

(2002) 07 OHC CK 0002

In the Orissa High Court

Case No : Criminal Appeal No. 220 of 1994

Surekha Majhi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2002) 07 OHC CK 0002

Hon'ble Judges : P.K. Misra, J;B. Panigrahi, J

Bench : Division Bench

Advocate : D. Nayak, S. Swain, R.C. Swain, P.K. Pati, P.K. Mishra and D.P. Pradhan, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—These two appeals having arisen from the same order and common question of facts and law being involved in both of them, they were heard together and are disposed of by this common judgment.

2. The nine Appellants alongwith four Ors. (since acquitted) were prosecuted under Sees. 148/447/302/307/323/324/325, read with Section 149 of the Indian Penal Code, in short, "IPC". The four accused persons, who have been acquitted are Raghu Ratei, Kusa Ratei, Nave Majhi and Bhibisan Kuanr. The four Appellants, in Criminal Appeal No. 220 of 1994, who are ladies, have been convicted u/s 325/34, IPC and sentenced to undergo simple imprisonment for two years, while the five Appellants in Criminal Appeal No. 282 of 1994 have been convicted under Sections. 148, 302/149, 325/149, 324/149 and 323/149, IPC and sentenced to undergo R.I. for two years, life, two years, one year and six months respectively; the sentences to run concurrently.

3. The skeletal picture of the prosecution story is as follows:

For possession of a piece of land, locally known as "Khuntiabhag Patra duli" situated in mouza-Ghantabahali, there had been rancour, ill feeling and enmity between the Appellants on one hand and the deceased Ughe Majhi and Dhuble Majhi and their father Krushna Majhi on the other. In the year 1992 paddy crop was grown on the said land by Krushna Majhi, the father of Ughe Majhi and Dhuble Majhi. On the fateful date of occurrence, i.e. on 15.10.1992, in the morning, Ughe and Dhuble alongwith three labourers went to their land for harvesting the paddy. While they were cutting the crop, all the accused persons including the Appellants being armed with different weapons like lathis, axe, bow and arrows, proceeded in a body towards the said Khuntiabhag land. Panchanan Majhi, the son of Dhuble Majhi, apprehending some danger as the Appellants and their associates proceeded to Khuntiabhag land, followed them. Subsequently his mother Durmila Majhi and Rama Majhi, wife of the other brother Ughe Majhi, also went there. On their arrival, they noticed that Ughe Majhi, was being assaulted by Appellant Saheba Majhi by means of a lathi and Appellant Bhabi Kuanr by means of axe. Appellant Nila Majhi also shot an arrow at him. Receiving the lathi blow, axe blow and also the arrow shot, Ughe Majhi fell down on the ground. Sighting this ugly scene, his brother Dhuble Majhi wanted to intercept and protect the victim Ughe Majhi. He also snatched away the lathi from the Appellant Saheba Majhi. Thereafter, all the Appellants including ladies surrounded Dhuble and the lady Appellants, namely, Surekha Majhi Ura @ Urmila Majhi, Jema Majhi and Santana Majhi, who had been armed with lathis, dealt blows on both legs of Dhuble causing fracture of the legs, as a result of which, he fell down on the ground. At that juncture, Appellant Subata Majhi dealt an axe blow on the head of the deceased Dhuble Majhi. Simultaneously, Sahara dealt lathi blow on the back of Dhuble. When the labourers, namely. Ubjan flag, Jadaba Nag and Ankura @ Sankeda Nag, who had been to the aforesaid land for harvesting the crop, tried to come to the rescue of both the injured, namely, Ughe and his brother Dhuble, they too were encircled and assaulted by those lady Appellants. As a result, they received injuries on their person. At this time, the other Appellants also assaulted Ankura @ Sankeda Nag causing severe injuries to him. Panchanan went to the Choukidar for informing about the incident. Subsequently, the Choukidar and Ward Member of the village arrived at the spot. Durmila Majhi, P.W.3, alongwith the son of the Choukidar proceeded to Titilagarh to lodge a report. The incident was orally explained to the Inspector-in-charge of the police station, who reduced the same to writing. After it was read over and explained to the informant, she put her LTI thereon. The IIC, Titilagarh Police Station, reached the spot and after having found the condition of the injured to be serious, immediately arranged for their removal to Titilagarh Sub-Divisional Hospital. However Ughe Majhi and Dhuble Majhi succumbed to their injuries. The three injured labourers were shifted to the Sub-Divisional Hospital Titilagarh. The Investigating Officer conducted the inquest over the dead-bodies of both the deceased at the spot, examined the witnesses and seized some of the weapons of offence at the spot. The three injured labourers were undergoing treatment in the Sub-divisional Hospital for about a week. Ankura @ Sankeda Nag, after being

discharged from the hospital, died in his house, in village Patrapalli. Post mortem examination over all the three dead bodies was conducted. After completion of investigation, charge-sheet was submitted against all the accused persons in the manner stated above.

4. The prosecution, in order to prove the culpability of the Appellants, had examined 21 witnesses out of whom the evidence of P.Ws. 3 to 7 is significant. P.Ws. 1 and 2 were witness to the inquest and also to the seizure of the incriminating materials. On a combined reading of the evidence, it has however been established that they went to the spot and found Ughe Majhi and Dhuble Majhi lying dead at Khuntiabhag land. P.W.1 has also stated that the land belongs to Krushna Majhi. The inquest report had been marked as Exts. I and II. In course of investigation, the weapons of offence like lathis, bow, arrows, and Bitas were seized in presence of P.Ws. 1 and 12. P.W.1 had identified the three arrows (M.O.I), bow (M.O.II). Two Bitas (M.O.III) and six lathis (M.O.IV). In the same night, the police had also seized two lungis and one towel belonging to Ughe Majhi and Dhuble Majhi and prepared the seizure list in which P.W.1 signed. On careful consideration of the evidence of both the witnesses, we do not find that the Appellants were able to shatter the same in any manner.

5. P.Ws. 3 and 4 no doubt were relations of the deceased, but on that count alone their evidence cannot be brushed aside, if such testimony inspires confidence and proves about the complicity of the Appellants. P.W.3 is the wife of deceased Dhuble Majhi. She presented a brief narration of the fact as to how the incident had taken place. From her evidence, it has transpired that the incident had taken place in the month of Aswina of the year 1992 on a Thursday morning. Her husband alongwith Ughe Majhi and their labourers went to cut paddy crop from Khuntiabhag land. While they were cutting their paddy crop, all the Appellants also proceeded in the same direction. P.W.3 having anticipated that some quarrel might ensue, followed them. He son Panchanan (P.W.4), the wife of deceased Ughe Majhi, and Dukha Sunani @ Gahir (P.W.5) also accompanied her. On their arrival at the spot, they found that the Appellant Saheba assaulted Ughe Majhi by means of lathi on his head followed by Bhabhi Kuanr inflicting axe blow on the head of Ughe. The Appellant Nila also shot an arrow aiming at Ughe which hit the right shoulder just above the upper arm. Ughe, after sustained severe bleeding injuries, sank down on the ground. At this juncture, her husband Dhuble Majhi rushed to the spot to rescue his brother. He also snatched away the lathi from the Appellant Saheba Majhi. The lady Appellants Uma, Jema, Surrekha and Santara chased him and dealt lathi blows on his leg, as a result of which he fell down on the ground. After her husband fell down, the Appellant Saheba Majhi dealt an axe blow on the head of her husband causing severe bleeding injury. The accused Sabara also dealt lathi blows on the back of her husband. All the labourers, who had been to harvest the crop, attempted to intercept and prevent the accused persons from inflicting further injuries. They too received injuries having been assaulted by the Appellants Saheb. Nila, Subata, Sabara and Bhabhi. After assaulting her husband, her husband's brother and the labourers, the

Appellants took to their heels. She sent her son Panchanan to the Ward Member and the Grama Rakhi. The Ward Member and the son Of Grama Rakhi, namely, Abhiram came there. Thereafter, she sent to the Titilagarh Police Station to lodge a report and on her instruction, the FIR was scribed and the case was subsequently registered against all the Appellants alongwith other accused persons (since acquitted by the trial Court).

