2 cm below and parallel to injury No. (ii). Underlying injuries Nos. (ii) and (iii) fracture and separation of both tibia and fibula into pieces and complete laceration and fracture of peroneal longus and brevis muscle and part of gastrocnemius muscles and lateral peroneal nerve, artery and vein.

(iv) Incised wound 6 1/2 cm x 4 1/2 cm x 4 1/2 cm over anterior aspect of left arm 4 cm above ante cubital fossa with fracture and complete separation of lower end of humerus with laceration and rupture of biceps brachialis brachioradialis, anterior cubital vein, brachial artery and median and ulnar nerve.

(v) Incised wound 5 1/2 cm x 3 cm x 4 1/2 cm, 3 1/2 cm above the elbow joint over medial aspect of arm with fracture and separation of lower end of humerus with laceration and rupture of biceps, brachialis and anterior cubital vein, brachial artery, ulnar and medial cutaneous nerve.

(vi) Penetrating wound 4 1/2 cm x 1 1/2 cm x 4 cm over left side of the face starting from inner angle of left eye to left side of bridge of nose and alar side with gaping fracture of underlying maxilla and loosening left 1st and 2nd incisor teeth and fracture of lateral orbital bone.

10. The doctor after giving conscious thought opined that all the injuries were sufficient to cause death in ordinary course of nature and that injury Nos. (i), (ii) and (vi) were prominent injuries. He has further opined that the death was almost instantaneous because major vessels were cut.

11. After going through the evidence of P.W.7 and the post-mortem report, this Court is satisfied that the death of Karuna was a homicidal one.

12. This is a case where the P. Ws.1, 3, 4, 5 and 6 have seen the occurrence. The consistent case of the aforesaid witnesses is that the accused persons caught hold of Karuna and Runu @ Girish Chandra Budek went on assaulting Karuna with an axe, which is a sharp cutting weapon as if he was cutting a tree. This

evidence gets ample corroboration from the medical evidence. The evidence of the eye witnesses further reveal that all the three accused persons have taken active part in the assault. According to learned Counsel for the Appellants, the facts narrated in the F.I.R. cannot be believed inasmuch as there is some discrepancy with regard to exactly who filed the F.I.R.

13. After verifying the original records and comparing the same with the F.I.R. printed in the paper book, this Court finds that there is an error in the printing, inasmuch as in place of "Binu", it has been written as "Dinu". Admittedly the F.I.R. was filed by Bana @ Barun Bhoi, which is signed by Bana Bhoi as Binu Bhoi in the original F.I.R. Unfortunately the same has been mentioned as "Dina Bhua" in the paper book and thus, causing the confusion. The signature of the informant appearing in the F.I.R. was marked as Ext.1/1 in course of deposition. The informant has also identified his signature and has clearly stated that the F.I.R. submitted by him has been marked as Ext.1. Thus, the argument advanced by learned Counsel for the Appellants cannot be accepted.

14. So far as the discrepancies in the evidence is concerned, no doubt certain minor discrepancies appear in the evidence of different witnesses, but then, the same are not very much material to the facts of the case and do not render the prosecution case untrustworthy. Added to the aforesaid facts, the bloodstained axe was recovered from the house of the accused Runu during search. That apart, the accused persons absconded from the village for quite some time. Though absconding may not be a ground to presume a person to be guilty, but then definitely it is a circumstance, which may be considered coupled with other circumstances.

15. After going through the entire evidence and the arguments advanced, we are satisfied with the reasonings given by the learned Sessions Judge holding the Appellants guilty for causing the death of Karuna. But then, it appears that there was inter se land dispute between the parties for quite some time and they were not in good terms. That apart, the accused persons are Scheduled Tribe persons and possess a volatile temperament. Fact remains, on the given date, they had caught hold of Karuna and assaulted them with an axe indiscriminately. The medical report as well as the evidence of the doctor however reveals that all the blows were given on legs and lower portion of the body. Thus, it appears that they had no intention to murder Karuna. The accused persons are in custody for more than 10 years. They are not criminals by profession.

16. The totality of the evidence, in our considered opinion, leads to an irresistible conclusion that the offence that the Appellants had committed is one punishable u/s 304, Part-I, Indian Penal Code, but not u/s 302/34, Indian Penal Code.

17. In the result, we set aside the conviction of the Appellants u/s 302/34, Indian Penal Code and the sentence of imprisonment for life imposed and instead convict the Appellants u/s 304, Part-I read with Section 34, Indian Penal Code and sentence them to undergo rigorous imprisonment for a period for the period

already undergone by them. The Appellants shall be set at liberty forthwith, if their detention is otherwise not required in any other case.

18. The appeal is disposed of subject to the modification of the conviction and sentence as indicated above.

S.C. Parija, J.

19. I agree.

20. Appeal disposed of.