

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.105 of 2002

Sirish Chandra Mohanta *Appellant*

-versus-

State of Odisha *Respondent*

Advocates, appeared in this case:

For Appellant : Ms. Bini Mishra, Advocate

For Respondent : Mrs. Saswata Patnaik
Addl. Govt. Advocate

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

**JUDGMENT
29.09.2022**

Dr. S. Muralidhar, C.J.

1. This appeal is directed against the judgment dated 12th April, 2002 passed by the Special Judge, Mayurbhanj, Baripada in T.C. No.4 of 2001 arising out of G.R. Case No.149 of 2000 convicting the present Appellant for the offence punishable under Section 302 IPC read with Section 3(2)(v) of the S.C. and S.T. (P.A.) Act, 1989 and sentencing him to undergo imprisonment for life.

2. It must be mentioned at the outset that along with the present Appellant, nine other accused persons were sent up for trial for committing the murder of Nandru Ho. However, the present Appellant was convicted for the offence under Section 302 IPC read with Section 3(2)(v) of the S.C. and S.T. (P.A.) Act as well

as two others namely, Raika@MadanMohanta and JayahariMohanta who were convicted for the offence under Section 323 IPC and sentenced to pay a fine of Rs.400 and in default to undergo simple imprisonment (SI) for fifteen days.

3. The case of the prosecution was that one ManikarPatra (PW 1) came to Karanjia Police Station (PS) and lodged a report to the effect that on 26th April, 2000 at 12 noon certain villagers including ManojMahanta, NanduruMohanta, DaitariMohanta, PradeepPalbabu, NiranjaniMohanta, ManoranjanMohanta along with 3-4 others had been to the cashew orchard situated in the border of the villages of Malharpada and Nodhagadia to consume the fruits by plucking. The cashew field was within Badgaon Gram Panchayat. When they were inside the cashew orchard, ten accused persons, who were villagers of Nodhagadia along with 17 to 18 others holding deadly weapons like Bhujali, lathi surrounded the villagers of Malharpada. RaitaMohanta (Accused No.3) (A3) is stated to have dealt a blow with a lathi on the head of ManikarPatra (PW 1), who sustained severe bleeding injury and looking at his serious condition, his co-villagers Nanduru Ho and DaitariMohanta came to his rescue. Accused SirishMohanta, the present Appellant (A2) is stated to have brought out a Bhujali from his dress and gave a piercing blow on the abdomen of Nanduru Ho, who sustained bleeding injury and cried for help. He is stated to have succumbed to his injury at the spot. Seeing this A2 is stated to have fled away from the spot with his weapon. DaitariMohanta was assaulted by JayahariMohanta (A9) with a lathi and sustained bleeding injuries. He too shouted for help. The

villagers of Nodhagadia then fled away noticing the death of Nanduru Ho. The injured were then brought to the hospital in a bleeding condition for treatment by the villagers of Malaharpada.

4. During investigation, it was ascertained that the deceased Nanduru Ho was 'Kolha' by caste and therefore, a member of the Scheduled Tribe (ST) community. An inquest was held over the dead body and then sent for post-mortem examination. As far as the Appellant is concerned, the weapon Bhujali was not recovered by the Investigating Officer (IO) during investigation.

5. The shirt and lungi of the present Appellant were seized and all of the accused persons were arrested. On the conclusion of the investigation, a charge sheet was laid against the accused persons for the aforementioned offences under Sections 302 and 34 IPC read with Section 3(2)(v) of the S.C. and S.T. (POA) Act. The accused pleaded not guilty, and claimed trial.

6. On behalf of the prosecution, 12 witnesses were examined. No witnesses were examined for the defence. On an analysis of the evidence, the trial Court came to the conclusion that barring the present Appellant none of the other accused could be found guilty for the offence under Section 302 read with 34 IPC. PWs 2, 3, 5 and 6 were unanimous that the Appellant had fled away from the spot when the deceased fell down on the ground and his intestine came out of his abdomen. The trial Court noted that the counter case had been registered by the accused against the villagers of Malharpada bearing ICC No.42 of 2000 which had been sent to

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the police for investigation under Section 156Cr.P.C. and G.R. Case No.298 of 2000 was also registered. The trial Court concluded that this is a case of murder coming under the thirdly clause of Section 300 IPC as all those elements were fulfilled.

7. This Court has heard the submissions of Ms. Bini Mishra, learned counsel appearing for the Appellant and Mrs. SaswataPatnaik, learned Additional Government Advocate for the State-Respondent.