6. The Appellants wanted to built up a case by taking advantage of the statement of P.W.3 about right of private defence as there was civil suit for the land in question and the said civil suit, Saheba Majhi had got a decree. It is curious to note that no step was taken by the accused persons to file the copy of the decree. Nothing has also been established by the defence as to what type of decree Saheba Majhi had obtained in respect of the disputed land. Be that as it may, the land in question was cultivated by Krushna Majhi, the father of both the deceased Dhuble and Ughe in the year in question. Normally, a person, who had raised crop, is expected to harvest the same. So far as possession of the land by Krushna in the disputed year is concerned, the same has hardly been questioned in cross-examination. P.W.3 being the wife of Dhuble would never make an attempt to see the actual assailants of her husband scot free. Her statement, according to us, appears to be credible, trustworthy and confidence inspiring. But, while dealing with her evidence in respect of the lady" Appellants, it is found that they allegedly chased her husband upto a distance of 200 cubits. From the spot map prepared by the I.O. point "A" & "B" had been indicated where the dead-bodies of Ughe and Dhuble were lying. Though the distance between points "A" and "B" has not been indicated, from the spot map it does not seem that both the points are far away from each other Therefore, the version of P.W.3 that her husband was assaulted by the lady Appellants after coming a distance of 200 cubits away from the place where Ughe was lying appears to be an exaggerated statement, which does not reflect the true picture of the prosecution story. Furthermore, it is stated that all the lady accused indiscriminately assaulted on the leg of Dhuble. But from the medical report, it is found that only one leaner fracture was present in the tibia. If that be so, it cannot be presumed for a moment that all the lady accused had assaulted Dhuble. No other overt act has been attributed to the lady Appellants. Therefore, in our considered opinion, the finding of the learned Addl. Sessions Judge that all the lady accused were responsible for causing grievous hurt, punishable u/s 325/34, IPC is unsustainable. Accordingly, Criminal Appeal NO; 220 of 1994 is allowed and the order of conviction end sentence passed against them is hereby set aside.

7. Now, coming to the evidence of P.W.4, who is the son of P.W.3 in all material particulars the evidence of P.W.4 lends support to the testimony of P.W.3. It is established from his testimony that in the month of Dasahara, 1992 on Thursday at 8.00 a.m. morning the incident had taken place on their land locally known as "Khuntiabhag duli". His father Dhuble Majhi and uncle Ughe Majhi alongwith their three other labourers proceeded to harvest the crop on that day. While they were cutting (he crop in the disputed land, the Appellants Saheba, Nila, Subata,

Sabara, Bhabi, Raghu, Kusa. Nave, Surekha, Ura, Santara, and Jema being armed with different deadly weapons prevented his father and Ors. from harvesting the crop. But when his father did not pay any heed to their protest, they first assaulted Ughe Majhi, as a result of which he fell down senseless on the spot. When his father went to rescue his uncle, these Appellants also assaulted indiscriminately on different parts of his body. As a result he sank down on the ground being injured. The case of the prosecution is that particularly the Appellants Sabara and Subat assaulted on the head of his father and also on the back followed by indiscriminate assault by Ors. .

8. Mr. Pradhan, learned Counsel appearing for the Appellants, had placed a critical analysis of the evidence of P.W.4 by stating-that he being the son of the deceased Dhuble. it is but quite natural that he will support the prosecution story. Merely because P.W.4 is the son of the deceased Dhuble, it cannot be presumed that his testimony is shrouded with suspicion. In this connection we rely upon a judgment of the apex Court in the case of Bijoy Singh and Anr. v. State of Bihar : 2002 (4) Supreme 362, wherein it has been held as follows:

We are not in agreement with the argument of Mr. U.R. Lalit, Senior Advocate appearing on behalf of the Appellants that all the witnesses being related to each other and interested in the success of the prosecution cannot be relied upon for holding the Appellants guilty for the commission of the offence. For merely being relatives of the deceased or the injured is no ground to reject the testimony of the witnesses who are otherwise found to be trustworthy and reliable. In the instant case two Courts have rightly found that the presence of the prosecution witnesses being P.Ws. 1, 2, 4, 5 and 7 on spot at the time of occurrence is established. Despite ignoring their exaggerated version, we feel that their testimony inspires confidence to hold the real culprit guilty for the commission of the crime. The whole of the case of the prosecution cannot be discarded. and all the accused are not entitled to be acquitted.

From the aforesaid factual analysis, we found that the evidence of P.W.4 has received substantial corroboration from his mother's testimony. Within few hours of the occurrence, the IIC proceeded to the spot and also found two dead-bodies lying en the disputed land.

9. Now, turning to the evidence of P.W.5, who was the lady labourer, accompanied P.Ws. 3 and 4 to the disputed land, we found that the prosecution story has been amply proved by such independent evidence of P.W.5. Even assuming that P.Ws. 3 and 4 were close relations of Ughe and Dhuble, but no comment can be made on the testimony of P.W.5. Thus, on a combined reading of the evidence of P.Ws. 3 to 5, we feel inclined to hold that the prosecution has amply proved its case regarding the implication of all the five male Appellants. It is true that the evidence of P.Ws. 6 and 7 does not help so much to the prosecution to bring home the charge. But from their evidence, at least a part of the prosecution story, so far as it relates to the quarrel which had admittedly taken place on Khuntiabhag land, has been proved.

