

Laxman Sahu

Vs

State of Orissa

Criminal Appeal No. 266 of 1973

(A. P. Sen, B. C. Ray JJ)

30.09.1986

ORDER

1. We have, with the above assistance of Shri M. Qamaruddin, learned counsel for the appellant gone through the judgment of the High Court. The High Court on a careful consideration of the evidence adduced in the case has come to a definite conclusion that the appellant was guilty of culpable homicide not amounting to murder punishable under Section 304-I of Indian Penal Code, 1860.

2. The learned counsel for the appellant has contended that the finding of the High Court that the head injury No. 1 was the cause of the death of deceased cannot be sustained inasmuch as the death has been caused due to cumulative effect of six other injuries on the person of the deceased. It was also contended in this connection by the learned counsel that the evidence of Dr. Jagadananda Negi, PW 9 who performed the post-mortem on the body of the deceased to the effect that injury No. 1 was fatal should not be accepted. We are afraid that we cannot accept this contention put forth by the learned counsel. It is evident from the evidence of PW 9 Dr. Jagadananda Negi who performed the post-mortem on the body of the deceased that the injury No. 1 was fatal; there was effusion of clotted blood between the skull and the brain. In his opinion death was due to coma as a result of injury to the brain due to injury No. 1 and death was within half an hour of the receipt of the injury. Dr. Negi further testified that the contusion over the back was due to lathi blows and the injuries are ante-mortem. It is, therefore, clear that injury No. 1 by itself was sufficient to cause the death of the deceased. The decision of this Court in *Deo Narain v. State of U. P.* is distinguishable on facts. There in the course of a melee a blow with lathi was aimed at a vulnerable part of the body of the accused who in order to defend himself caused a blow with considerable force with a spear on the chest of the deceased though he himself received a superficial lathi blow on his head. It was held in that case by this Court that it could not be held that the right to private defence was considered to have been exceeded on the sole ground that he used his spear on the chest with more force than was necessary to prevent the deceased from committing unlawful aggression. In the instant case there is nothing to show that the appellant caused the lathi blow on the head of the deceased in order to defend himself against an apprehended assault on a vital part of his body. It is needless to point out in this connection that the right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his creation. The necessity must be present, real or apparent. In the circumstances it was rightly held by the High Court that there was no justification for such a vital blow inflicted on the head of Sridhar which caused his death. The High Court rightly held that the appellant exceeded his right of private defence and he was rightly convicted under Section 304-I of the Indian Penal Code.

3. We agree with the conclusions and reasonings arrived at by the High Court. The appeal is

accordingly dismissed. Bail bonds shall stand cancelled and he shall be taken into custody forthwith to serve out the remaining part of the sentence.

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