

Ghana Pradhan and Others

Vs

State of Orissa

Criminal Appeal No.716 of 1979

(S.R. Pandian, Smt, M.S. Fathima Beevi, K. Jayachandra Reddy JJ)

13.11.1990

ORDER

1. This appeal is preferred against the judgment made in Govt. Appeal No. 39 / 76 on the file of the High Court of Orissa. These two appellants along with the others, namely, Arakhita Pandhan and Pareswar Padhan who were arrayed as accused Nos. 3 and 4 took their trial under the charges namely, the appellants and the third accused u/s. 302 read with 34, I.P.C. and 4th accused u/s. 302 read with 114, I.P.C. The appellants are brothers. The third accused (since acquitted)\* namely, Arakhita is the father of the appellants and the 4th accused Pareswara Pradhan is the grandfather of the appellants. The charge levelled against these appellants and others is that on 3-4-74 at Kanbar, the appellants along with their father in furtherance of their common intention committed murder of one Gaja Bohi and the grandfather Pareswara Pradhan accused No.4 abated the commission of the said offence. The trial Court acquitted accused No. 4 and convicted the appellants u/ s. 304, I. P. C. and sentenced both of them to undergo rigorous imprisonment for 7 years, and also convicted accused No .3. namely the father of the appellants u/s. 323, I.P.C. and sentenced him to undergo RI for a period of six months. The State on being aggrieved by the judgment of the trial Court preferred an appeal as against all the accused. The High Court for the reasons assigned in its judgment confirmed the acquittal of the 4th accused namely Pareswara. Pradhan as well as the conviction of third accused Arakhita u/s. 323, I.P.C. and the sentence imposed therefor, but allowed the State appeal by converting the conviction of the appellants u/ s. 302 read with S. 34; I.P.C. and sentenced each of them to undergo life imprisonment. Hence the present appeal by the appellants. It is seen from the records that the prosecution has examined P. Ws. 1, 3, 5, 7 and 11 as eyewitnesses to the occurrence in question. According to the evidence, the second appellant - Rana Pradhan dealt lathi blows on the head of the deceased while the appellant No. 1 (Ghana Pradhan) stabbed on the right side of the chest of the deceased with a knife, which injury had passed through the lung. P.W. 12 has opined that both the injuries namely injury on the head as well as the injury on the chest were individually sufficient to cause the death of the deceased. After hearing the learned counsel appearing for the appellants and the respondent and considering the entire evidence, we are of the view that the second appellant namely, Rana Pradhan is liable only for an offence of culpable homicide not amounting to murder, punishable u/ s. 304, Part II, I.P.C. as the evidence is lacking for concluding that he shared the common intention of Ghana Pradhan in causing the death of the deceased. Further the circumstances also indicate that he would not have intended to cause the death of the deceased so as to attract Cl. 3 of S. 300 but would have got the knowledge that such injury was likely to cause the death. So far as Ghana Pradhan is concerned (the first appellant), there is overwhelming direct evidence supported by the medical evidence. incriminating the first appellant with the offence of murder, thereby making him liable to be punished u/ s. 302, I.P.C. simpliciter.

We, accordingly, convict him u/ s. 302 instead of S. 302 read with S. 34, I.P.C. and maintain the sentence of imprisonment for life. So far as Rana Pradhan is concerned, we set aside the conviction u/s. 302 read with S. 34, I.P.C. and the sentence of life imprisonment instead convict him u/s. 304, Part II, I.P.C. and sentence him to undergo imprisonment for 7 years.

2. Subject to the above alteration in the conviction of Rana Pradhan, the appeal is dismissed.

Order accordingly.

</html