

BATAKRUSHNA PARIDA

v.

STATE OF ORISSA

(Criminal Appeal Nos. 6-7 of 2003)

APRIL 28, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Penal Code, 1860 – s. 304 (Part II) – Occurrence as a result of rivalry between villages – Resulting in causing death and injuries – Charge u/s. 302, 307, 148 and 302/149 IPC – Trial Court convicting one accused u/s. 304 (Part II) and acquitting other accused of all the charges – High Court upholding the acquittal order – Order of conviction was altered to one u/s. 302 – On appeal by the accused, held: High Court despite holding that the accused fired the shot on the spur of the moment and there was free fight amongst the villagers, ought not have convicted him u/s. 302 – He is liable to be convicted u/s. 304 (Part-II).

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 6-7 of 2003.

From the Judgment & Order dated 11.4.2002 of the High Court of Orissa Cuttack in Criminal Appeal No. 251 of 1984 and Govt. Appeal No. 6 of 1985.

Satya Mitra Garg, Sangram Patnaik, Sandha Pandey, Madhua Bhushan and Sanjeev Kumar Jha for the Appellants.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the Judgment of a Division Bench of the Orissa High Court allowing the appeals filed by the State. Two appeals were filed against the common order/Judgment of Learned Sessions

A Judge, Dhenkanal in Sessions Trial No.25 D of 1983. The Trial
Court directed acquittal of all the accused persons who were
charged for commission of offences punishable under Sections
302, 307, 148, 302/149 of the Indian Penal Code, 1860 (in
short the IPC). However the present appellant was convicted
B in terms of Section 304 Part II IPC and was sentenced to
undergo rigorous imprisonment for three years. The State
questioned the acquittal of the respondents as well as the
conviction of the present appellant in terms of Section 304 Part
II, IPC in place of the Section 302 IPC. The present appellant
C filed an appeal questioning the order of conviction. Both the
appeals were placed together and disposed of by the common
judgment.

2. The skeletal picture of the prosecution case as
unravalled during trial is as follows :

D 3. Village Saruali is consisted of three hamlets, namely,
Gopal Sahi, Dehury Sahi, and Parida Sahi. There was no love-
lost between the villagers of Gopal Sahi and Dehury Sahi on
one hand and Praidah Sahi on the other. The long standing
E enmity existed on account of a dispute over some forest land
as such land was allegedly under the possession of the people
of Dehury Sahi. Owing to such animosity the people of Dehury
Sahi stopped rendering service to the people of Parida Sahi
F for the last 6 to 7 years preceding the occurrence. Since there
was serious law and order problem, therefore there was a
proceeding under Section 107, Cr.P.C. and several suits were
pending between the people of Dehury Sahi and Parida Sahi.
The respondents in Government Appeal belong to Parida Sahi
G whereas the victim as well as the prosecution witnesses belong
to Dehury Sahi and Gopal Sahi. It was alleged that in the night
of Kumar Purnima falling on 1.11.1982 the Dehury Sahi people
had carried the image of Goddess Laxmi to the house of Bali
Parida of Parida Sahi with whom Dehury Sahi people had
developed some friendship. Therefore, the appellant-
H respondents who belong to Parida Sahi raided the house of

Bali Parida.

4. On the following day i.e. on 2.11.1982 between 9.00 and 9.30 A.M. the respondents belonging to Parida Sahi being armed with lathis and four muzzle loading guns proceeded to Dehury sahi and on their arrival near the house of Banka Dehury the appellant - respondent no.1 Batakrushna Parida fired a gun shot at Sahadev Dehury who was then engaged in washing his face in the backyard of Banka Dehury. After receiving such gun shot Sahadev fell down with bleeding injury and instantaneously died. Respondent Dibakar Parida fired another shot from his gun towards Chhota Dehury as a result of which the latter received injury in his knees. Respondent Sankar Parida fired a shot from his gun towards Gopal Sahi and the pellet from his gun, of course, hit on the forehead of Athani Das as a result of which Athani Das fell down under a Mahua tree. After the respondents fired three successive shots from their guns the villagers of Dehury Sahi chased them as a reason whereof the respondents ran hither and thither towards their hamlet 'Parida Sahi'. While they were running, on being chased by the prosecution witnesses, appellant Batakrushna Parida received a lathi blow by one Sikar Dehury (P.W.11) as a result of which the gun held by him fell down from his hand and Braja Dehury (P.W.9) picked up the said gun. Respondent Sankar Parida chased Sikar Dehury (P.W.11) to give him a push with the gun, but he managed to snatch away the gun from the hand of respondent Sankar Parida. Kusana Dehury (P.W.7) and one Kashi Behera chased respondent Lambodar Parida, but respondent Lambodar Parida fired a shot at them as a result which Kusana Dehury (P.W.7) sustained bleeding injury near his neck.

5. Deceased Dambaru Behera chased Ganga Parida (since dead), but the latter over-powered Dambaru and flung him on the ground. Thereafter Sidheswar (since dead) threw a big stone on the lower part of his abdomen as a result of which he sustained severe injury on his abdomen. He was taken to

A Kamakhyanagar hospital and immediately shifted therefrom to Dhenkanal Hospital where he breathed his last during treatment. There was exchange of pelting of stones from both sides throughout the occurrence.

B 6. On receiving information the O.I.C. of Kamakhyanagar police station reached the spot at about 10.30 A.M. and after receiving information from P.W.1 which he treated as F.I.R., (Ext.1) immediately swung into action. He examined the informant and noticed the dead body of Sahadev Dehury lying in the bari of Bank Dehury where he held inquest over the deadbody in presence of the witnesses and prepared the inquest report. He despatched the deadbody of deceased Sahadev Dehury to Kamakhyanagar Hospital for post-mortem examination and other injured persons, namely, Chhota Dehury (P.W.6), Kusana Dehury (P.W.7), Hanua Dehury (P.W.12), D Athani Das (P.W.5) and Dambaru Behera for treatment. He immediately recorded the statements of some witnesses of village Saruali. He also seized the blood stained earth and sample earth from the spot where the deadbody of Sahadev Dehury was lying vide Ext.10.

E 7. On receiving the information, investigation was undertaken and common charge-sheet was filed. All the accused persons pleaded innocence and false implication.

F 8. In order to establish the accusations, 21 witnesses were examined in the Trial Court. Similarly 12 witnesses were examined by the accused persons. On consideration of the evidence on record, the Trial Court held that except the present appellants the others were not liable to be convicted. It was essentially held that Section 149 IPC has no application to the G facts of the present case.

H 9. However the accused-appellant Batakrushna Parida was held to be guilty in terms of Section 304 Part II IPC as he fired from his gun to scare away the prosecution witnesses and in that process a pellet caused a gun shot wound to the

deceased which proved fatal. Three years rigorous imprisonment was imposed as noted above. Two appeals were filed. Vide the impugned judgment, the High Court dismissed the appeal so far as the co-accused persons were concerned holding that apart from Batakrushna Parida, others had no common object of killing the deceased. It was noted that the fact situation made the position clear that Batakrushna Parida on the spur of the moment had fired a shot from his gun as a result of which Sahadev Dehury died immediately. At this juncture, the High Court held that the Trial Court rightly observed that Section 149 had no application but it further held that the offence committed by the present appellant was relatable to Section 302 IPC and not 304 Part II IPC. Accordingly the State's appeals were allowed so far as the present appellant is concerned and he was convicted in terms of Section 302 IPC and sentenced to undergo rigorous imprisonment for life.

10. In support of the appeal, learned Counsel for the appellant submitted that having found that the appellant fired a shot from his gun on the spur of the moment, there was no scope for accepting the State's appeals to hold the appellant guilty of offence punishable under Section 302 IPC. The Trial Court noticed that there was a free fight and a right to private defence was purportedly being exercised by the accused but the same was exceeded.

11. The Trial Court referred to the factual situation and observed that there was a free fight. The accused persons purportedly claimed exercise of the right of private defence but there was no reason for the accused appellant to fire and kill the deceased. The High Court came to an abrupt conclusion (that it is only conclusion for making the conviction under Section 302 IPC) as follows:-

"It is difficult to prove the intention of Batakrushna Parida. It has to be gathered from the surrounding circumstances. We are at loss to understand as to why he shot at Sahadev Dehury without any provocation. Accordingly, we hold

A Batakrushna Parida responsible for causing the death of Sahadev Dehury punishable under Section 302, IPC."

B 12. It is to be noted that the High Court itself confirming the view of the Trial Court, observed that the firing was done on the spur of the moment and there was a free fight among the other villagers. The High Court ought not to have held that the offence committed by the accused was relatable to Section 302 IPC. In the circumstances, we set aside the the impugned judgment of the High Court and restore the order of the Trial Court. The accused is directed to surrender to custody forthwith to serve out the remainder of sentence, if any. The appeals are dismissed accordingly.

C

K.K.T.

Appeals dismissed.