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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.70 of 2004

Harekrushna Naik and others

Appellants

-versus-

State of Orissa

Respondent

Advocates appeared in this case:

For the Appellants : Mr. S. C. Puspalak, Advocate

For the Respondent : Mr. J. Katikia
Addl. Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

JUDGMENT
06.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the judgment dated 31st January 2004, passed by the learned Sessions Judge, Mayurbhanj in Sessions Case No.175 of 2000 convicting the Appellants for the offences punishable under Sections 302, 307, 452 and 341 read with Section 34 IPC. By the impugned order on sentence on the same date, the Appellants were sentenced to undergo imprisonment for life for the offence under Section 302 read with Section 34 IPC and no separate sentence was passed as regards the other offences.

2. While Appellant Nos. 2 and 4 were enlarged on bail by an order of this Court dated 12th November 2007, Appellant No.1 and Appellant No.3 were enlarged on bail by this Court by orders dated 15th February 2010 and 28th October 2015 respectively. The Court is informed subsequently by a report dated 21st January, 2021 of the Inspector in-Charge (IIC) of Raruan Police Station (PS) that Appellant No.3 has expired.

3. The case of the prosecution was that on 8th April 2000, at 8 am when the deceased Keshab Naik was sleeping in his house at village Sunaposi, PS-Raruan, District-Mayurbhanj, the Appellants i.e., accused numbers 1 to 4 dragged him to the village road holding an iron rod, axe and other kinds of deadly weapons and assaulted him with those weapons, thus, murdering him. When Bholanath Naik (P.W.14), the son of deceased Keshab, sought to intervene, he too was assaulted by the accused with iron rod, lathis, axe and curved stick causing him bleeding injuries. Thereafter, the four accused fled away from the spot with their respective weapons. P.W.14 then lost his consciousness and when he regained his senses, he approached a visually challenged person, Chintamani Naik, who gave him some wearing apparels. Thereafter, P.W. 14 went to the house of Dhyana Chandra Behera (P.W.7). He was taken in a scooter to Singda outpost where he verbally reported the matter to the Police, who reduced his version to writing.

4. The Police then reached the spot and brought the deceased to the hospital. Keshab Chandra Naik had expired on the same date between 4 and 5 pm.

5. Ananta Kumar Giri (P.W.16) was the Assistant Sub-Inspector (ASI) of Police at Raruan P.S., who happened to be at the Singda outpost on that date. He was the first person to take down the written report of P.W.14. He thereafter visited the spot and examined certain witnesses and recorded their statements. After receiving the message regarding death of Keshab Chandra Naik, he changed the offence to Section 302 IPC and handed over the case to the Officer in-Charge (OIC), Raruan P.S. i.e., Sangram Keshari Behera (P.W.15).

6. P.W.15 held an inquest over the dead body of Keshab Naik at 7.15 am on 9th April 2000, and thereafter sent the dead body for Post Mortem (PM) Examination. He visited the spot and apprehended the four accused. Pursuant to statements made by A1, while in custody, the weapon of offence wielded by him viz., the axe was seized. Each of the other accused thereafter made statements leading to the recovery of the iron crowbar, tangia and bamboo ukuni lathi. The clothes worn by the accused were also seized. On completion of investigation, a charge-sheet was laid against the four accused, who pleaded not guilty and claimed trial.

7. The prosecution examined sixteen witnesses whereas the defence examined one witness. The lone defence witness was Thusa Mundri (D.W.1). The attempt through D.W.1 was to show

that the deceased had been assaulted by his own son, who had fled away due to differences of opinion. However, in his cross-examination, he claimed that Bholanath had nothing in his hand and that nobody had chased him. He apparently did not notice any injury on the person of Bholanath.

8. The trial court on an analysis of the evidence, came to the conclusion that the prosecution had proved the case against the four accused beyond all reasonable doubts and then proceeded to convict and sentenced them in the manner indicated hereinbefore.

9. This Court has heard the submissions of Mr. S. C. Puspalak, learned counsel appearing for the Appellants and Mr. J. Katikia, learned Additional Government Advocate for the State.

