

Dhanar Vs. State

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Court : Orissa

Decided On : Jan-07-1983

Reported in : 1984CriLJ402

Judge : J.K. Mohanty and ;R.C Patnaik, JJ.

Appellant : Dhanar

Respondent : State

Judgement :

ORDER

J.K. Mohanty, J.

1. Appellant Dhanurjaya Gouda along with seven others, who are all related to each other were tried in the court of Sessions Judge, Koraput, Jeypore. The appellant was charged under Section 302, I. P. C, for having committed murder of Baidehi Samant and/ under Section 307, I.P.C, for having attempted to cause death of Balaram Samant (PW 1), the husband of deceased Baidehi Samant. The other accused persons were charged under Sections 302/149 and 307/149, I. P. C. The Sessions Judge convicted the appellant under Section 302, I.P.C, and sentenced him to undergo imprisonment for life. The appellant was also convicted under 307, I. P. C. and sentenced to undergo R. I. for five years. Both the sentences were ordered to run concurrently. The other accused persons were acquitted.

2. The prosecution case is as follows:-

There was dispute between PW 1 and the accused persons over a plot of land bearing plot No. 930 appertaining to khata No. 43 of village Mahendri and locally known as 'Jamkonadi'. It is alleged that on 24-1-1978 at about 6.00 a.m. PW 1 had been to the village tank to answer the call of nature. He found accused Motisingh and Ganga Goud (since acquitted) ploughing the disputed land. The other accused persons were standing on the land. Sunadhar and Ganga (since acquitted) were armed with sticks and the appellant was armed with a gun. PW 1 went to the disputed land and asked the accused persons as to why they were ploughing the land. He was assaulted by Ganga Gouda and Sunadhar. The other accused persons except the appellant also assaulted him by hand. At that time the deceased who was nearby, came and intervened. She was taking away PW 1 from the spot by catching his hand. At this point of time appellant Dhanurjaya Goud fired from the gun which hit the back of PW 1 and chest and other parts of the body of the deceased. PWs 8 and 9, who were present nearby, immediately went to the police station where F.I.R. was lodged by PW 9. The police registered a case and took up investigation. PW 17, the Sub-Inspector of

Police, proceeded to the spot and found the injured persons lying on the spot with bleeding injuries. They were sent to Dabugam Primary Health Centre where PW 1 examined them and advised to take them to Nawarangapur Hospital. They were again removed to Koraput Headquarters Hospital where the Surgical Specialist (PW 10) examined them. He was also not in a position to adequately treat the injured persons. So they were sent to Medical College Hospital, Berhampur, and were treated by PW 20. Though PW 1 recovered, the deceased succumbed to the injuries. In the meantime the accused appellant appeared before Nawarangpur police station along with the gun (M.O.I.) and was arrested. M.O.I, was also seized from him On completion of investigation police submitted charge-sheet against the accused persons.

3. During trial twenty one witnesses were examined on behalf of the prosecution. PWs 1, 8 and 9 are the eye-witnesses to the occurrence. PWs 10, 11, 20 and 21 are the Doctors. PW 21 has conducted post-mortem examination over the dead body. PW 6 is the Magistrate who recorded the dying declaration of the deceased. On behalf of the defence three witnesses were examined.

4. PW 20, during the surgical operation, found two pellets from the body of the deceased - one in the abdominal cavity and the other in the peritonium. He also found one pellet from the chest of PW 1, During post-mortem by PW 21, another pellet was recovered from the body of the deceased. The learned Sessions Judge after considering the evidence on record convicted and sentenced the appellant as stated earlier and acquitted the remaining accused persons.

5. The defence plea is that the land belongs to accused Jagannath Gouda and Sunadhar Gouda (since acquitted) and they have been possessing the land since long. On the date of occurrence accused Motisingh and Ganga Gouda went to the disputed land to plough it. PW 1, his wife (deceased) and two others came to the disputed land being armed with lathis, Motisingh and Ganga left the place out of fear. Thereafter Dhanurjaya came there and challenged PW 1 as to why he threatened the boys. At this PW 1 gave a push to Dhanurjaya. At that time PW 9 came to the disputed land being armed with a gun and fired aiming at the appellant. But the pellets from the gun hit PW 1 and the deceased. The further plea of the defence is that even assuming that Dhanurjaya has fired from the gun, he has done so in exercise of the right of private defence of property.

6. That the deceased died of gun shot injuries is not disputed. PW 20 has stated that the injuries can be caused by a firearm like the gun (M.O.I.). They were all grievous in nature. The firing might be from a distance of about 15 to 16 yards.

7. PWs 1, 8 and 9 are the eye-witnesses to the occurrence. PW 1 has stated as to how the incident occurred and how he was assaulted. He has stated that the appellant was armed with the gun (M.O.I.). When he was being assaulted, his wife (deceased) came and intervened, She was taking him away by catching his hand. At that time the appellant fired from the gun at his (PW 1's) back. The pellets also hit his wife. Thereafter both of them fell down. His evidence has been amply corroborated by PWs 8 and 9. Thus the prosecution case has been proved by PWs 1, 8 and 9.

8. The defence has taken the plea of private defence of property. It has been stated that the accused persons were in possession of the property and PW 1 and his men tried to disturb their possession and they had every right to protect their property.

Even assuming that the appellant and the other accused persons were in possession of the property, it is there in evidence that PW 1 was not armed with any weapon at the time of occurrence. Moreover, he was first assaulted and seeing this his wife (deceased) came to his rescue and was taking him away. At this point of time the appellant fired from the gun. So in the facts and circumstances of this case, the plea of right of private defence cannot be accepted.

9. Mr. Naik, learned Counsel appearing for the appellant, submitted that PW 8 is a relation of PW 1 and he should not be believed. He also submitted that there are lot of discrepancies in the evidence of PWs 1, 8 and 9. But on a careful consideration of the evidence of PWs 1, 8 and 9, we see no reason to disbelieve them. Of course there are some minor discrepancies here and there in their evidence. But that does not, in any way, affect the prosecution case. Mr. Naik then submitted that though the dying declaration has been recorded, the interpreter has not been examined and so it should not be accepted. Even assuming that the dying declaration cannot be acted upon, the evidence of PWs. 1, 8 and 9 is sufficient to establish the guilt of the appellant. No other infirmity has been pointed out to us so as to disbelieve the prosecution case.

10. After hearing arguments of both sides, considering the evidence on record and in the facts and circumstances of the case we are of the view that this appeal has no merit and is accordingly dismissed. The conviction and sentence of the appellant are confirmed.

R.C Patnaik, J.

11. I agree.