8. Ms. Mishra submitted that there was no independent witness supporting the case of the prosecution. They were interested witnesses and inimical to the accused party. The weapon allegedly used by the Appellant was not seized by the prosecution. Therefore, one important element of the case of the prosecution could not be proved. Further, unless the counter case against the prosecution party is taken to its logical end, it could not be said that the case of the prosecution has been proved beyond reasonable doubt. It was submitted that the trial Court did not give sufficient time to the accused to produce defence witnesses and the Appellants had filed criminal misc. case in this Court which was disposed of stating that if the judgment was not pronounced on the date fixed, the Petitioner should be given a chance to adduce evidence. However, since the judgment was pronounced, the Petitioner was deprived of leading evidence. Alternatively, it was submitted that it has emerged from the cross-examination of ManoranjanMohanta (PW 5) that the incident took place on the spur of the moment without pre-meditation and therefore, the

important element of the intention under Section 302 IPC is not established. At best it could be a case under Section 304 Part II IPC.

9. Mrs. SaswataPatnaik, learned Additional Government Advocate on the other hand submitted that the case against the present accused stands conclusively proved through the consistent evidence of PWs 1, 2, 3, 5 and 6. They have consistently spoken of the present Appellant assaulting the deceased with a Bhujali. The medical evidence also clearly corroborated the eyewitness testimony. The injury was fatal and resulted in instantaneous death. There was, therefore, clearly both knowledge and intention in committing the crime.

10. The above submissions have been considered. It is clear from the evidence of PWs 1, 2, 3, 5 and 6 that the prosecution party had come into the government field in which the accused parties were present being armed with the weapons. The fact that they were armed with deadly weapons indicates that they were anticipating some trouble. However, as the events transpired, the deceased was not the specific target of assault by the accused party. The first person to be attacked was PradeepPalbabu (PW 6), who was attacked by RaitaMohanta on his head with a lathi. Thereafter, PW 2 and the deceased NanduruHo intervened for his rescue. It is then that the present Appellant attacked Nanduru Ho by a Bhujali. This was a single blow on the abdomen. Clearly it was not premeditated but happened on the spur of the moment.

11. The important aspect in Section 300 IPC is the main portion of the provision which requires the act to be “done with the intention of causing death”. Here it cannot be said that the Appellant intended to cause the death of Nanduru Ho when he gave him a Bhujali blow on his abdomen. Considering that it was a single blow after which the Appellant fled away, it is plain that the Appellant did not expect Nandru Ho to succumb to the injuries and fall down dead then and there. Not only the Appellant but the rest of the accused party also fled away. Clearly, there was no intention therefore, to kill Nandru Ho but only to stop him. The single blow inflicted on the abdomen of Nandru Ho could not be said to be inflicted with unusual cruelty.

12. Also there was grave and sudden provocation because it was the prosecution party that trespassed into the government field which did not belong to them. The Court is, therefore, unable to concur with the conclusion reached by the trial Court that the clause ‘thirdly’ under Section 300 IPC is attracted in the present case. The accused party was, even according to the prosecution version, defending the property in question from being trespassed by the prosecution party. Therefore, both Exceptions 2 and 4 to Section 300 IPC are attracted.

13. In *Arjun v. State of Rajasthan AIR 1994 SC 2507*, it is explained that the state of mind has to be inferred from the facts and circumstances of each case keeping in view the nature of weapon and how it was used and the injury which is inflicted. In *Mahesh v. State of MP (1996) 10 SCC 668* the accused gave a

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single blow by a Pharsa as a result of sudden fight when the deceased objected to the grazing of cattle. The assault took place without premeditation. It was held that Exception 4 to Section 300 IPC stood attracted. The Court there sustained the conviction of the Appellant under Section 304 Part I IPC.

14. In ***Rajender Singh v. State of Bihar AIR 2000 SC 1779***, it was explained that the necessary ingredients of Exception 4 of Section 300 IPC are (i) sudden fight (ii) absence of premeditation, (iii) no undue advantage or cruelty. Likewise, in ***Kikar Singh v. State of Rajasthan AIR 1993 SC 2426***, it was explained *inter alia* that (i) the act must be committed without pre-meditation, in a sudden fight in the heat of passion, (ii) there must be a sudden quarrel, (iii) without the offender taking undue advantage, and (iv) the accused not acting in a cruel or unreasonable manner.

15. The Court is satisfied that in the present case, Exception 4 read with Exception 2 to Section 300 IPC stands attracted and the offence can rightly be characterized as culpable homicide not amounting to murder in terms of Section 304 Part II IPC.

16. Consequently, the conviction of the present Appellant is converted from Section 302 IPC to Section 304 Part II IPC. It is seen that the Appellant was enlarged on bail by an order dated 5th May, 2005 of this Court by which time the Appellant had already served five years of imprisonment. He has been out on bail for almost seventeen years now.

17. Keeping in view the above circumstances, the sentence awarded to the Appellant for the offence under Section 304 Part II IPC, is confined to the period already undergone which shall include the default sentence for non-payment of fine. The bail bond of the Appellant stands discharged.

18. The appeal is disposed of in the above terms.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K.Jena/Secy.