10. From the evidence of P.W.8 it appears that he had examined Akrura Nag, the deceased labourer, who received the following injuries:

- i. One laceration - 7 cm x 10 mm. Scalp depth over right parietal region of the scalp. It is simple in nature and can be caused by hard and blunt weapon.
- ii. Laceration 2.5 cm x 0.5 cm Scalp depth over centre of vault of scalp-simple in nature and can be caused by blunt weapon.
- iii. Laceration 2 cm x 0.5 cm Scalp depth over occipital region of scalp. Simple in nature and can be caused by hard and blunt weapon.

He also examined Ubjian Nag (P.W.6), the brother of Jadab Nag (P.W.7). Therefore the presence of Ubjian Nag and Jadab Nag cannot with the deceased Akrura Nag cannot be falsified Merely because they did not support the prosecution in course of hearing, the prosecution case cannot be thrown over board since the same has been amply proved by other independent witnesses coupled with the evidence of the close relations of deceased Ughe and Dhuble. From the autopsy examination of Dhuble, Akrura and Ughe, it has been proved that they met homicidal death out of the injuries. The injuries inflicted on them would in ordinary course of nature cause death. P.W.12 has proved the seizure of sickle, 3 Nos. of arrows, 4 Nos. of, lathis from the brinjal field belonging to Saheba Majhi, which lay hurried underneath. The articles were sent for scientific examination and serological test. The lathis were found to have contained human blood of "A" origin. The arrow stated to have been used by the Appellant Nila, which was seized from the spot also contained human blood of "A" group. Both the deceased Ughe and Dhuble and blood group of "A" origin. The bannian belonging to the Appellant Subat also contained human blood of "A" group. The full shirt used by the Appellant Bhabi, who allegedly dealt axe blow, also contained human blood of "A" group.

11. Mr. Pradhan, learned Counsel appearing for the Appellants raised a contentious Issue by contending that the Appellant Saheba Majhi on the very same date lodged a report stating that the deceased and their company had assaulted them, but that case was subsequently suppressed and the prosecution has falsely implicated the Appellants in this case. From the FIR purported to have been lodged by Saheba Majhi, it is rather proved that the Appellants had assaulted the deceased party. During investigation of the present case, the FIR lodged by Saheba Majhi was also inquired into and the police had to submit the final report, it being a mistake of fact. The Appellants had never made any endeavour by bringing out that they too were injured in the same transaction. Therefore, from the aforesaid discussion, we unhesitatingly hold that the FIR alleged to have been lodged by Saheba Majhi was a counterblast to nullify the effect of the prosecution story.

12. Another limb of contention of Mr. Pradhan is that the trial Court has relied upon the statement alleged to have been made by the injured Akrura Nag @ Sankeda Nag by treating the same as dying declaration. Such finding being

unsustainable in law, the Appellants should be given benefit of doubt and accordingly, they should be acquitted. The statement of Akrura was only recorded u/s 161, Code of Criminal Procedure Any such statement recorded during investigation cannot be regarded as dying declaration. We, therefore, find substantial force in the submission of Mr. Pradhan. Be that as it may, even excluding such statement alleged to have been made by the deceased Akrura Nag, the prosecution has proved its case by clear, cogent, credible, and trustworthy evidence from which a reasonable conclusion can be arrived at regarding the complicity of the Appellants in CrI. Appeal No. 282 of 1994 in the crime.

13. On a careful cogitation of the case of both the parties, on perusal of the evidence on record, and considering the case from every angles, we uphold the conviction and sentence passed against the Appellants in CrI. Appeal No. 262 of 1994, who have been directed to undergo imprisonment for life under Sections 302/149, IPC, rigorous imprisonment for two years u/s 325/149, IPC rigorous imprisonment for one year u/s 324/149, IPC and rigorous imprisonment for six months u/s 323/149, IPC; the sentenced to run concurrently.

14. In the result Criminal Appeal No. 220 of 1994 is allowed and the order of conviction and sentence passed against the Appellants is set aside. As regards Criminal Appeal No. 282 of 1994, the same is dismissed and the order of conviction and sentence passed against the Appellants is confirmed.

P.K. Misra, J.

15. I agree.