

Hazari Parida

Vs

State of Orissa

Criminal Appeal No. 267 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

16.01.1979

JUDGMENT

FAZAL ALI, J. -

1. The appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life. Five persons were tried by the Sessions Judge, who after considering the evidence acquitted four of the accused persons but convicted the appellant under Section 302 read with Section 34 IPC. The appellant filed an appeal in the High Court which was also dismissed and, therefore, the appellant obtained special leave from this Court and hence this appeal before us.

2. It is not necessary for us to repeat the prosecution case all over again because a detailed narration of the same is to be found in the judgment of the High Court and the Sessions Judge. The occurrence appears to have arisen while the deceased along with others was returning to his village from the town on August 31, 1969 at about 10 p.m. Admittedly the moon was visible because the date of occurrence was not a dark night. The High Court has clearly found that there was sufficient light to enable the witness to identify the appellant who was a known person. There was also some enmity between the parties. Both the courts below have accepted the appellant first hit the deceased Madhusudan Padhan. The High Court after considering the evidence of these witnesses affirmed the sentence passed on the appellant.

3. In support of the appeal, Mrs. Bhandare argued two points before us. In the first place, it was contended that having regard to the fact that the Sessions Judge acquitted four of the accused persons who had also participated in the occurrence, it would not be safe to rely on these witnesses in order to convict the appellant. Although the argument is extremely attractive we are unable to accept it because the evidence of the eyewitnesses clearly shows that on the orders of Ram Chandra Routrary the appellant, Hazari Parida fired the first shot from his gun which hit the deceased Madhusudan Padhan who sustained bleeding injury thus falling on the ground, and died instantaneously. The version of the eyewitnesses is fully corroborated by the medical evidence as found by the courts below. As there is clear evidence to show that it was the appellant who had fired the gun shot on the deceased, even if the other four accused have been acquitted by the Sessions Judge that would not affect the case of the appellants.

4. It was then contended by Mrs. Bhandare that having regard to the enmity and also having regard to the fact that the person who gave orders for their assault has been acquitted, the appellant should also be acquitted, because the very genesis of the prosecution case falls to the ground. We, however, do not find any substance in these contentions, for, as already indicated there being very clear evidence of almost six witnesses to show that the appellant had given a fatal injury, the mere fact

that the order-giver had been given the benefit of doubt, would not be sufficient to vitiate the conviction of the appellant. The two contentions raised by counsel for the appellant fail. We find ourselves in complete agreement with the judgment of the High Court. The appeal is accordingly dismissed and the conviction and sentence passed on the appellant are confirmed.

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