

Padman Meher and Another

Vs

State of Orissa

Criminal Appeal No. 83 of 1975

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

21.10.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. Padman Meher and his son Bhagabat Meher who were tried along with Bidhu Meher on a charge under Section 302 read with Section 34, Indian Penal Code and acquitted by the learned Sessions judge of Bolangir Kalhandi but, who were convicted, on appeal by the State by the High Court of Orissa under Section 302 read with Section 34 and sentenced to imprisonment for life are the appellants in this appeal. The case of the prosecution briefly was that the appellants were in possession of and cultivating the lands of the deceased Narayan and his uncle PW 1. PW 1 was living in a different village from his childhood and it was for that reason his lands were being cultivated by his relatives, the accused. The deceased had sold some and leased out the rest of his lands to the accused. A few months before the occurrence PW 1 came to the village and got a Panchayat convened to recover possession of his lands. He also petitioned to the Gram Panchayat. In this petition he made allegations against the deceased also. However, according to the case of the prosecution PW 1 and the deceased were making common cause against the accused.

On September 6, 1969 at about 5 a. m. PW 1 and the deceased went to one of the lands in dispute for the purpose of cultivating it. After some time PW 1 returned home for a bath leaving the deceased in the field. After bathing, PW 1 again went to the field. He found the accused assaulting the deceased. Padman was attacking him with a tangia (axe) and Bidhu was attacking him with a lathi while Bhagabat was standing near with a spur in his hand. He raised a cry whereupon the accused persons left the place. He went near the deceased. The deceased told him that the two appellants and the son-in-law of the first appellant whom he did not name, had attacked him. PW 1 then gave some water to the deceased and went to the village. He informed PW 7, the Member of the Panchayat about the occurrence. PW 7, PW 8, the wife of the deceased, and others came to the scene of occurrence. The deceased repeated the statement which he had made to PW 1 to PWs 7 and 8 also. PW 1 then went to the police outpost at Lachhipur and gave a report. The Assistant Sub-Inspector made an entry in the Station at Dungripali. The Sub-Inspector went to the village, held inquest over the dead body (the deceased having died in the meanwhile), and arranged to send the body for post-mortem examination.

2. At the trial the prosecution examined PWs 1 and 4 as eyewitnesses to the occurrence and also relied upon the oral dying declarations made to PWs 1, 7 and 8. The learned Sessions Judge found that the prosecution had failed to establish its case beyond reasonable doubt and acquitted the accused. The State preferred an appeal against the order of acquittal. On a reappraisal of the evidence, the High Court confirmed the acquittal of Bidhu Meher but convicted the two appellants

as mentioned above.

3. The question for consideration is whether the Session Judge had taken such an unreasonable view of the evidence that the High Court was justified in interfering with the order of acquittal. One crucial circumstance upon which the learned Session Judge placed considerable reliance was that the nature of the injuries sustained by the deceased was such that it was impossible for him to have made the dying declarations attributed to him by PWs 1, 7 and 8. The medical evidence shows that the deceased suffered several injuries, of which injury 5 was as follows :

One cut penetrating injury on the spinal column at the level of the right inferior angle of the scapula extending to the right side of the back - size : 2 1/3 inches X 3/4 inch X chest wall. Vertebra was cut. Chest valve was also cut. The inter spinus vertebrae were cut. The long vertebral muscles i. e. sacro spinalis and other longitudinal muscles were cut at the spot. The weapon point had entered the vertebral canal injuring the spinal membrane and the part of the spinal cord. The broad edge of the weapon had penetrated the inter costal muscle at the back and had torn the pleura and had injured the lower part of spinal border of the right lungs. Size of injury 1 inch X 1/6 inch X 1/6 inch. The vertebral muscles were cut.

The doctor, PW 13, expressed the opinion that after receiving this injury the victim would not be able to talk and death might be instantaneous. He also said that the injury would have caused great shock and part of the body would have been paralysed. Cutting of the spinal cord would have affected the blood circulation and the central nervous system. Coma would follow due to shock. We are of the view that the nature of the injury was such that whether death was instantaneous or not, the shock would have been such that the deceased would not have been in a position to talk. The evidence of PWs 1, 7 and 8 that he repeated to each one of them the statement attributed to him cannot therefore, be accepted. We cannot say that the learned Sessions Judge took an unreasonable view in coming to the conclusion that the deceased would not have made the dying declaration ascribed to him. Another circumstance which weighed considerably with the learned Sessions Judge was the false implication of one Indra Meher as one of the assailants of the deceased in the first information report. Later, in the course of investigation Indra Meher was dropped and Bidhu Meher was substituted in his place. No explanation was offered by the prosecution for this change of front. Another circumstance upon which the learned Sessions Judge relied was that Pw 4 who claimed to be a farm servant of the accused would go to the extent of stating that the accused went to the field prepared to kill the deceased whereas the other evidence including that of the widow of the deceased would show that the deceased and his wife were living with the accused even on the day of the occurrence. PW 4 was not mentioned by name in the first information report though it was said that the farm servant of the accused was present at the time of the occurrence. It is doubtful whether PW 4 was really the farm servant of the accused. He admitted that he did not remember when he was engaged as Padman's farm servant. He also admitted that apart from taking food in Padman's house, he was not being paid any wages. He is a boy of thirteen years. The learned Sessions Judge, in the circumstances of the case, thought that his services had been requisitioned for the purposes of the case to figure as an eyewitness. On a perusal of the entire evidence and on a consideration of the facts and probabilities of the case, we think that the view taken by the learned Sessions Judge was also reasonably probable and therefore, the High Court was not justified in interfering with the order of acquittal. We, therefore, allow the appeal, set aside the judgment of the High Court convicting and sentencing the appellants and restore the judgment of the learned Sessions Judge acquitting the appellants.

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