
(2006) 11 OHC CK 0050

In the Orissa High Court

Case No : Govt. Appeal No. 9 of 1988 and Criminal Appeal No. 23 of 1988

State of Orissa

APPELLANT

Vs

Jagannath Das and Others
 Golaka Chandra Das Vs
State of Orissa

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 134, 302, 304, 304(2), 34

Citation : (2007) CLT 345 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : P.K. Khuntia, Addl.Government in Appeal No. 9 of 1988, R.C. Mishra and D.P. Dhal, for Appeal No. 23 of 1988, for the Appellant; R.C. Mishra and D.P. Dhal, in Appeal No. 9 of 1988 and P.K. Khuntia, A.G.A. for Appeal No. 23 of 1988, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard further argument, hearing is concluded and the judgment is as follows.
2. All the three Respondents stood charged for the offence u/s 302/134, LP.C. in S.T. Case No. 26/195 of 1986 in the Court of Second Addl. Sessions Judge, Puri As per the impugned judgment delivered on December 23rd, 1987, Respondents No. 1. and 3 were granted benefit of doubt and acquitted from the charge u/s 302/134, I.P.C. and Respondent No. 2. was convicted u/s 304, Part-II I.P.C., by getting acquittal from the charge of murder. The State has field the Govt. Appeal challenging to such order of acquittal and Respondent No. 2 has filed Criminal Appeal No. 23 of 1988 challenging to the order of conviction u/s 304, Second Part, I P.C. Thus, on consent of the parties, Both the appeals are heard analogously and this common judgment shall abide the result in both the appeals.
3. Respondents stood charged for the offence u/s 302/134, I.P.C. on the allegation that on February 18, 1986 they shared common intention and caused death of Bijoy Kumar Moharana (hereinafter referred to as "deceased").

Respondents denied to the charge and claimed for trial. Trial was undertaken. During course of the trial, prosecution relied on the evidence of as many as 15 witnesses and out of them. P. Ws. 1 and 4 to 8 have been described as witnesses to the occurrence. P. Ws. 10 to 12 are the doctors who treated the deceased and granted injury certificates and P.W.13 is the doctor who conducted post-mortem examination on the dead body of the deceased and proved the report Ext. 16. P.W. 14 is the Executive Magistrate, who, on police requisition, recorded statement of the deceased, i.e., the "dying declaration" Ext. 19. Accused persons examined Dr. Bansidhar Mohanty (D.W.I) and proved Exts. A to D, the documents in support of their defence plea. The weapon of offence, i.e., a "Gupti" has been marked M.O. III and the cover thereof as M.O. IV.

4. On assessment of evidence, Trial Court recorded finding that Respondents 1 and 3 are entitled to benefit of doubt, but Respondent No. 2 Golakha Chandra Das, who is also Appellant in Criminal Appeal No. 23 of 1988, should be convicted for the offence u/s 304, Part-II, I.P.C., in as much as, according to the consistent evidence of the eye witnesses and the dying declaration Ext. 19, the deceased suffered death because of single stab blow and there was no premeditation or preparation by Respondent No. 2 to commit murder or to attempt the murder, because he (the deceased) arrived at the spot of occurrence in course of the quarrel.

5. The State challenges the order of acquittal from the charge u/s 302/34, I.P.C. and alternatively argues to convict Respondent No. 2 u/s 302, I.P.C. by modifying the order of conviction u/s 304, Second Part, I.P.C. On the other hand, Learned Counsel for the Respondents claim for acquittal of Respondent No. 2. and to maintain the order of acquittal of Respondent Nos. 1 and 3.

6. Factual finding, which is not disputed before us, is that there existed a boundary dispute between the parties as neighbours to each other and in the civil dispute, interim order of injunction was in force. A drumstick tree was in existence in the disputed area. According to informant, the accused party plucked drumstick from the tree and it was protested by his family members. That trifle quarrel intensified to the alleged occurrence of murder. It is the admitted case of the parties that the deceased was not present when the quarrel started between the two groups. He arrived there after the quarrel intensified. According to prosecution, Respondents are the aggressors and committed the aforesaid act of murder of the deceased. On the other hand, it was the plea of the accused persons that the prosecution party was the aggressor and none of the Respondents caused injury on the body of the deceased or any other persons from the prosecution party. According to them, they were assaulted by the members of the prosecution party, for which Respondent No. 1 sustained injuries. To prove that injury, D.W. 1 was examined. After careful perusal of the evidence on record and the findings recorded by the Court below, we are unable to agree with the argument advanced by Learned Addl. Govt. Advocate that a case of homicide is made out against Respondent Nos. 1 and 3 together with

Respondent No. 2 for the offence u/s 302/34, I.P.C. In that respect the Trial Court had rightly separated the grain from the chaff by accepting credible part of the evidence of the eye witnesses which is consistent with the "other direct or circumstantial evidence relating to the dying declaration or otherwise. We find that the Trial Court has rightly assessed the circumstances and stated that a single blow by "Gupti" on the chest at the 6th rib was not proved to be dangerous to cause instantaneous death of the deceased though according to the opinion of P.W. 13 ultimately that injury together with failure of the system resulted in the death of the deceased. In the above context, we are unable to accept the argument advanced by the Appellant that the dying declaration is not reliable or that even if that dying declaration is accepted, then also he should not be held guilty of the offence of culpable homicide, in as much as the deceased accidentally suffered that injury and not because of any intentional act of Respondent No. 2. In the above context, Learned Counsel for the Respondent No. 2 states that injury on Respondent No. 1. was not explained by the prosecution. We find on reference to the evidence of D.W. 1 that Respondent No. 1 suffered superficial injuries and in a case of this nature, prosecution is not bound to explain such injuries on Respondent No. 1. P.W. 13 has specifically stated that notwithstanding nondamage to the internal organ like lungs due to the stab injury the deceased suffered the death as a consequence of that injury and because of failure of other organs. Once that part of the evidence of P.W.13 remains unchallenged and acceptable, conviction of Respondent No. 2, who is the Appellant in Criminal Appeal No. 23 of 1988, cannot be found to be illegal, unjust or improper.

7. For the reasons indicated above, we do not find any merit in the Government Appeal so also in the Criminal Appeal filed by Respondent No. 2 and both the Appeals are accordingly dismissed. We direct Respondent No. 2, who has been sentenced to undergo imprisonment for three years, to surrender in the Court below within one month to serve the sentence. In the event of failure, the Court below may do well to secure his attendance for the purpose of serving the sentence as per law.

Govt. Appeal and Criminal Appeal dismissed.