10. The case of the prosecution essentially revolved around the evidence of P.W.14, the injured eye-witness, who also happened to be a related witness. The settled position in law in regard to the testimony of an injured eye-witness has been explained by the Supreme Court in *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259 as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit

an injured witness". (*Vide Ramlagan Singh v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh v. State of Punjab, (1983) 3 SCC 470; Appabhai v. State of Gujarat, AIR 1988 SC 696; Bonkya v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh v. State of Punjab, (1997) 7 SCC 712; Mohar v. State of Uttar Pradesh, (2002) 7 SCC 606(SCC p.606b-c); Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu v. State of Rajasthan, (2009) 10 SCC 477; Annareddy Sambasiva Reddy v. State of Andhra Pradesh, (2009) 12 SCC 546 and Balraje v. State of Maharashtra, (2010) 6 SCC 673.*

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30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

11. Likewise in ***Ramvilas v. State of Madhya Pradesh, (2016) 16 SCC 316***, it was pointed out that “evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses.”

12. P.W. 14 was injured in the attack and this stood proved by the evidence of Dr. Manoranjan Mallick (P.W. 13), who found the following injuries on his person:

"1. Incised wound size of 2"/1" at right side of skull behind the ear. Injury was simple by sharp weapon.

2. Incised wound size 1" x 1" over right malar eminent. It was simple by sharp weapon.

3. Lacerated wound ½" x ½" over right arm. Simple in nature. Caused by rough surface.

4. Lacerated wound 1" x 1" posterior aspect of right fore-arm. Simple in nature and caused by hard and blunt weapon.

5. Lacerated wound 3" x 1" over left tibia and fibula. It is simple and caused by hard and blunt object.

6. Lacerated wound size ½" x ½" over right knee. Simple and caused by blunt surface."

13. P.W.13 further volunteered that according to the surgery specialist, P.W. 14 had also suffered bony injury. After examining the weapons of offence, P.W. 13 certified that the injuries on P.W. 14 could be caused by those weapons.

14. P.W. 14 has clearly spoken about the manner in which the offence took place. The four accused entered the house, dragged Keshab Chandra Naik outside to a distance of 20 cubits from the house and then assaulted him with the iron rod, axe, bamboo lathi and a lathi fixed with sickle. When P.W. 14 tried to separate the accused persons from his father, they assaulted him as well. P.W. 14 sustained bleeding injuries throughout his body.

15. The cross-examination of P.W. 14 did not yield much for the defence. In other words, no contradiction or inconsistency could be elicited with reference to his previous statement to the Police.

He specifically denied the suggestion that he had sustained injuries due to quarrel with some other persons after taking liquor.

16. The evidence of the injured eye-witness P.W. 14 stands corroborated by the medical evidence of P.W. 13, who conducted the PM of the deceased and found the following injuries:

- "1. Fracture over right humerus.
2. Compound fracture on the left tibia and fibula.
3. Incised wound over left dorsum of foot. Size was 5" x 1".
4. Incised wound on the left side occiput. Size was 2" x 1". "

17. P.W. 13 opined that injury Nos. 2 and 4 were fatal to the deceased. Dr. Chitralekha Panda (P.W.9) conducted the PM of the deceased and found the same injuries as was noticed by P.W. 13. She too was shown the weapons of offence and certified that the injuries could have been caused by those weapons.

18. While it is true that P.Ws.1 to 3 and P.Ws. 10 and 11 turned hostile, P.W. 7 supported the version of P.W.14 and testified that he had brought the injured P.W. 14 to the Singda outpost. He stated how the deceased had disclosed to him in the vehicle and also in the hospital that the accused persons had caused the injuries. The deceased had also mentioned how prior to the occurrence, he had objected to the son of the accused Sridhar not going for studies and playing and, therefore, the accused persons had developed a grudge against him.

19. Having carefully examined the evidence of P.W. 14, this Court is satisfied that his evidence is clear and consistent and lends assurance as to its truthfulness and reliability. It stands corroborated by the medical evidence as well as the evidence of P.W.7. Further, the Chemical Examination Report showed the presence of human blood on most of the weapons of offence as well as the clothes worn by the deceased and the accused.

20. The Court is satisfied that the prosecution has been able to prove its case beyond all reasonable doubts against the four accused. The Court is unable to find any error having been committed by the trial court in convicting the Appellants and sentencing them in the manner indicated above.

21. The appeal is accordingly dismissed. The bail bonds of the Accused-Appellants, who were enlarged on bail, are hereby cancelled and they are directed to surrender forthwith and, in any event, not later than 20th September 2022 failing which the IIC concerned will take steps to take them into custody to serve out the remainder of their sentences.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge