(2024) 10 OHC CK 0005

Orissa High Court

Case No: Criminal Appeal No.206 Of 2001

Ananta Naik & Another		APPELLANT
	Vs	
State Of Odisha		RESPONDENT

Date of Decision: Oct. 8, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313, 374(2)
- Indian Penal Code, 1860 - Section 300, 302, 304I, 304II, 324

Hon'ble Judges: G. Satapathy, J

Bench: Single Bench

Advocate: A. Mishra, K.K. Gaya

Final Decision: Partly Allowed

Judgement

G. Satapathy, J.

1. This is an appeal U/s.374(2) of the Code of Criminal Procedure, 1973 (in short â€œthe Codeâ€) by the convicts challenging their conviction and

sentence as recorded on 02.06.2001 in Sessions Trial No.131 of 1993, by which the learned Additional Sessions Judge, Angul convicted the appellants

for commission of offence punishable U/s. 304 Part-I of the IPC and sentenced each them to undergo Rigorous Imprisonment (R.I.) for seven years.

2. The short history of the case is that on 3. 04.1993 at about 7 P.M. in the evening, the convict-Arta Naik while talking with Rahas Naik (hereinafter

referred to as the â€œdeceasedâ€) in latterâ€™s house in village Ranigoda, the convict-Ananta Naik, who is the brother of convict-Arta Naik dealt an

axe blow by coming there and thereafter, convict-Arta Naik indiscriminately assaulted the deceased by means of a stick making the deceased

senseless. Prior to this occurrence on the same day, the goat of the deceased had eaten away the crops of the convicts and thereby, damaged it, but

the deceased and his son had agreed to compensate the convicts. The wife and daughter-in-law of the deceased namely Hina Naik(P.W.7) and

Sukumari Naik(P.W.8) respectively as well as some persons of the village namely Pravakar Naik and Bhakta Naik were present at the place of

incident.

2.1. Due to the aforesaid assault, the deceased sustained bleeding injury on his head and he was shifted to hospital and provided with preliminary

treatment with stitch of the wound. Since no bed was available in the hospital, the deceased was taken back to his house and on the next day morning,

he was again brought to the hospital as his condition became serious, but unfortunately the deceased succumbed to the injuries.

2.2. On the very day of assault i.e. on 03.04.1993 at about 10.00 P.M. in the night, the son of the deceased namely Jayakrushna Nayak(P.W.11)

reported the incident by presenting F.I.R. before the O.I.C., Angul, Police Station, who registered Angul P.S. Case No.51 of 1993 and the

investigation ensued which culminated in submission of charge sheet against the convicts on completion of investigation. Accordingly, the case record

was committed to the Court of Sessions and the convicts were sent up for trial which commenced soon after their denial to the charge for committing

murder of the deceased.

3. In support of its case, the prosecution examined altogether fourteen witnesses vide P.Ws. 1 to 14 and proved ten documents vide Exts.1 to 10 as

against the sole oral evidence of one witness D.W.1 by the defence. The plea of convicts in the course of trial was that the deceased being in an

inebriated condition fell down on the stone and sustained injury which resulted in his death. However, the convicts took the additional plea of denial

simplicitor and false implication in their statements U/s.313 CrPC.

4. After appreciating the evidence on record upon hearing the parties, the learned trial Court by mainly relying upon the evidence of P.Ws. 7, 8, 11, 12

as the eye witnesses to the occurrence convicted the appellants by the impugned judgment for commission of offence U/s.304 Part-I of the IPC after

holding the prosecution not being able to establish the charge U/s.302 of the IPC and proceeded to sentence the convicts to the punishment indicated

in the first paragraph.

5. Ms. Ananya Mishra, learned counsel for the appellants by filing the written notes of submission has submitted before this Court that although the

informant-P.W.11 and his brother P.W.12 reached to the spot after the occurrence, but notwithstanding to such fact, the learned trial Court has

weighed their evidence as the eye witnesses to the occurrence and since the so called eye witnesses to the occurrence being P.Ws.7 and 8 were the

family members of the deceased, they could be presumed to be interested and partisan witnesses, but there exists serious material discrepancies in the

testimony of P.Ws.7 & 8 which was ignored by the learned trial Court while recording conviction against the appellants. Ms. Mishra has further

submitted that the Doctor-P.W.3, who initially examined the deceased before his death had opined that all the injuries except the lacerated injury

sustained by the deceased were simple in nature and could have been caused by hard and blunt weapon and the lacerated injury of the deceased could

have been caused by axe and the rest of the injuries by lathi. It is further submitted by her that the lacerated injury being not fatal injury and no lathi

having been seized in this case, the prosecution story was motivated one. Ms. Mishra has further submitted that the autopsy conducting doctor-P.W.4

in his testimony had opined that the fatal injury which caused the fracture of skull and intracranial haemorrhage could have been caused by the blunt

end of the axe which is speculative one and there being glaring inconsistencies between the ocular and medical evidence which is apparent from the

evidence of P.W.4, the testimony of the so called eye witnesses deserves no consideration. Ms. Ananya Mishra, learned counsel for the appellants

has further submitted that the recovery of axe at the instance of appellant No.1 is not believable or established which is palpable from the evidence of

P.Ws. 1 & 10 and since the I.O. has not been examined in this case, the convicts were prejudiced. Further, it is also argued on behalf of the appellants

that neither any blood stain was found on the axe on chemical examination nor was any question put to the convicts U/s.313 CrPC regarding use of

any specific weapon for causing the death of the deceased and the learned trial Court has committed error in not taking into account the evidence of

defence witness. It is also advanced on behalf of the appellants that since there was no incise wound found on the body of the deceased, it cannot be

said that the sharp cutting weapon like axe was used to commit murder of the deceased, morefully when the intention of the convicts to cause death

or to cause such bodily injury as is likely to cause death of a person is missing in the evidence of prosecution witness, the conviction of the appellants

still cannot hold good even for offence U/s. 304 Part-I or Part-II of the IPC. While summing up her argument, Ms. Mishra has further submitted that

the impugned judgment is shrouded with infirmity, suspicion and error which makes it bad in the eye of law and it ought to be set aside and she

accordingly has prayed to allow the appeal to acquit the appellants of the charges by relying upon the judgment in the case of Â Â Hallu and Others

vs. State of Madhya Pradesh; 1974 AIR 1936.

5.1. In reply, Mr. K.K. Gaya, learned ASC has submitted that there was nothing to disbelieve the evidence of eye witnesses and the motive behind

crime is forthcoming from the evidence on record as it is established by the prosecution that the appellants assaulted the deceased for the reason that

the goat of the deceased had entered into the agricultural land of the appellants and damaged the crops. It is further submitted that since there is

absolutely no rule of law to disbelieve the evidence of related witnesses without the prejudice being established, the evidence of eye witnesses in this

case cannot be discarded on the ground that they are the relatives of the deceased, more particularly why the relatives of the deceased would falsely

implicate the appellants. Mr. Gaya has further submitted that even if P.Ws.11 and 12 are not considered as the eye witnesses to the occurrence, but

the evidence of P.Ws.7 & 8 cannot be disregared as the eye witnesses to the occurrence, more particularly, when P.Ws. 7 & 8 had given a vivid

description of the occurrence and their testimony has not at all been demolished by the defence in any manner, rather the evidence of P.Ws. 7 & 8

corroborates each other and therefore, the prosecution having established the guilt of the appellants, there is no infirmity in the conviction of the

appellants and, therefore, the learned trial Court having not committing any illegality in convicting the appellants for causing death of the deceased, the

present appeal deserves no consideration and is liable to be dismissed. Mr. K.K. Gaya, learned ASC has accordingly, prayed to dismiss the appeal.

6. After having considered the rival submissions upon perusal of record, this Court considers it appropriate to reexamine/relook the evidence adduced

by the prosecution to find out as to whether the conviction of the appellants for offence U/s. 304 Part-I of the IPC is sustainable or not. Although the

learned counsel for the appellants has disputed that P.Ws. 11 & 12 are not the eye witnesses to the occurrence, but she could not validly dispute or

make out any point to disbelieve the evidence of P.Ws. 7 & 8 as the eye witnesses to the occurrence, rather the contention of the appellants is that

since P.Ws. 7 & 8 are the relatives of the deceased, they are interested witnesses, but law on this point is very clear that merely because a witness is

the relative of the victim-deceased, it would not ipso facto render his evidence unreliable, unless the same is established by the defence after taking

such plea. It is also not believable as to why the relative of the deceased would falsely implicate a person for the death of his near and dear. It needs

to be emphasized that while tendering evidence, the witnesses related to the deceased-victim may exaggerate, but the role and duty of the Court is to

separate grain from chaff and find out the truth. Further, a close relative who is a material witness cannot be regarded as interested witness to discard

his evidence as such. Law is fairly well settled that if the evidence of material witness, who may be related to the deceased is free from any infirmity

and reliable as also cogent, his evidence cannot be brushed aside. In this regard, this Court considers it apt to refer to the decision in Laltu Ghosh vs.

State of West Bengal; (2019) 15 SCC 344 wherein at paragraph-12, the Apex Court has held as under:-

â€œ12. As regards to the contention that the eye-witnesses are close relatives of the deceased, it is by now well settled that a related witness cannot be said to be

an â€˜interestedâ€™ witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between â€˜interestedâ€™ and

â€˜relatedâ€™ witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a

litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity

or other reasons, and thus has a motive to falsely implicate the accused.â€

7. Applying the above principle, since it is not disputed that P.Ws. 7 & 8 are the eye witnesses to the occurrence, this Court right now proceeds to re-

examine the evidence of P.W.7, who is the wife of the deceased and her testimony clearly suggests that on the day of occurrence, the goat of the

deceased had trespassed into the land of the appellants and damaged it and on this point, there was some discussion and annoyance, but the deceased

had agreed to pay money as compensation for the damaged crops done by his goat and the deceased had tried to settle the dispute, however, in the

course of such settlement, appellant-Ananta assaulted the deceased by means of an axe, whereas appellant-Arta assaulted the deceased by means of

a stick. The important evidence is that the blows struck on the head of the deceased and blood and brain matter came out and the deceased fell down

unconsciously. In the cross-examination of P.W.7, it was elicited by the defence that except her son(P.W.11) and daughter-in-law(P.W.8) and

Pravakar, no other came to the spot at the time of incident.

8. On coming back to the evidence of P.W.8, who has been examined as an eye witness to the occurrence, it appears that she had reiterated what

P.W.7 has stated in her evidence in substance and her testimony would go to reveal that the appellant-Ananta came with a tangi and dealt a blow,

which struck on the head of the deceased, whereas appellant-Arta dealt blows with a badi (stick). P.W.8 has also stated about the motive behind

crime as their goat entered into the bari (backyard) of the appellants.

9. On a careful scrutiny of evidence of P.Ws. 7 & 8, there appears neither any infirmity in their evidence nor could the defence demolish their

evidence in any manner. No material contradiction was elicited from the mouth of either of the witnesses to give benefit to the appellants. Further, the

defence could not validly dispute the main substratum of evidence of PWs. 7 & 8 that appellant-Ananta dealt a blow by means of an axe on the head

of the deceased and appellant-Arta assaulted the deceased by means of a stick. When the evidence of P.W.11 is considered on the backdrop of

P.Ws.7 & 8, it appears that the defence has brought in cross-examination of P.W.11 that he has not raised any hulla (commotion), when the

appellants came to his house and none of the villagers came to the spot, but only his family members were present there and his family members were

inside the house when the appellants were quarreling with him. On a careful scrutiny of the evidence of the main prosecution witness, a sensible man

would definitely believe their evidence inasmuch as the reason behind the incident is for damage to the crops of the appellants by the goat of the

deceased and there was a quarrel between the appellants and the son of the deceased on this issue, but the deceased had agreed to compensate the

appellants by paying some money and in the course of discussion, the incident occurred.

10. On coming back to the evidence of doctor, it appears that P.W.3 is the doctor, who had examined the deceased in the night before his death and

his testimony transpires that the deceased had sustained eight injuries, out of which injury No.ii was a lacerated injury of size 4â€™â€™ x

Â¼â€™â€™ x Â¼â€™â€™ over mid line of scalp. According to P.W.3, injury No.ii can be possible by axe and all other injuries can be possible by

lathi. The defence has preferred not to cross-examine P.W.3. Similarly, P.W.4 who is the autopsy conducting doctor, has described all the injuries

sustained by the deceased in his evidence. According to him, the deceased had sustained eight injuries and the cause of death of the deceased was

due to injury to skull leading to laceration of brain matter causing intracranial haemorrhage and injury Nos.i & ii were sufficient to cause death of a

person in ordinary course of nature. P.W.4 has also stated alike that injury Nos. i & ii can be caused by axe.

11. Much emphasis was given by the learned counsel for the appellants with regard to the fatal injury which caused fracture of skull and haematoma

to the deceased by the â€œblunt end of the axeâ€ as it measures 2â€™â€™x2â€™â€™ as speculative one on the ground that the prosecution has not

explained as to which side of the axe was used at the time of assault by the appellant-Ananta. True it is that the evidence on record does not disclose

as to whether appellant-Ananta Naik had dealt a blow on the deceased by sharp side of axe or blunt side of the axe, however, it cannot be validly

disputed that the appellant-Ananta Naik had given blow by means of an axe and the appellants were convicted for offence U/s. 304 Part-I of the IPC.

On the other hand, the evidence of the doctor has not been challenged by the defence by cross-examining him. Further, the prosecution by way of

clear, cogent and reliable evidence has established that the appellant-Ananta had given an axe blow to the head of the deceased, even though it was

not established as to which side of the axe â€œsharp or bluntâ€ was used.

12. It is, however, advanced by the learned counsel for the appellants that there was inconsistency in the testimony of eye witnesses, but the

discussion made hereinabove clearly suggests that the testimony of the eye witnesses is not only clear, cogent and believable, but also free from any

infirmity or inconsistency. It is also canvassed for the appellants that no specific question has been put to the convicts for use of weapon of offence

and no blood stain was found on axe and therefore, the conviction of the appellants would be unsustainable, but fact remains that when the evidence

of eye witnesses are not only very clear, but also convincing and reliable, the aforesaid contention as advanced pales into insignificance and merely

because no specific question has been asked to the appellants in their statement U/S.313 of CrPC with regard to use of specific weapon or presence

of blood stain on the axe would not make the case of the prosecution unreliable or can be thrown out rightly. Further, the evidence of eye witnesses is

free from any contradiction on material points and this Court finds the evidence of eye witnesses not only credible, but also acceptable. The learned

counsel for the appellants has, however, criticized the impugned judgment on the ground of non-consideration of defence evidence, but it appears to

the Court that the defence evidence in this case is not of such character to arrive at a different conclusion as the learned trial Court has arrived at.

13. What is more important is that the defence evidence only suggests about the fact that the head of the deceased got struck on the roof and he fell

down on the stone kept by one Brahma Naik, but in cross-examination, the defence witness-D.W.1 has clearly admitted that he had not stated

anything to the Police and he was not present when the Police came for investigation and he never tried to contact the Police and Police asked the

persons who had the witnessed the incident. It, therefore, clearly appears that the defence evidence is not only insignificant, but appears to have been

set off to counter the prosecution case on imagination. The decision relied on by the appellants in Hallu (supra), the Apex Court has clearly held that it

is generally not easy to find witnesses on whose testimony implicit reliance can be placed. It is always advisable to test the evidence of witnesses on

the anvil of objective circumstances of the case. On re-appreciation of the evidence on the basis of the aforesaid dictum of the Apex Court, this Court,

however, finds the evidence of eye witnesses not only to be credible, but also reliable and acceptable and thereby, the learned trial Court has not

committed any illegality or infirmity by placing reliance on the evidence of eye witnesses.

14. In this case, both the appellants were convicted for offence U/S. 304 Part-I of the IPC, but fact remains that only appellant-Ananta assaulted the

deceased by means of an axe, whereas appellant-Arta is found to have assaulted the deceased by means of a bamboo stick, but it is not clear as to

who assaulted first. However, the evidence of eye witness-P.W.7 transpires that first appellant-Ananta came with an axe and then appellant-Arta

came with a lathi to the spot, but on the other hand, the evidence of P.W.8 transpires that appellant-Arta came with a lathi and abused them and

appellant-Ananta came with a tangi and dealt blow on the head of the deceased. It is, therefore, very clear that both the convicts reached to the spot

separately, but not simultaneously. In such event, especially when there is no evidence as to the common intention shared by both the convicts, it

would not be safe to hold that the convicts had came to the spot with an intention to kill the deceased, but it can be gathered from the act of the

appellant-Ananta that he had intention to assault on the head of the deceased with an axe which has been rightly appreciated by the learned trial Court

in convicting the appellant-Ananta for 304 part-I of IPC, but since both the convicts had not shared the common intention and appellant-Arta had only

assaulted by means of a lathi, his act would not squarely covered by the offence U/S.304 Part-I of the IPC, since appellant-Arta had no intention to

kill the deceased, nor had he got any knowledge that by giving a lathi blow, he would thereby finish the deceased. On the contrary, there is also no

evidence on record to suggest that appellant-Arta dealt successive blows by means of said lathi and the medical evidence available on record suggests

that the deceased had sustained some abrasions on left and right elbow joint, shoulder joint, left and right knee joint and such injuries were simple in

nature. Further, it can be well perceived and visualized that if a blow of axe was hit on the head of a person, the said person in all probability would fell

down on the ground and on account of falling on the ground, such person might also sustain some abrasions on his body. It is no doubt true that the

common intention can be inferred from the circumstance, but in this case, there is absolutely no evidence to suggest about any common intention

shared by both the convicts and in such situation, especially when there is no evidence gathered and produced by the prosecution to indicate any

intention of the appellant-Arta to give fatal blow to the deceased coupled with absence of evidence to indicate about appellant-Arta assaulting the

deceased by means of stick repeatedly, this Court on a cumulative appreciation of evidence considers that the act of appellant-Arta can by no stretch

of imagination would attract the offence U/S.304 Part-I of IPC and therefore, his conviction for offence U/S. 304 Part-I of IPC is unsustainable and

liable to be set aside, rather his act would squarely covered by Section 324 of IPC. Accordingly, Appellant-Arta is convicted for commission of

offence U/S. 324 of IPC and taking into account his act together with the circumstance under which the offence was committed and the fatal blow to

the deceased being given by convict Ananta, the appellant-Arta is sentenced to undergo RI for two years.

15. In the result, the appeal is allowed in part on contest, but no order as to costs. Consequently, while maintaining the conviction and sentence of the

appellant-Ananta Naik, the judgment of conviction and order of sentence passed on 02.06.2001 by learned Additional Sessions Judge, Angul in

Sessions Trial No.131 of 1993 stands modified to the extent indicated above for the Appellant-Arta Naik.

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