

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.145 of 2003

Ganda Bagh (dead) and others ***Appellants***

-versus-

State of Odisha ***Respondent***

Appeared in this case:

For Appellants : Mr. Satya Brata Acharya,
Advocate

For Respondent : Mr. P. K. Muduli,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

JUDGMENT
31.03.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the order dated 16th May, 2003 passed by the Additional Sessions Judge, Sonepur in Sessions Case No.82/90 of 2001.

2. By the impugned judgment, 8 accused persons were held guilty for the offence punishable under Section 148 IPC while 3 of the accused viz., Ganda Bagh, Chaitan Bagh and Timan Bagh (Accused Nos.1, 3 and 7 respectively) (hereafter A-1, A-3 and A-7 respectively) were held guilty for the offence punishable under

Sections 302 read with Section 34 IPC. The other accused persons were held guilty under Section 302 read with Section 149 IPC. Additionally, Kunar Bagh (A-8) was held guilty under Section 323 IPC and the remaining under Sections 323 read with Section 149 IPC. Timan Bagh (A-7) was held guilty under Section 324 IPC and the other under Sections 324 read with Section 149 IPC. Ramesh Bagh (A-5) was held guilty under Section 326 IPC and the other accused under Sections 326 read with Section 149 IPC.

3. As far as the sentence is concerned, Ganda Bagh (A-1), Chaitan Bagh (A-3) and Timan Bagh (A-7) were sentenced under Sections 302/34 IPC and the remaining under Section 302/149 IPC to undergo rigorous imprisonment (RI) for life. For the offence under Section 323 IPC and Section 323 read with Section 149 IPC each of the accused was sentenced to undergo RI for six months; for the offence under Section 324 and Section 324 read with Section 149 IPC to undergo RI for one year and for the offence under Section 326 and Section 326 read with Section 149 IPC to undergo RI for five years; for the offence under Section 148 IPC each of the accused was sentenced to undergo one year RI. All sentences were directed to run concurrently.

4. The case of the prosecution is that a piece of Government land of village Chirgunmuhan was leased out in favour of the informant Kushale Podh (P.W.6) and Lankeswar Podh (P.W.10)

in 1996. They were in possession of the said land and had raised paddy thereon. Prior thereto, accused Ganda Bagh (A-1) had been in possession of the land but he could not be evicted prior to the leasing out of the land to P.Ws. 6 and 10.

5. On 13th November, 2000, at around 7 am, P.W.6, P.W.10 accompanied by Lata Podh (P.W.7) and Ramdei Podh were cutting paddy in the disputed land. A-1 came to the spot and asked them why they were cutting paddy from his land. P.W.6 informed A-1 that they were cutting paddy from their own land and questioned him for restraining them. A-1 left the spot and after some time, all the accused persons came to the spot armed with weapons. P.W.6 was assaulted by A-8 by means of a lathi, as a result of which he sustained a swelling injury on his head. P.W.10 was assaulted by A-7 by means of a tangi, as a result of which he sustained an incised injury on his back. At that point in time, Subal Tandi (the deceased), Sudam Tandi (P.W.11) and Sahadev Tandi (P.W.12), who were tenants in the adjoining land rushed to the rescue of P.W.s 6, 7 and 10 and protested against the accused. Thereupon, A-1, A-3 and A-7 dragged Subal Tandi from the ridge of his land to the disputed land and assaulted him by means of a Tangi, as a result of which he succumbed to the injuries. Seeing this P.Ws.11 and 12 raised a protest and they were assaulted by A-5 and A-8.

6. P.W.6 then went to Tarava Police Station (PS) and reported the matter to the Officer In-Charge (OIC), who reduced it to writing and took up the investigation. Charge-sheet was submitted against all the accused persons, who then faced trial for the offences punishable under Sections 147/148/323/324/341/326 and 302 read with 149 IPC as well as Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 [SC & ST (PoA) Act]. It may be noted at the outset that by the impugned judgment of the trial Court, all the accused have been acquitted of the offence under Section 341 IPC and Section 3 of the SC & ST (PoA) Act.

7. 16 P.Ws. were examined. Of these, P.Ws.6, 10, 11 and 12 are the injured witnesses. P.Ws.1 to 5 and 8 are witnesses to the seizure. P.W.9 is a DSP, Sonapur, who re-examined some of the witnesses during the stage of investigation. P.W.13 is the doctor, who examined the injured P.Ws.10, 11 and 12. P.W.4 is the doctor, who conducted post-mortem (PM) examination on the deceased. P.W.16 is the Investigating Officer (IO). P.W.15 is another witness to the occurrence.

