

(2008) 07 OHC CK 0065

In the Orissa High Court

Case No : Criminal Appeal No. 36 of 1997

Sumanta @ Champu Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2008) CLT 1233 (Suppl CrI) : (2008) 2 OLR 354 Supp : (2008) OLR 1233 (Suppl CrI)

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : P.C. Acharya, for the Appellant; A.K. Mishra, for the Respondent

Judgement

1. Appellant challenges the conviction u/s 302, IPC and sentence of imprisonment for life as per the impugned Judgment in S.T. Case No. 197 of 1994 of the Court of Sessions Judge, Mayurbhanj at Baripada. It is not disputed at the Bar that deceased Palu Naik and the sole accused Sumanta @ Champu Naik are cousin brothers and they are neighbours in village Tiansi under Morada Police Station of Mayurbhanj district.

2. In substance, the prosecution case is that at about 7:30 p.m. on 25.6.1994 while the deceased with his wife were sitting in front of their house, accused quarreled with his own wife and as a offshoot of that quarrel he suddenly ran and dealt two axe blows (by its blunt side) on the head of the deceased. As a result of that impulsive assault, deceased sustained bleeding injuries. He was taken to the nearby medical center and thereafter to the district headquarters hospital, where he succumbed to the injuries on 1.7.1994. The mother and the widow amongst others are the eye-witnesses to the occurrence. The wearing apparels of the accused seized were sent for chemical analysis and serological test together with the blood-stained earth and the wearing apparels of the deceased, etc. and the report from the State Forensic Science & Laboratory (Exts. 14 and 15) indicate that they were containing same group of human blood. The axe, i.e.

the weapon of offence was also seized and was identified by P.W.2 to be belonging to the accused. Learned Sessions Judge relied on such principal evidence besides the corroborating evidence of other witnesses and recorded the finding that deceased suffered homicidal death and accused is the author of the crime. Accordingly he recorded the aforesaid conviction and imposed sentence of imprisonment for life.

3. Learned Counsel for the Appellant argues that the person who impersonated as the sister of the deceased was examined as P.W.6 and therefore her evidence was expunged. Independent witnesses like P.W.7 did not support the prosecution evidence as an eye-witness and, under such circumstance the evidence of highly interested witnesses like P.Ws. 1 and 2 should not have been accepted to find the accused as the author of the Crime.

4. Though the Appellant does not dispute the homicidal death of the deceased, on perusal of the evidence of Dr. Anujram Padhi, P.W.3, we find that he found two stitch wounds on the head of the deceased. The first one was of the size of one and half inch long situated on the anterior aspect of the left parietal region and the other one was half inch in length and situated posterior to injury No. 1. P.W.4, i.e. Dr. Prana Krushna Behera, who granted initial treatment to the deceased, stated in his deposition that he granted Injury Certificate, Ext. 2, and recorded therein that deceased had two lacerated injuries on the aforesaid area respectively of the dimension 2" x 1/2" and 1" x 1/2". P.W.3 opined that the death was due to the aforesaid ante mortem injury and because of the depressed fracture of the skull at relevant places and hemorrhage of brain on account of that. P.W.3 further opined that the injury was sufficient to cause death in ordinary course of nature. He proved post mortem report, Ext. 1. Opinion of the doctor was accepted as such by the trial Court regarding homicidal death. But we find from the facts adduced by the prosecution that though the assault was made in the evening at about 7.30 p.m. on 25.6.1994, but the deceased suffered the death in course of his treatment only on 1.7.1994. Be that as it may, evidence of P.Ws. 3 and 4 are sufficient to prove the homicidal death of the deceased.

5. Indeed, the evidence of P.W.6 was expunged and P.W.7 turned hostile, but the widow of the deceased as P.W.2 and the mother of the deceased as P.W.1 were two natural witnesses present at the spot at the time of occurrence. Their evidence cannot be ignored simply because they are related to the deceased. Under such circumstance, we peruse the evidence of both the witnesses and find that notwithstanding threadbare cross-examination, their credibility in accounting for the occurrence against the accused has not been shaken. Under such circumstance, we are unable to accept the argument of the Appellant to grant him any benefit by doubting the evidence of P.Ws. 1 and 2.

6. Learned Counsel for the Appellant alternatively argues that keeping in view the tribal background of the accused and the deceased and their place of residence in a tribal district like Mayurbhanj and impulsive act of the tribal people, at best it may be a case of culpable homicide not amounting to murder

and that aspect was not at all considered by the trial Court. Mr. A.K. Mishra, learned Standing Counsel does not subscribe to the aforesaid idea and the argument of the Appellant. But, on perusal of the evidence, as noted above, we find that though the injuries were caused on 25.6.1994 evening, but the death occurred on 1.7.1994. Apart from that though the accused used the axe as the weapon of offence, he did not utilized its sharp edge for inflicting the blows. There is no iota of evidence on record about any enmity between the accused and the deceased. The quarrel between the accused and his wife might have resulted in an impulsive act in accused dealing the blows to the deceased but that has not been surfaced on record through cogent reasons by the prosecution. But, on a reading of the total evidence and the circumstances emerging therefrom, the contention of the Appellant regarding impulsive act appears to be a tale tell circumstance. Therefore, we feel it appropriate that the accused should be convicted for the offence u/s 304, Part-I, I.P.C. because of the gravity of the injury, even if it is impulsive, and not u/s 302, IPC.

7. Accordingly, we set aside the order of conviction of the Appellant for the offence u/s 302, IPC and in its place we convict him for the offence u/s 304, Part-I, IPC and impose sentence of rigorous imprisonment for ten years. It is needless to say that the period in custody be set off and if the Appellant has not been released on bail pursuant to the order of this Court passed on 16.12.2003 in Misc. Case No. 77 of 2003, he be set at liberty forthwith, if his detention in jail custody is not required in connection with any other criminal case.

The Criminal Appeal is accordingly allowed in part.