

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA 51 of 2007

Daku @ Dasarathi Dehury ***Appellant***

-versus-

State of Odisha ***Respondent***

For Appellant : Mr. B. P. Das, Advocate

For Respondent : Mr. A. P. Das,
Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

JUDGMENT
20.05.2022

Dr. S. Muralidhar, C.J.

1. This appeal is directed against the judgment dated 21st March, 2007 passed by the learned Sessions Judge, Mayurbhanj in ST Case No.175 of 2005 convicting the Appellant for the offence punishable under Section 302 IPC for the murder of his cousin, Basanta Kumar Naik and sentencing him to life imprisonment and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment (RI) for three months.

2. At the outset it requires to be noted that pursuant to the order dated 21st April, 2022 of this Court, the IIC, Karanjia Police Station, Mayurbhanj has submitted a report on 5th May, 2022

stating that the Appellant is staying in his house with his wife and his other family members.

3. The case of the prosecution is that on 23/24th April, 2005 around midnight, the deceased quarreled with his wife, Gouri Naik (P.W.1) and during such quarrel, the accused, who was the cousin of the deceased, came there and challenged the deceased for picking up quarrels with the family members regularly. Due to such challenge, there was a hot exchange of words between the deceased and the accused. Thereafter, the accused returned to his house and returned back with a sword and assaulted the deceased, as a result of which the deceased sustained severe bleeding injuries and died at the spot.

4. A telephonic message was sent to the police. Mr. Somanath Sahu, attached to the Karanjia Police Station (PS) (P.W.10) proceeded to the spot, took down the report of P.W.1, registered it as an FIR and took up the investigation. He then arrested the accused, held an inquest over the dead body, prepared inquest report and sent the body for Post-Mortem (PM). While in custody, the accused offered to produce the sword used to murder the deceased and pursuant thereto, the sword (MO-1) was seized from a straw heap near the house of the deceased. A charge-sheet was filed. The accused denied the charge and claimed trial.

5. Ten witnesses were examined for the prosecution, which included the Investigating Officer (IO)-P.W.10. The eye-

witnesses were P.W.1 (the wife of the deceased), Smt. Gaya Naik (P.W.2), the aunt of the accused and the mother of the deceased and the father of the deceased-Hari Naik (P.W.4).

6. The cross-examination of P.W.1 did not yield anything at all for the defence. She stated that it was a moonlit night on the date of the occurrence. She stated that the deceased had taken liquor and that the parents of the deceased were also present when the accused assaulted her husband with the sword. She denied the suggestion that at the time of the incident the deceased was armed with an axe or that he tried to assault the accused with that axe or in the result of a tussle with the accused, the deceased had sustained injuries.

7. As far as P.W.2 is concerned, she too stood firm in her cross-examination. While she said she was not able to see clearly in the night, she still denied that it was not the accused who had murdered the deceased. As far as P.W.3 is concerned, he too was unable to be shaken in the cross-examination.

8. Faced with the above facts, which clearly point to the guilt of the accused beyond reasonable doubt, learned counsel for the Appellant sought to build the case of the offence being one of culpable homicide not amounting to murder. Reliance was placed on the decisions of the Supreme Court in *State of Himachal Pradesh v. Wazir Chand* (1978) 1 SCC 130, *Ravi Kumar v. State of Punjab* (2005) 9 SCC 315, *Surinder Kumar v. Union*

Territory, Chandigarh (1989) 2 SCC 217, Pardeshiram v. State of Madhya Pradesh (2021) 3 SCC 238 and Gurmukh Singh v. State of Haryana (2009) 15 SCC 635.

9. Learned counsel for the Appellant relied on the decision in *Wazir Chand (supra)* to make it appear that it was a sudden fight flowing from an earlier incident. As regards the fact situation in *Wazir Chand (supra)*, it is noticed from the said judgment by this Court that there was only one injury in that case, which was opined to be sufficient in the ordinary course of nature to cause death. This was one of four injuries leading to the inference that the other three were obviously viewed as serious injuries.

10. The present case is not one of a sudden quarrel at all. After the quarrel between the deceased and the accused, the accused returned to his house, and then returned to the house of the deceased with a sword and assaulted the deceased with it. Therefore, this was clearly pre-planned. The intention to commit the murder was apparent from the huge number of injuries on the body of the deceased. The injuries were as under:

"(ii) Multiple injuries present with clean cut margin under both the deltoid region, left side of the neck, left thigh, dorsum of right palm, right maxilla and contact abrasion on the chest i.e. (a) cut wound on the left arm deltoid region of size 7" x 3" x 2 ½" horizontally situated and have felling out medially by contact abrasion 3" length corresponding fracture of humerus present.

(b) Similar cut wound present on the right deltoid region of size 7" x 3" x 3" and felling laterally underlying humerus fracture present.

(c) Two definite cut wounds whose margins are adhered together present on the left side of the neck of size 6 ½" x 3 ½" x 2" and partially mandible is cut, Left side major vessels of the neck are cut.

(d) cut would present on the dorsum of the right palm 1 ½" x ½"

(e) Similar cut wound on the lower part of the left thigh present of size 2 ½" x 1" x ½ c.m.

(f) 7" horizontally situated one contact abrasion present on the right side of the chest extending from just above nipple to posterior margin of auxilla, where one stab wound of size 1" x ½" x ½" was present.

(g) Similar contact abrasion present obliquely on the mid part of the chest of size 10" length.

(h) Similar contact abrasion of size 4" present on the front of neck."

11. All of the injuries were said to be ante-mortem in nature and the cause of death was due to haemorrhagic shock due to homicidal cut injuries by a sharp cutting weapon. In other words, it was not just any one injury that caused the death of the deceased, but all of the above cut injuries. The cross-examination of the doctor (P.W.8) did not bring out anything at all for the defence. He clearly stated that such injuries are not possible "by fall over a sharp-edged stone."

12. Although the Appellant sought to put forth an alternative theory of the deceased being armed with an axe, he could not produce any evidence to make good such defence. Turning to the next decision in *Ravi Kumar* (*supra*), in the said case there was a quarrel between the accused and the deceased on the previous

date. On the next day, the accused and the deceased had talks. During the course of talks, a quarrel again ensued and the accused took up a Dhangu and gave two blows on the head of the deceased. The Dhangu was not brought by the accused but it was found behind the deceased, which was picked up by the accused. These facts therefore show that indeed the incident happened on the spur of the moment whereas in the present case, the accused returned with the sword after a quarrel had taken place and, therefore, clearly intended to murder the deceased.

13. In ***Surinder Kumar*** (*supra*), the following facts make it clear that it was in a different set of circumstances that the Supreme Court in the said decision converted the offence to one under Section 304 Part II IPC:

"3. On January 3, 1975, at about 7.15 p.m., PW 2 and his deceased brother had an heated argument with the appellant and his brother Amrit Lal in regard to the return of the kitchen. In the course of this heated exchange PW 2 is alleged to have showered filthy abuses. Although PW 2 denies this fact, PW 4 has admitted the same. PW 2 also threatened to throw out the utensils and lock the kitchen. Since PW 2 was uttering filthy abuses in the presence of the appellant's sister and Nitya Nand did not restrain him, the appellant got enraged, went into the kitchen and returned with a knife with which he inflicted one blow on the neck of PW 2 causing a bleeding injury. In the melee the appellant inflicted three knife blows to Nitya Nand; one on the shoulder, the other on the elbow and the third on the chest, as a result whereof Nitya Nand collapsed to the floor and later died while on the way to the hospital."

14. Clearly therefore Nitya Nand, who was the deceased, was not the target, but it was P.W.2, who was the target and Nitya Nand,

who intervened, got attacked. The facts here are very different and cannot be brought within Exception 4 to Section 300 IPC.

15. In *Pardeshiram (supra)*, there was a dispute as regards to a agricultural land prior to the incident and at the time of the incident, a quarrel had started on the issue of construction of a wall on the said land. The Appellant had hit the deceased with a shovel, a common agricultural tool, which was available at the spot. These facts clearly revealed that the crime happened at the spur of the moment and quiet unlike the present case where the accused returned with the sword to the house of the deceased and inflicted numerous sword wounds on his person.

16. In the last-mentioned case, *Gurmukh Singh(supra)*, the facts were very different, which read as under:

"3. According to the prosecution version, on 8.1.1997 in the morning, deceased Hazoor Singh had borrowed the tractor of Lal Singh and tiller of Gurbachan Singh. Gurmej Singh, P.W.5, son of Hazoor Singh (the deceased) was going along with Lal Singh to return the tractor at the Dera of Gurbachan Singh. On the way, accused Gurmukh Singh, son of Dayal Singh, accompanied by the co-accused Niranjana Singh, Harbhajan Singh and Manjit Singh armed with lathis, whose Dera was nearby came and stopped the tractor. The appellant raised a lalkara that Hazoor Singh and his son should not be allowed to pass through the passage of which there was a dispute between the parties. Hazoor Singh was following the tractor. He advised the appellant to desist from stopping the tractor on which the appellant gave a lathi-blow on the head of the deceased Hazoor Singh rendering him unconscious, resulting in his fall on the ground."

17. No comparison could be drawn with the above facts and the facts on hand. Consequently, the Court is not persuaded that in the present case the offence should be converted to one punishable under Section 304 Part II IPC.

18. For all of the aforementioned reasons, the Court finds no error committed by the trial Court in convicting the Appellant for the offence punishable under Section 302 IPC.

19. However, it has been brought to the notice of the Court that during the pendency of the appeal, the Government of Odisha in exercise of the powers conferred by Section 432 of the Code of Criminal Procedure, 1973 remitted the unexpired portion of the sentence passed against the accused and ordered his premature release vide a letter (File No.IV-J-05/2021 6049 dated 21st June, 2021) of the Joint Secretary to Government in the Law Department communicated to the I.G. Prisons and DCS Odisha, Bhubaneswar. Pursuant thereto, the Appellant has already been released. The said letter is kept on record.

20. In view of the above, no further steps need be taken against the Appellant. Accordingly, the appeal is disposed of.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda