

\224x

Cr1.A.No. 598-600 OF 1999  
.UP 10 2; Fixed-pitch, smtst; -n -ml4 -PA4 -dFX-NORMAL -Fx -e -j; dumbp  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
.UP 10 2; Fixed-pitch, smtst; -n -ml4 -PA4 -dFX-NORMAL -Fx -e -j; dumbp  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
ITEM No.102 Court No. 4 SECTION IIA  
Part heard

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No.598-600 of 1999@@  
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

Chandrasekhar Mohapatra Appellant(s)

VERSUS

State of Orissa Respondent(s)  
(With Office Report )

Date : 05/12/2001 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS  
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant (s) Mr. SK Dholakia, Sr.Adv.  
Mr. Sibbo Sankar Mishra, Adv.  
Ms. Sujatha Sharan, Adv.

For Respondent (s) Mrs. Kriti Renu Mishra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP1

Mr. SK Dholakia, learned senior counsel started arguments at 12.05 P.M. and concluded at 3.30 P.M. Thereafter Mrs. Kirti Renu Mishra, learned counsel for the State started hier arguments at 3.30 P.M. and was on her legs, when the Court rose for the day leaving the matter part-heard.

.SP1

Ganga Thakur (HK Bhatia)  
PS to Registrar Court Master

ITEM NO. 101 (Part Heard) COURT NO. 4

Date : 06.12.2001@@

EEEEEEEEEEEEEEEEEEEE

CORAM AND APPEARANCE SAME AS ABOVE

UPON hearing the counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP1

Ms. Mishra, learned counsel for the State reumسد her arguments at 11.55 A.M. and concluded at 12.25 P.M.

Appeal is disposed of in terms of the signed order.

Hemalatha

(HK Bhatia)  
Court Master

(signed order is placed on file)

.PA  
.PL55

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.598-600 of 1999@@  
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

Chandrasekhar Mohapatra & Ors. ...Appellant (s)

vs.

State of Orissa ...Respondent(s)

O R D E R@@  
EEEEEEEEEE

.SP2

There were four accused in the trial court facing charge relating to the murder of one Umesh Chandra Mohapatra. The first accused was Hathim Mohammad. Fourth accused is Chandra Shekhar Mohapatra while the second and the third accused were his sons. The trial court convicted Al-Hathim Mohammad for the offence under Section 302 IPC and sentenced him to imprisonment for life. A4-Chandra Shekhar was convicted for the said offence read with Section 114 of the IPC. He too was sentenced to imprisonment for life. His two sons (A2-Godabarish and A3-Janardhan) were also convicted under Section 326 and 324 of the Indian Penal Code. A2 was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for three years while A3 was convicted under Section 324 and was sentenced to undergo rigorous imprisonment for three months. When the convicted persons filed appeal before the High Court

:2:

the State also filed appeal against A2-Godabarish and A3-Janardhan as they were not convicted under Section 302 read with Section 34 of the IPC. A division bench of the High Court accepted the appeal of the State and convicted A2-Godabarish and A3-Janardhan under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life. The appeals filed by the other convicted persons were dismissed by confirming the conviction and sentence imposed on them. So far as A2 and A3 are concerned they became entitled to file this appeal as of right under Section 379 of the code of Criminal Procedure.

Umesh Chandra Mohapatra and A4-Chandra Shekhar are maritally related to each other. There were some dispute between them relating to landed property. This made them inimical to each other. According to the prosecution version, deceased and his three sons (PW2-Amarendra Kumar

Mohapatra, PW11-Sangram Kumar and PW15-Debasis Kumar) were returning from the house of the deceased's mother-in-law. They were confronted on the road by A4-Chandra Shekhar and the remaining accused. The time was around 5.00 P.M. then. On sighting the deceased and his sons, A4 made an exhortation for finishing them off. Immediately A3-Janardhan struck Sangram PW-11 with an axe. This was followed by A1-Hathim Mohammed launching a

:3:

massive attack with a Gupti on the deceased. It is said that A2-Godabarish and A3-Janardhan also inflicted blows on the deceased with Katari and Tangi respectively, besides attacking two of his sons PW2 snatched the Katari from A2-Godabarish. After inflicting fatal injuries on the deceased and injuries on his children the assailants escaped from the scene. The injured persons were removed to the hospital and on the way Umesh Chandra Mohapatra succumbed to the injuries.

A1-Hathim Mohammad has not filed any special leave after the High Court confirmed the conviction and sentence passed on him. Mr. SK Dholakia, learned senior counsel who argued for the remaining persons contended that the entire prosecution story should be viewed with great suspicion on account of certain glaring features peculiar to this case. One is the fact that FIR mentioned one more assailant whose identity could not be disclosed therein, but it was revealed during investigation as Johid Khan. PW17-investigating officer said that the said Johid Khan had not participated in the crime at all. With the help of this aspect, learned senior counsel contended that attempts to rope in innocent persons could be discerned from the said feature and that itself is sufficient to cast suspicion on the whole version of the prosecution.

:4:

The next aspect highlighted by the learned senior counsel is that A1-Hathim Mohammad had in fact surrendered before a Magistrate on 17.11.1988 but the Magistrate did not accept his surrender on the ground that his name was not seen mentioned in the FIR. Learned senior counsel contended that this is enough to tarnish the FIR which is seen in the present form.

At the first blush we too felt that those two features could have a devastating impact on the prosecution story. But when we went deeper into the evidence we found that they are not sufficient to vitiate the prosecution case.

Regarding Johid Khan, PW17 said that he was not involved in the case which means the investigation was fair by not involving innocent persons. The name of the person was not mentioned in the FIR by PW2 and that shows that there was no attempt on the part of PW2 also to involve innocent persons. Regarding the Magistrate not accepting the surrender of A1, we have found that Magistrate was himself examined as court witness. He then said that it was on account of an oversight committed by him that the name of A1 was not found out from the FIR. We had seen the FIR and it had really mentioned the name of first accused. If at the first instance the Magistrate had thought it differently we may only say that to err is human.

:5:

Learned senior counsel then tried to point out that no seal has been stamped on the FIR which is the

usual practice. True, the seal of court is not seen affixed on the FIR. It could have been due to the lapse of the clerk concerned, for, we found the signature of the Magistrate affixed on the FIR. That apart, the FIR had reached the Court soon after it was made and no attempt was made by the defence to show that it had not reached the court promptly.

Nonetheless, we have considered the roles attributed to A2-Godabarish, A3-Janardhan and A4-Chandra Shekhar. The only conduct attributed to A4 - Chandra Shekhar is that he made an exhortation. It is too difficult for us to believe that he with the accused would have chosen not to do anything and wanted his children to do the violent attack after giving a clarion call that all others should be finished. Except the words attributed to him nothing else has been said against him by any one of the prosecution witnesses. For that matter only the three sons of the deceased who were avowedly inimical to the accused have said that A4 gave such an oral vibration that too only once. As to what exactly were the words employed by him, we found discrepancy as between three witnesses. After bestowing our anxious judicial consideration on the role attributed

:6:

to A4-Chandra Shekhar we are inclined to think that evidence is not enough for the Court to conclude that he had acted with the common intention to murder the deceased.

So far as A2-Godabarish is concerned the trial court has chosen to convict him for the offence under Section 326 of the IPC. The High Court dissented from that and convicted him of the major offence of murder with the help of Section 34 of the IPC on the premise that he had also launched attack on the deceased with the lethal weapon like a Katari. True, PW2 and his two brothers said so when they were examined as witnesses in court, but in the first information statement, PW2 had not said that A2-Godabarish had done anything against the deceased.

Ms. Kirti Renu Mishra, learned counsel for the State made an attempt to bring A2-Godabarish also within the purview of Section 34 to tag with Section 302 on the premise that he was armed with a lethal weapon and he had inflicted injuries on PW2. It is difficult on the facts of this case, to believe that A2 intended the murder of the deceased. The maximum we can deduce from the circumstances is that A2 would have intended to attack PW2 which he did. Therefore the finding made by the trial court as against him should have been sustained by the High Court.

:7:

Regarding A3-Janardhan a plea was made by Shri Dholakia, learned senior counsel particularly highlighting that he was a minor at the time of the occurrence. We had applied our mind seriously on this aspect. All the eye witnesses have said uniformly that he had attacked the deceased. In the FIR also it is said that he turned to the deceased for attacking. The injuries noted in the post-mortem contained corresponding wounds which could be caused with the help of a weapon like Tangi (a sharp cutting weapon). If Janardhan had attacked the deceased while that victim was under the attack launched by A1-Hathim Mohammad (which is described by the prosecution as mercenary killer) It is difficult for us to delink A3-Janardhan from the purview of Section 34 of the IPC so far as the murder of the deceased is

concerned.

In the result we allow this appeal in so far as A4-Chandra Shekhar is concerned. We set aside the conviction and sentence passed on him. He is acquitted. He is on bail and so his bail bond would stand cancelled.

We set aside the conviction and sentence passed on A2-Godabarish for the offence under Section 302 read with Section 34, but we restore the conviction and sentence passed on him by the trial court under Section 326 of the IPC. It is for the jail authorities to find

:8:

out whether Godabarish has to undergo any remaining period of imprisonment for completing the sentence imposed on him by the trial court.

We dismiss the appeal filed by A3-Janardhan and confirm the conviction and sentence passed on him under Section 302 read with Section 34 of the IPC.

Appeals are disposed of accordingly.

.SP1

@@

AAAAAAAAAAAAAAAAAAAA

.....J@@

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

(K.T. Thomas)@@

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

@@

AAAAAAAAAAAAAAAAAAAA

@@

AAAAAAAAAAAAAAAAAAAA

@@

AAAAAAAAAAAAAAAAAAAA

New Delhi

.....J@@

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

December 06, 2001

(S.N. Phukan)@@

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

@@

AAAAAAAAAAAAAAAAAAAA