8. During the pendency of the appeal, Bishnu Bagh (A-2), A-4, A-5, Umesh Bagh (A-6) and A-8 were enlarged on bail by this Court by an order dated 29th January, 2004. A-1, A-3 and A-7 were released on bail by this Court by an order dated 16th July, 2008.

9. The Court was informed on 15th February, 2021 by a letter dated 17th January, 2021 of the IIC Tarva PS, Subarnapur that A-2 (Bishnu Bagh), A-4 (Jati Bagh), A-6 (Umesh Bagh), A-7 (Timan Bagh) and A-8 (Kunar Bagh) were alive whereas the remaining three Appellants had expired.

10. This Court has heard the submissions of Mr. S. B. Acharya, learned counsel, who advanced submissions on behalf of the Appellants and Mr. P. K. Muduli, learned Additional Government Advocate for the State.

11. Of the injured eye-witnesses, P.Ws.6, 10, 11 and 12 deposed that the accused had assaulted them by different weapons causing injuries and they were medically examined on police requisition. P.W.13 proved the injuries on these witnesses. As far as the deceased is concerned, P.W.14, who conducted the PM, found two small punctured wounds. One was below the left knee. The underlying tibia and fibula were fractured. Another incised wound was on the front of left thigh with the muscles cut open and the femoral artery and the great saphenous vein was cut into two pieces. He found the left thumb chopped off and hanging from its base. There was fracture of both the thumb and proximal phalanx of ring fingers. There was one incised wound on the right hand near the elbow and the right humerus bone was cut. There was a fracture of right humerus bone. There was another incised wound on the right hand below the elbow on lateral side and

upper end of the radius was fractured and cut open. All the injuries were found to be ante-mortem and caused by a sharp cutting weapon. The cause of death was opined due to shock and massive haemorrhage caused by injuries on the vital organs. There was no challenge to the evidence of P.W.14.

12. The conclusion reached by the trial Court was that the death of Subal Tandi was homicidal in nature. The trial Court then discussed in detail the evidence of P.W.6, the star witness. In material particular, it was supported by P.Ws.3, 4 and 5. It emerged that while the four injured witnesses were reaping paddy in their field, A-1 came and questioned them and when they resisted his objection, he went back and returned with all the other accused, who were armed.

13. There was a counter case with A-8 lodging an FIR with the allegations that A-1 had reported that P.W.6, his brother and others were forcibly reaping paddy from the suit land.

14. Believing the eye-witnesses as to their consistent version, which was fully corroborated by the injuries on the deceased and the accused and being satisfied with the manner of the occurrence of the crime and the circumstances under which it was took place, the trial Court had no difficulty in finding the accused guilty of the offences and sentencing them as noted hereinbefore.

15. Mr. Acharya, learned counsel for the Appellants made the following submissions:

(i) There were contradictory statements regarding lodging of the FIR. While P.W.6 stated that he went alone to the P.S. to lodge the report, P.W.8 stated that he had been alone to the P.S. P.W.15, who was the cousin brother of the deceased stated that the Gramarakhi went to the P.S. to lodge a report. The IO, P.W.16 stated that prior to the receipt of the FIR, he had no knowledge of the occurrence.

(ii) The assault on the deceased was not on the vital parts. The case of the prosecution was that A-1 dealt a tangi blow on the right-hand palm in finger of deceased. A-3 dealt a tangi blow on the right elbow. When the deceased fell unconscious, A-1, A-3 and A-7 again assaulted him with tangies two to three times, while he was lying on the ground. Reference is made to the evidence of P.W.14, the doctor, who conducted the PM to urge that none of the injuries were on the vital parts and, therefore, not sufficient in the ordinary course of nature to cause death. Further, no particular injury was by itself sufficient to cause death.

(iii) Injuries on the accused were not explained. P.W.13 had examined A-7 and A-8 on the day of occurrence to find the injuries. A-8 sustained one incised wound on the left side of the occipital bone, which could have been caused by a sharp cutting

weapon and a bruise on the base of left hand middle finger and another bruise on the dorsal side of the left arm, which could have been caused by the blunt weapon. Likewise, A7 had three injuries on his person. With the injuries not having been explained, it should be inferred that the prosecution had suppressed the genesis of the dispute. Reliance is placed on the decision of the Supreme Court of India in ***Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263***.

(iv) A-2, A-4, A-5, A-6 and A-8 could not have been convicted under Section 302 read with 149 IPC. While there was a sudden fight in which A-1, A-3 and A-7 attacked the deceased, the other accused had in no manner even attacked the deceased.

(v) There was no examination of the material witnesses. The wife of deceased China Tandi, who was present at the spot along with one Ramdei Podh, who was also present were not examined and the failure to examine them was fatal to the prosecution case.

(vi) There were material contradictions in the evidence of P.Ws. P.W.6 states in his evidence that he was sent to medical directly from the PS and that P.W.7 and Ramdei Podh were also assaulted by the accused. P.W.7 however denied in her evidence that she was assaulted by any of the accused. P.W.10 stated in his evidence that Sahadev and Kushale were not treated as indoor

patients whereas P.W.11, Sudam Tandi stated that he was treated as an indoor patient for ten days.

(vii) It was submitted that there was inimical relationship between the parties and, therefore, the inconsistency in the evidence of PWs., not being corroborated by expert opinion, was fatal to the case of the prosecution.

16. Mr. P. K. Muduli, learned Additional Government Advocate supported the trial Court judgment and submitted that it was based on proper analysis of the evidence of the P.Ws., four of whom were injured eye-witnesses. The contradictions in their testimonies were not material so as to falsify the case of the prosecution. Eye-witness testimonies, according to him, were fully corroborated by the medical evidence. There was no inconsistency in the background history of the dispute between the main accused and the informant side. Relying on the decision of the Supreme Court in ***State of M.P. v. Ramji Lal Sharma, 2022 Live Law (SC) 258***, Mr. Muduli submitted that once it was proved by the prosecution that all the accused came to the place of incident armed with lathi and tangia to commit an offence, they should be held to have shared a common intention.

17. The above submissions have been considered. Having perused the testimonies of the injured eye-witnesses, the Court is satisfied that they have put forth the consistent version on the

manner in which the incident took place and the attack by A-1, A-3 and A-7 on the deceased. It is therefore clear that as far as A-1, A-3 and A-7 are concerned, they were the persons who caused the injuries on the deceased, which proved to be fatal.

18. No doubt there are some discrepancies in the versions of the eye witnesses, but these were not in material particulars so as to discredit their testimonies entirely. As explained by the Supreme Court in ***Subodh Nath v. State of Tripura AIR 2013 SC 3726***

“16....As has been held by this Court in *State of Rajasthan v. Smt. Kalki and Another [(1981) 2 SCC 752]*, in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like.”

19. An important aspect, which seems to have not been taken into account by the trial Court, is that when the accused party came to the field in which paddy was being cut by the informant party, the intention was not to cause injuries to those in the neighbouring fields, particularly the deceased and P.W. 11 (Sudam Tandi) and P.W.12 (Sahadev Tandi). The intention was only to prevent the informant party from continuing to reap the paddy. When the deceased sought to intervene in the fight, the attackers turned their attention to him. It is seen that A-1, A-3 and A-7, while attacking the deceased, did not attack him on any of the vital parts. The injuries were on the arms and legs and not on the chest or any of the vital organs. No doubt, because of the deep cuts on

the thigh bones and arms, the injuries turned out to be fatal. It is evident even from the eye-witnesses' testimonies that A-1, A-3 and A-7 did not have any intention to actually kill the deceased.

20. As far as the remaining accused are concerned, while they may have intervened to cause injuries to the informant party, they had no role to play as far as the death of the deceased is concerned. They too had not arrived there with any intention to cause any injuries to the deceased or P.Ws.11 and 12. This again has been lost sight of by the trial Court.

21. Consequently, the Court is satisfied that vis-à-vis A-1, A-3 and A-7, the offence that stands attracted is the one punishable under Part II of Section 304 IPC and not Section 302 IPC. Their conviction is therefore converted from the offence punishable under Section 302 read with 34 IPC to Section 304 Part II read with 34 IPC and correspondingly, the sentence awarded to them is modified to the sentence already undergone.

22. As far as the remaining accused are concerned, they were acquitted of the offences under Section 302 read with 149 IPC and while their sentences for the offences under Sections 323 and 324 read with 149 IPC are sustained and for those offences, the sentence is confined to the period already undergone.

23. As a result of the above discussions, all the bail bonds stand discharged since all the accused have already served out the entire sentences.

24. The appeal is disposed of in the above terms. Urgent certified copy of this order be issued as per rules.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda

