

Aditya Mahapatra and Another

Vs

State of Orissa

Criminal Appeal No. 34 of 1976

(V. D. Tulzapurkar, O. Chinnappa Reddy JJ)

25.09.1978

JUDGMENT

CHINNAPPA REDDY, J. –

1. This Court granted special leave limiting it to the question of the nature of the offence committed by appellant 1 Aditya Kumar Mahapatra who was convicted by the lower courts under Section 302 Indian Penal Code and sentenced to imprisonment for life. The prosecution case was briefly as follows :

1a. There was a certain amount of ill-feeling between the teachers of Bagurai High School and the rest of the villagers in connection with the celebration of Holi festival and the sale of controlled sugar. On March 28, 1973, Aditya Kumar who is the son of the Headmaster of the school, accompanied by two teachers of the school, Hrudananda and Rajendra Prasad, who were also tried with him, was proceeding along the main road of the village at about 10 p.m. When the appellant and his companions reached the bazar, they shouted abusive words and challenged the villagers 'to come and see '. PWs 1 and 8 who happened to be sitting on the culvert asked them why they were using abusive language. The appellant caught hold of PW 1 and asked him, "What are you saying." Hearing the noise of the disturbance the deceased Chitaranjan Prusti and some other villagers came there. Chitaranjan raised his hands and asked them not to quarrel. He requested them to be peaceful so that the matter could be settled. Hrudananda Misra, one of the companions of Aditya Kumar, said, "This fellow is the leader, stab him". Aditya took out a knife and stabbed Chitaranjan in the left side of the chest. PW 4 tried to catch hold of the hand of Aditya. He too received an injury on the hand. Aditya and his two companions then ran away. They were chased by the villagers but they managed to escape. PW 3 informed the police about the occurrence on the telephone. Chitaranjan was taken to the hospital. The doctor, PW 5 attended on him. The services of a Magistrate PW 6 were requisitioned and he recorded the dying declaration from Chitaranjan. Chitaranjan died later. After due investigation, a charge-sheet was filed against Aditya and his two companions. The plea of Aditya was that at about 9.30 p.m. on March 28, 1973, stones were pelted at his house. His father asked him to fetch the other two accused so that they could go to the police station to give a report. He and the other two accused were going together along the bazar. They were surrounded by PWs 1, 4, 8 and 9. They were being assaulted by the villagers when the deceased along with others came rushing to the place. The deceased requested everybody to be peaceful and not to create any trouble. The attention of the villagers was diverted by the arrival of the deceased. The accused managed to escape. Aditya did not stab the deceased.

2. The prosecution examined PWs 1, 3, 4, and 9 as eyewitnesses to the occurrence and also relied upon the dying declaration recorded by the Magistrate. The learned Sessions Judge found that there

was no material to hold that the villagers of Bagurai were the aggressors. He found that the three accused persons went to the bazar shouting challenges. When the deceased arrived on the spot and tried to restore peace, Aditya stabbed him. He was, therefore, guilty of the offence under Section 302, Indian Penal Code. The learned Sessions Judge did not accept the prosecution case that Rajendra Prasad abetted the commission of the offence of murder. He, however, found Hrudananda guilty of offence of abatement of murder. He also found Rajendra guilty of the offence of causing simple hurt to PW 4. On appeal, the High Court accepted the evidence of the eyewitnesses and the dying declaration and confirmed the finding of the learned Sessions Judge that it was Aditya that had caused the death of Chitaranjan by stabbing him. The High Court, however, acquitted Hrudananda of the offence of abatement of murder. The conviction of Rajendra under Section 324, IPC was, however, confirmed.

3. Shri Gobind Das, learned counsel for the appellant argued that Aditya was proceeding with his companions in order to give a report to the police about the stone pelting at his house when he was surrounded by a hostile mob of villagers; in order to extricate himself Aditya must have used the knife which resulted in a fatal injury being caused to the deceased. Learned counsel submitted that the offence fell under the second or the fourth exception to Section 300, IPC. He also urged that having regard to the circumstances of the case the lack of premeditation, even if exceptions 1 and 4 did not apply, the offence would only fall under the second part of Section 304. We are unable to see any basis for the submission of Shri Gobind Das in the record. It is true that Aditya and one of his companions received some injuries but as pointed out by learned Sessions Judge and the High Court, they must have received the injuries after the stabbing of the deceased when they were chased. The evidence of the prosecution witnesses does not show that Aditya was surrounded by any hostile mob. On the other hand the evidence shows that it was Aditya and his companions that were indulging in abusive language and issuing challenges. There was no occasion at all for the exercise of any right of private defence nor could it be said that there was a sudden quarrel in the course of which Aditya inflicted the fatal injury on the deceased in the heat of passion without taking undue advantage. The prosecution evidence shows and it is also the case of the accused, that the deceased came to the spot as a peacemaker and certainly not as a trouble-maker. Even according to the statement of Aditya, the deceased appealed to everybody to be calm and peaceful. In that situation one fails to see any justification for the stab injury inflicted by Aditya on the deceased. We are also unable to see how the offence can possibly be brought within the second limb of Section 304, IPC. The injury was intended. It was not accidental. The injury was on a vital portion of the body. It had penetrated the chest to a depth of 2 and 3/4 inches. The left lung had been pierced. The fourth rib was cut through and through indicating that considerable force had been used. The injury inflicted by the accused was sufficient in the ordinary course of nature to cause death. Then offence clearly fell within the 3rd limb of Section 300, IPC. Shri Gobind Das argued that having regard to the circumstance that the age of Aditya was only 18 years, the sentence might be reduced. We do not see how, if the conviction under Section 302 is confirmed, the sentence case reduced. We would also like to add that though special leave was confined to the question of the nature of offence, on the insistence of Shri Gobind Das, we did go through the evidence of some of the eyewitnesses and we are satisfied that the conviction is correct on merits also. The conviction of the other appellant has not been canvassed. The appeal is, therefore, dismissed.

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