

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.159 of 2003

M. Narayan Patra

....

Appellant

Mr. G. Tripathy, Advocate

-versus-

State of Odisha

....

Respondent

Mr. J. Katikia, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK**

ORDER

19.05.2022

Order No.

11.

1. The present appeal is directed against the judgment dated 8th April, 2003 by the Second Additional Sessions Judge, Berhampur in S.C. Case No.8 of 2002 convicting the present Appellant for the offence punishable under Section 302 read with Section 34 IPC for intentionally causing the death of one Tuna Behera on 2nd July, 2001 in village Ganganapur in District-Ganjam.

2. At the outset, it requires to be noticed that there were three accused sent for trial, the present Appellant was accused No.1 the other accused got acquitted by the trial court by the same impugned judgment. As a result, the present Appellant has been convicted only for the offence under Section 302 IPC and sentenced to imprisonment for life. By order dated 16th March, 2004 the Appellant was enlarged on bail.

3. The Court heard the submissions of learned counsel for the parties.

4. The case of the prosecution is that deceased Tuna Behera was staying in the last two years prior to his death in the house of his brother-in-law Prafulla Behera (PW 1) and his sister Jhunu Behera (PW 2) in village Gaganapur. Tuna was running a grocery shop in the said village. It is stated that the villagers were annoyed with Tuna for creating disturbances and on 1st July, 2001, 30 to 40 villagers got together and drove Tuna out.

5. A village meeting was convened on the following day to resolve the issue. It was decided at the meeting that a resolution could be arrived at only in the presence of Tuna. On 2nd July, 2001, when the Tuna returned to the house of PW 1, the decision of the village meeting was conveyed to him by PW 1.

6. It is then stated that at 8 pm on 2nd July, 2001, PW 1 and PW 2 left their home for viewing the car festival in the village. Deceased Tuna said to have slept in the verandah in the rear side of the house after taking food.

7. At 11 pm when PWs 1 and 2 returned, they heard Tuna shout 'Marigali Marigali' from the rear side of the house. When they proceeded to the rear side they found 7 to 8 persons assaulting the deceased by means of tangi and kati. Seeing PWs 1 and 2 they fled away.

8. The principal question before the trial court concerned the identification of the present Appellant Narayan Patra PW 1 as being part of the seven persons who assaulted the deceased. The trial court in the impugned judgment accepted the version of PW 1 that he had identified the present Appellant as one of the culprits. However, it is pointed out by the learned counsel for the Appellant that PW 1 who is the only witness projected by the prosecution as an eye-witness, with all other witnesses other than PW 2 turning hostile, cannot be viewed as being consistent and reliable. Importantly, it is submitted that while PW 2 did not name the Appellant at all, it is only PW 1 who supposed to have identified him in the moonlit light on the date of the incident. It is pointed out that when the Investigating Officer (IO) (PW 8) was cross-examined he made an admission that "the informant had not stated before me about accused Narayan Patra standing at the spot but stated about Narayan Patra running away from the spot."

9. Mr. Katikia, learned AGA also referred to the above statement and submitted that presence of Narayan Patra was confirmed by PW 1 at the very first instance even at the stage of registering the F.I.R. and therefore the said evidence was sufficient to bring him to guilt of the accused.

10. In the considered view of the Court, the prosecution is on shaky ground as far as PW 1 is concerned. Since he is both a related and an interested witness, the Court has to be cautious about accepting such evidence which not only must be

corroborated by the medical evidence but should receive corroboration from some other independent evidence that can lend assurance to the court about its veracity. What is significant here is that PW 1 in fact, does not in the first instance tell the police that the present Appellant was one of the persons assaulting the deceased. This becomes clear from the cross examination of PW 8 that the informant PW 1 told the IO only about the Appellant running away from the spot and not that the Appellant was one of the assailants.

11. This is an important factor to bear in mind particularly since the whole case of the prosecution was about 7 to 8 persons attacking the deceased with tangi and kati. It is this that made the prosecution rope in the present Appellant along with two others with the help of Section 34 IPC. In other words, the whole case of the prosecution is about all of these 7 to 8 persons sharing a common intention of doing away with the deceased. That story has not been able to be proved by the prosecution.

12. In the first instance, it must be noted that even at the time of sending up the case for trial, there were only three accused out of the 7/8 persons who ought to have been made to face trial. Even of those three, two got acquitted because of lack of evidence. It is one thing to say that a person was present, was armed and assaulted the deceased and another to say such person was found running away from the spot. Considering

that the medical evidence shows that the deceased died due to attack by sharp edged weapons, and the present Appellant was not shown as possessing any weapon at all, but at the highest only found running away from the spot, in the considered view of the Court it would be wholly unsafe to base the conviction of the present Appellant for the offence under Section 302 IPC without the aid of Section 34 IPC on such weak evidence of PW 1. In other words, the evidence of PW 1 is wholly insufficient to support the conviction of the Appellant for the offence under Section 302 IPC.

13. For all the aforementioned reasons, the Court is of the view that the benefit of doubt ought to be given to the Appellant. He is accordingly acquitted of the offence under Section 302 IPC. The impugned judgment of the trial court is set aside. The bail bonds furnished by the Appellant stands discharged.

14. The appeal is accordingly disposed of.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge