

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No.86 of 2012

(From the judgment of conviction and order of sentence dated 01.10.2012 passed by the learned Sessions Judge, Balasore in Sessions Trial No.307 of 2010).

<i>Parikhita Dalei</i>		<i>Appellant</i>
	-versus-	
<i>State of Orissa</i>		<i>Respondent</i>

Advocates appeared in the case:

For Appellant	:	Ms. Sunanda Biswal, Adv.
	-versus-	
For Respondent	:	Mr. S.S. Kanungo, AGA

CORAM:
MR. JUSTICE D. DASH
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-18.11.2022
DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. This appeal is directed against the judgment and order dated 01.10.2012 passed by the learned Sessions Judge, Balasore in Session Trial Case No.307 of 2010 convicting the Appellant for the offence punishable under Section 302 of the I.P.C. and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2,000/- and in default to undergo R.I. for two months.

I. CASE OF THE PROSECUTION:

2. The case of the prosecution is that Sanatan Dalei (“deceased”) had two wives. He had four children with her first wife. However, after the death of his first wife, he re-married and started staying separately with his second wife and their two baby daughters.
3. On 28.06.2010, at about 5.20 P.M., one Sania Singh and Parikhita Dalei, a relative of Sanatan, were standing with the baby daughters of Sanatan near the Narayani Pokhari of their village. At that time, Sanatan Dalei came there to take his elder daughter to his shop but when she refused to follow, he assaulted her. Parikhita Dalei objected to this and slapped Sanatan.
4. In retaliation, Sanatan Dalei took hold of a stick to hit Parikhita but he left the spot and brought a spade (“kodala”) from the house of one Nunguri Singh and inflicted a spade blow on Sanatan. Sanatan fell due to the impact and Parikhita kept on inflicting more spade blows on Sanatan.
5. Goutam Dalei, son of Sanathan rushed to the spot after finding out about the incident and found his father lying in a pool of his blood. He moved his father to the Balasore District Headquarters Hospital. Unfortunately, at about 8.00 PM, Sanatan Dalei succumbed to his injuries.

6. Goutam Dalei (“informant”) submitted a written report before the Officer-in-Charge, Remuna Police Station on 28.6.2010 who registered the F.I.R No.86 of 2010 and took up an investigation.
7. During the investigation, he examined the witnesses including the informant, visited the spot, prepared a spot map, seized sample blood-stained earth, prepared a seizure list, and conducted an inquest over the dead body of the deceased.
8. On the same day, he arrested the appellant, Parikhita Dalei, seized the blood-stained weapon of offence on production, seized the apparel of Parikhita Dalei in presence of witnesses, sent the appellant to Remuna PHC for medical examination, seized the nail clipping and sample blood of appellant on production by the doctor, forwarded the appellant to the Court along with escort parties, sent the requisition to Medical Officer, Remuna PHC to conduct autopsy over the dead body and also made a requisition to the Medical Officer along with the weapon of offence seeking his opinion regarding the cause of death, received the query report from Medical Officer, sent the exhibits to R.F.S.L., Bampada, Balasore through the S.D.J.M., Balasore for chemical examination, received the chemical examination report along with serological report and post mortem report.

9. After completion of the investigation, the Officer-in-charge submitted the charge sheet against the appellant, Parikhita Dalei under Section 302 of the Indian Penal Code.
10. The prosecution examined eight witnesses. No witness was examined for the defence.

II. TRIAL COURT JUDGMENT

11. The trial Court began the analysis of the evidence with the examination of the testimonials of the P.Ws.
12. Manjulata Jena (P.W. 1) and Sanjukta Jena (P.W. 2) are daughters of the deceased and his first wife. They claimed to have been the ocular witnesses to the incident.
13. P.W. 1 deposed before the Court that, on the alleged date and time of occurrence, she found the appellant standing at the ridge of a tank, under a tamarind tree, with the daughter of the deceased. She saw the appellant run to the house of Nunguri Singh, where she brought out the spade (“kodala”) and dealt blows to Sanatan. She added that the appellant dealt 2 to 3 blows with the spade on Sanatan lying on the floor. After that, the appellant ran away with the little girl and the spade. She claims to have witnessed the incident from a distance of 10 to 15 cubits from the spot. P.W.2 corroborated the deposition of P.W.1.
14. The informant, Goutam Dalei (P.W. 1) deposed that he came to the spot after being informed of this incident by one

Chaitanya Dalei. He reached the spot and moved his wounded father to the hospital with the help of the villagers in an ambulance.

15. Ramesh Chandra Dalei (P.W. 4) asserted that he spoke with the appellant where he confessed to having slain Sanatan Dalei. At that time, the appellant was also carrying a child holding a blood-stained spade. Ramesh claims to have snatched that spade from the appellant and produced the same before the police.
16. The Medical Officer, Dr. Sanjaya Kumar Giri (P.W. 6) conducted the autopsy of the body of the deceased. In his report, he registered the several wounds on the face and head of the deceased. On dissection, he also found an injury on the brain on the right frontal lobe injury with blood clots. In his report, he has opined that all the injuries are ante mortem in nature and the death is caused by hemorrhagic shock due to multiple injuries. He also claimed in the cross-examination that the wounds could have been caused by a spade or another similar weapon.
17. The Investigating Officer, Mr. Ajay Kumar Tirkey (P.W.8) has also affirmed that the cause of the death of the deceased is a result of the wounds inflicted by the appellant with the spade ("kodala") at his head and face.

18. The trial court held that the statement of the witnesses coupled with the report of the Medical Officer, and inquest report gives a ring of truth regarding the cause of death and it is clear that the death of Sanatan Dalei is, indeed, homicidal.
19. The trial court further held that regarding there is no ambiguity about the spot of the incident as per the investigating report and various testimonials of the witnesses. As such, the prosecution gains substantial corroboration from the eyewitnesses and the Investigating Officer. The presence of witnesses on the spot was quite natural and it is highly improbable that they would embroider a story about their father and a co-villager respectively in such a ghastly crime.
20. The trial court emphasized the factum of the deceased had received multiple injuries on the vital part of his body. The cause of the death was hemorrhagic shock due to multiple injuries with a spade as proved by the Medical Officer (P.W.6) and his report. During cross-examination, the Medical Officer specifically stated that there was no injury on the backside which matches the description of the eyewitnesses who have categorized that the appellant inflicted spade blows on the front side of the body of the deceased.
21. The trial court especially considered the deposition of P.W.4 who claims that the appellant confessed to him that he has murdered Sanatan.

22. By the conjoint reading of the evidence of the official and independent witnesses including the doctor and Investigating Officer, the trial court observed that there is direct evidence favouring the case of the prosecution and ergo, the appellant has been unequivocally implicated with the charge of injury and death of the deceased. The undiscredited testimonies of the above witnesses also do not create any substantial doubt against the story of the prosecution.

23. Based on the above evidence, the trial Court held that the guilt of the appellant is established beyond reasonable doubt. He was, accordingly, convicted and sentenced as indicated hereinbefore.

III. APPELLANT'S SUBMISSIONS:

24. Learned counsel for the Appellant contended that the deceased was the aggressor and he had gravely provoked the appellant who, in a fit of rage, assaulted the deceased with a spade. Ergo, this is a case of culpable homicide not amounting to murder and falls under Exception 1 of Section 300 IPC.

25. It was submitted that P.W.1 and P.W.2 are closely related to the deceased and their depositions are not creditworthy.

26. It was submitted that the appellant is in jail custody since the date of arrest i.e. 29.6.2010 and has undergone imprisonment for about 3 ½ years.

27. The Sessions Judge, while hearing the question of sentence has fairly observed that there is no material that the convict is involved in any criminal case previously.

IV. RESPONDENT'S SUBMISSIONS

28. Learned counsel on behalf of the prosecution countered the submissions of the appellant by contending that it is not a case of grave and sudden provocation. To buttress their argument, reliance has been placed on *(2002)22-OCR-38, 2001-SAR(Cri)-277 & (2002)23-OCR-718*.
29. It is further submitted that the ingredients of the second part of Section 304 Indian Penal Code speaks of knowledge and does not refer to the intention which has been segregated in the first part. Knowledge is the knowledge of the likelihood of death and to bring the offence under Clause-3 of Section 300, the prosecution has established its case quite objectively. The nature of injuries and the circumstances under which the incident took place are relevant factors and where though the quarrel between the appellant and deceased ensued after an altercation, a series of injuries were seen on the body of the deceased. Therefore, the offence could not be brought within any five exceptions of Section 300 of the Indian Penal Code and Section 304 of the Indian Penal Code could not, as such, be invoked.

30. Law is well settled that the intention or knowledge is very much necessary to render the killing culpable homicide and the burden lies on the prosecution to establish such intention or knowledge and it can be done by proof of circumstances and the act or omission. However, there is no evidence worth the name on record that the actions of the deceased generated such disproportionate retaliation from the appellant. Under these circumstances, a crime of such heinous nature cannot be excused.
31. Moreover, the appellant dealt repeated blows with a deadly weapon like a spade on the vital part of the body of the deceased. The injuries, as noted by the Medical Officer, were grievous resulting in the cause of death of the deceased.
32. The prosecution submitted all in favour of the findings returned by the Trial Court in holding the appellant to be the author of the crime. According to him, the Trial Court on detailed analysis of the evidence on record did not commit any error in returning the finding that the prosecution has established its case against the appellant in causing the murder of the deceased beyond reasonable doubt and therefore, the judgment of conviction and order of sentence is not liable to be interfered with.

V. COURT'S ANALYSIS AND REASONING:

33. We have carefully examined the impugned judgment, the evidence available in this case, and the contentions of both parties.
34. The case of the prosecution mainly rests upon the testimony of eyewitnesses i.e., P.W.1 & P.W.2. It is not in dispute that there was a fallout between the appellant and the deceased and the same can be confirmed from the deposition of P.Ws.1 & 2. In the cross-examination, P.W.1 had testified that the place of the altercation was only 10-15 cubits from the spot where she was standing and, therefore, the incident being seen by P.W.1 is wholly acceptable.
35. It is an admitted fact that the appellant and the deceased quarreled as it spiraled to the point that the appellant slapped the deceased and the deceased took up a stick to beat him up. Following this, the Appellant got himself a spade, assaulted the deceased with a spade, and inflicted mortal wounds, which ultimately led to his death.
36. Now, the test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. In the case at hand, the evidence of P.W.1 & P.W.2 too receive corroboration from the circumstantial testimony of P.W.4 and Chemical Examination Report.

37. The principle of law is well established that a conviction can be based on the deposition of a sole eyewitness. The rider, however, remains that in order to draw the inference as to the guilt of the appellant from such testimony the eyewitness shall be wholly reliable. This is the test of Section 134 of the Evidence Act. In the case of *Shivaji Sahebrao Bobade v. State of Maharashtra*¹, the Supreme Court held that even where a case hangs on the evidence of a single eyewitness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration.
38. We find no such reason to disagree with the conclusion of the trial court that the presence of witnesses on the spot was quite natural. It is highly improbable that they would embroider a story about their father and a co-villager respectively in such a ghastly crime. Plus, the defence has also not attempted to even question the happening of the incident.
39. The evidence, in this case, is clear to the effect that the appellant was the author of the injuries sustained by the deceased. The prosecution has adduced sufficient evidence to show that the appellant was indeed involved in the events, which transpired in the scheme of things. The defence has been blatantly unsuccessful in rebutting their claim.

¹ (1973) 2 SCC 793

Furthermore, the samples collected during the investigation and the later post-mortem also solidify the story of the prosecution.

40. Counsel for the appellant, however, argued that this was a case of sudden and grave provocation and that the offence would be one punishable under section 304 and not section 302 of the IPC.
41. Now, Exception 1 to section 300 codifies the principle that if homicide is committed in face of grave and sudden provocation emanating from the victim, the charge of murder by a person for such grave and sudden provocation from the victim reduce the charge of murder to culpable homicide not amounting to murder. Few things immediately emerge. The requirements of exception 1 to section 300 are:
 - i. provocation
 - ii. that such provocation must be sudden and grave and
 - iii. that same should emanate from the victim except when death of some other person than intended is caused by mistake or accident.
42. However, there is no strait jacket formula to determine grave and sudden provocation in such cases. In the case of *Budhi Singh v. State of H.P.*,² the Supreme Court observed that:

² (2012) 13 SCC 663

“The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the Court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the appellant resulting in inflicting of injury.”

43. The Supreme Court judgement in ***K.M. Nanavati v. State of Maharashtra***³ remains the seminal case pertaining to the test of grave and sudden provocation. It was observed as under :

“The Indian law, relevant to the present enquiry, may be stated thus :

- (1) The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the appellant, placed in the situation in which the appellant was placed would be so provoked as to lose his self-control.*
- (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden*

³ AIR 1962 SC 605

provocation to an appellant so as to bring his act within the first Exception to s. 300 of the Indian Penal Code.

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

44. It is also essential to note that the graveness and suddenness of the provocation must both be simultaneous. This implies that firstly, the provocation must not only be grave but also sudden and that it must be uninvited and unforeseen; secondly, the act of the appellant must be derived from the provocation of such nature.
45. Having thus, reminded ourselves of the legal position if we examine the facts of the case. In this case, three particular instances blow off the contention of grave and sudden provocation claimed by the defence:
46. **First**, the appellant initially slapped the deceased during the altercation and then stormed off to bring a spade from a nearby house. Here, it must be remembered that the provocation, if any, must be not merely sudden nor only

grave but must be both grave as well as sudden which alone gives benefit to the culprit. The effect of such grave and sudden provocation, if any, must be the loss of self-control. If there was time enough to cool down & the appellant afterwards avenges himself for the insult or offence given, he can hardly plead the extenuating circumstance as enacted. In the present case, the appellant went to the house of Nunguri Singh, came back and then hit the deceased. Here, the appellant got enough time during which the element of pre-meditation ought to have crept into the act of the appellant that would negate the defence of grave and sudden provocation.

47. ***Second***, it has been established that the deceased had fallen on the ground after receiving the first hit from the appellant. However, the appellant went on inflicting blows repeatedly on the deceased; who was lying on the ground in a helpless condition. The fact that the appellant repeatedly inflicted blows on the deceased after the first blow, without there being any grave and sudden provocation, so much so that he sustained severe head injuries and died, only shows that the appellant had then gathered intention and executed it into full action. Ergo, this case cannot be covered under this exception.
48. ***Third***, the initial burden rests on the appellant to prove the existence of circumstances to bring the case within the

exceptions. The Court shall start with the initial presumption of the absence of such circumstances. It was observed that the standard of proof on the part of the appellant is not so onerous as it would undoubtedly rest on the prosecution, namely, the general burden of proving the charge beyond reasonable doubt. The appellant may discharge this burden by establishing a mere balance of probabilities in his favour concerning the said circumstances. The onus is, therefore, on the appellant to lift the initial burden placed by the Legislature under the latter part of Section 105 of the Evidence Act. However, in this case, the defence has not been able to establish any such circumstances. Ergo, the onus has not been duly elbowed by the appellant thus failing to establish this exception.

49. Applying the principles enunciated in the foregoing paragraphs to the facts of the present case, we do not think that the appellant can claim the benefit of this "Exception". There is no evidence that the appellant is anything but a normal person and he must be judged like any normal man under the strain of a similar provocation. There was indeed an altercation and the deceased uprooted a stick to beat the appellant up in retaliation to his slap. We are prepared to concede that such an act may alarm a person to react but it does not follow that he was entitled to lose his temper to the

extent of bringing a spade and killing the other man. Moreover, the retaliation was out of all proportions to the provocation. We do not think that a person who reacts in such an inhuman manner is entitled to the indulgence of Exception I to Section 300, IPC if, in a fit of temper, he beats the other person to death. We are of the view that this is not a case which falls under this Exception but one of murder

50. It is significant to notice that the defence has been unable to provide a satisfactory explanation to the accusations of the prosecution save rebut them effectively. We are aware of the fact that the appellant doesn't need to adduce evidence in their favour and they can rely on the evidence adduced by the prosecution to show that the prosecution has not succeeded in establishing the case beyond reasonable doubt. In the present case, the entire evidence as already discussed brings home the charges against the appellant. There is no reason to accept that the appellant acted out of provocation in the present scenario

VI. CONCLUSION:

51. The result is that this Appeal is without merit and it is liable to be dismissed. We do so, confirming the judgment of conviction and order of sentence dated 01.10.2012 passed by the learned Sessions Judge, Balasore in Sessions Trial No.307 of 2010.

52. The Appeal is, accordingly, dismissed.

(*Dr. S.K. Panigrahi*)
Judge

D. Dash, J. I agree.

(*D. Dash*)
Judge

*Orissa High Court, Cuttack,
Dated the 23rd Dec., 2022/B. Jhankar*

