

(2008) 11 OHC CK 0085
In the Orissa High Court
Case No : Govt. Appeal No. 17 of 1994

State of Orissa

APPELLANT

Vs

Chaitanya Prasad Sahu and Others

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 302, 323, 324, 34

Citation : (2008) 41 OCR 911

Hon'ble Judges : S. Panda, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : D. Nayak, R.K. Pradhan, U.R. Jena, M. Mohanty, S.K. Mohanty, P.K. Deo, B. Rout, N.K. Mohanty and G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

1. The order of acquittal granted in favour of the accused-Respondents by the Learned Sessions Judge, Balasore in Sessions Trial No. 82 of 1991 is under challenge at the instance of the State which prosecuted the appeal after obtaining the leave.

2. Admittedly, the members belonging to the accused party (3 in numbers), the informant and the injured persons belonged to different branches of the same family but separated by partition half a century back. The dispute relating to cutting of a tamarind tree on 10.5.1990 was resisted by the prosecution party. Dispute relating to cutting of the bamboo tree and putting up fence at the instance of the accused persons was opposed by the prosecution party and that resulted in an occurrence in which Sunati, wife of Chandra Mohan Sahu suffered instantaneous death due to bullet injury to her head. Surendra Sahu (P.W. 1), Upendranath Sahu (P.W. 11), Sebati Sahu (P.W. 7) and Brajamohan Sahu (P.W. 8) besides Abhimanyu Sahu (not examined) are the other injured persons.

3. For the aforesaid occurrence, accused Chaitanya was separately charged u/s 27 of the Arms Act and all the three accused persons were charged u/s 323/34,

Indian Penal Code and accused Chaitanya and Rajendra were charged u/s 302/324/34, Indian Penal Code. Prosecution led evidence to substantiate the aforesaid charges. Besides the aforesaid injured eye-witnesses, prosecution also relied on the evidence of P.W. 6, the doctor who conducted autopsy on the dead body of the deceased and P. Ws 4 and 5, the doctors who attended to the injured persons and granted injury certificates and opinion reports. While the corresponding post-mortem report and injury certificates have been marked as exhibits and that has been clearly noted at the bottom of the impugned Judgment, a relevant document, i.e. the report of the ballistic expert, has been marked as Ext.13 and the inquest report as Ext.12. Defence declined to the allegations and also tendered defence evidence in support of their contentions.

4. On assessment of evidence adduced by the parties, Learned Sessions Judge kept aside the defence contention and accepted the version of the prosecution regarding homicidal death of the deceased. However, the Trial Court granted benefit of doubt and acquitted the accused persons, inter alia, on the grounds that the injuries on the accused persons were not explained by the prosecution witnesses and that there are contradictions in their evidence in describing the occurrence.

5. In course of the prolonged hearing, Learned Standing Counsel took us-through the judgment and the entire evidence on record. On perusal of the same and upon hearing the parties, we find that prosecution has not been able to prove the case of homicidal death of the deceased inasmuch as according to the eye-witnesses only one shot was fired from the SBBL gun in possession of the accused persons. But not only at the time of inquest but also at the time of post-mortem examination, two bullet injuries could be noticed. P.W. 6 has categorically stated that -"I found the external injuries on the dead body as follows:

(i) Oval shaped lacerated gunshot hole 1.5" x 1/2" x 1" with scorched and contused edge present 1/2" above the outer angle of right eye-brow on the frontal bone. There was blackening and tattooing of the surroundings,

(ii) There was irregular shaped exit wound of size 3" x 2" x 1" which was lacerated present on the middle of the frontal bone. The edge of the wound was torn and reverted inside and outside.

(iii) An oval shaped entrance wound of size, 2" x 1/2" x 1/2"" which was lacerated present on the temporal bone, 1/2" lateral to left ear with laceration of underlying muscle and commuted fracture of bone.

(iv) There was irregular shaped exit wound of 3" x 1" x 1/2" which was lacerated, present 3" above the left ear with temporal bone. The underlying muscle is lacerated and the bone is commuted fracture. There was protusion of brain matter.

(v) There were three abrasions, 1/2" x 1/2", 1/4" x 1/4" and linear abrasion of 3"

in size present on the left and right pubital fossa and right buttock respectively.

P.W. 6 has opined that the injury was ante-mortem but he has not stated that the death was homicidal save and except stating that "The injury could have caused instantaneous death." After inspection of the seized gun and also conducting the test firing, the ballistic expert in his report Ext. 13 has stated that

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The exhibits marked as EC is a 12 bore fired empty cartridge case of "GEVELOT PARIS" make. The characteristics of the firing pin impression on the evidence cartridge case marked as EC have been corroded as revealed by microscopic examination. As such it is not possible to say definitely if it has been used for firing in the above mentioned gun marked as 66 1 BAL 90 .

6. It is the admitted evidence of the parties that there is a "Nala" (water channel) near the spot of occurrence. P.W. 3 admits that during Summer season people come to that place for hunting of birds by using guns. Whether or not the injury on the head of the deceased was caused by firing from the Nala side in the process of hunting birds, the above-noted report of the ballistic expert makes it clear that the injury was not caused by the alleged weapon of offence, i.e. the gun seized from the possession of the accused. Thus, the accused persons charged for offence u/s 302/34 Indian Penal Code are entitled to benefit of doubt.

7. The injured eye-witnesses to the occurrence in course of their evidence denied the suggestions of the accused about a mutual fight. But P.W. 3 an independent witness has stated about a mutual fight between both the groups. Such evidence of P.W. 3 has not been protested by the prosecution by way of declaring him hostile or by putting leading questions. Thus, the prosecution cannot wriggle out from the evidence of P.W. 3 and the consequences thereof. In such circumstance, when there is a land dispute relating to boundary and there was a scuffle in which the eye-witnesses/injured persons sustained some injuries and while narrating about that they had exaggerated the case to the extent by fabricating a story of causing death of the deceased from the seized gun used by the accused, we decline to interfere with the reasons assigned by the Trial Court for granting benefit of doubt to the accused persons.

8. Accordingly, we do not find any merit in this Government Appeal and the same is dismissed. The accused-Respondents be discharged from the bail bonds.

9. Appeal dismissed.