

Supreme Court of India

Bimbadhar Parida And Ors. vs State Of Orissa on 10 August, 1993

Equivalent citations: 1993 (3) Crimes 284 SC, JT 1993 (4) SC 551, 1993 (3) SCALE 361, 1993 Supp (4) SCC 34

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Bench: K J Reddy, G Ray

JUDGMENT K. Jayachandra Reddy, J.

1. These two appeals are directed against the judgment of the High Court of Orissa. Bimbadhar Parida and eight others are the appellants in Criminal Appeal No. 35/82 and Bidhyadhar Misra is the appellant in Criminal Appeal No. 84/82. These 10 accused alongwith 40 others were tried for offences punishable under Sections 326, 323, 325, 302, 307, read with 149 I.P.C. They were also charged under Section 427, 427/149, 392 and 379/149 I.P.C. The trial court acquitted some of them and convicted 14 accused under Sections 325, 323, 324, and 148 I.P.C. Accused Bimbadhar Parida was sentenced to undergo R.I. for three years under Section 325 I.P.C. and to pay a fine of Rs. 500/- in default of payment of which to further undergo R.I. for six months, the remaining accused were convicted for other lesser offences and their sentences range from six months to one year R.I. All the convicted accused preferred appeals to the High Court. The State also preferred an appeal contending that all of them have been convicted under Sections 302/149 I.P.C. The High Court acquitted four persons and altered the conviction of Bimbadhar Parida to one under Section 304 Part II I.P.C and sentenced him to four years' R.I. The other convictions and sentences in respect of remaining accused were confirmed. Hence these two appeals.

2. The prosecution case is as follows:

3. All the accused and the material witnesses are the residents of village Badapandusara, Puri District, Orissa State. There was longstanding enmity between "Malis" on the one hand and the villagers on the other hand in respect of a dispute over the administration of the affairs of the village deity. The endowment in respect of the deity possessed about 65 acres of land in six villages. There were 22 "Mali" families and two Brahmin families who performed Puja and in lieu thereof they used to enjoy the usufruct of the land. In 1952 a Board of Trustees was constituted. The "Malis" instituted proceedings for declaration that they were the hereditary trustees but the same was rejected. The appellant Bimbadhar Parida was the Managing Trustee of the Board and was also a Receiver for the management of the temple and the properties. He was asked to render accounts to the court and under the order he had to harvest the crop in presence of the Inspector of Endowments. It was alleged that there had been some misunderstanding between Bimbadhar Parida and the "Malis" and they were prohibited by him from entering the temple. It is also alleged that Bimbadhar Parida committed many irregularities and misdeeds. There was a rioting on 19.11.1972 and both parties received injuries and police cases were instituted. A police party was also posted in the village. On 21.11. 1972 in the early hours, a mob of the villagers consisting about 300-400 persons came to Mali Sahi from all the sides carrying deadly weapons shouting that they would assault the "Malis" and set fire to their houses. Bombs were exploded. Doors of houses were broken. The houses were damaged and ransacked and the "Malis" were assaulted and their properties were taken away. The major incident during this occurrence was in respect of throwing of a bomb by Bimbadhar Parida on one

Kandhi Dei which resulted in her death. The case was investigated and the charge-sheet was laid. Bimbadhar Parida was charged under Section 302 I.P.C. and others were charged for various offences.

4. According to the prosecution, on that day on seeing the mob approaching, P.W. 17, husband of the deceased Kandhi Dei, went inside the house and bolted the door. Some of the assailants uprooted the door and entered the house. When the deceased tried to stop them by standing at the front door and when she refused to give way to Bimbadhar Parida, he threw a bomb towards her which exploded on her stomach of which she died. The Doctor, P.W. 28, conducted the post-mortem examination over the dead body. He also examined other injured witnesses. The Doctor opined that the death of the deceased was due to shock and haemorrhage as a result of the dangerous injuries to the internal vital organs caused by explosive substances. Relying on the evidence of P.Ws 17,21,22,27 and 32 which is supported by the medical evidence, the trial court held that it was Bimbadhar Parida who threw a bomb which caused the death of the deceased. The trial court, however, gave benefit of doubt to all the acquitted accused after scrutiny of the evidence of the witnesses. It, however, held that Accused Bimbadhar Parida was liable under Section 326 I.P.C. and the remaining accused under other Sections and sentenced them as mentioned above. The High Court, however, took the view that Accused Bimbadhar Parida who threw the bomb, should be convicted under Section 304 Part II I.P.C. and accordingly convicted him and sentenced him to undergo four years' R.I. holding that he had the knowledge that by exploding a bomb, he was likely to cause the death of the deceased. The High Court acquitted four persons and confirmed the convictions of the remaining accused and made some minor alterations regarding the fine and imprisonment namely the sentence of two years was reduced to one year R.I. All the sentences were directed to run concurrently.

5. Learned counsel appearing for the appellants submitted that the witnesses are all interested and P.W. 32 was only a Police Officer and it would have been impossible for the said group of accused led by Bimbadhar Parida to enter the small room and hurl a bomb and that the witnesses have given an exaggerated version. Learned counsel also pointed out that in respect of the same incident, the High Court disbelieved the prosecution story about the mob going to the door of P.W. 17's house and uprooting the door with crowbars and about Bimbadhar Parida asking the deceased to give way and the alleged instigation by A-8 Uchaba Barik. He also pointed out that the Doctor's testimony contradicts the prosecution story that the deceased fell on her back as no injuries were found on the back but there were injuries on the fore-head and palms. Learned counsel also pointed out that the deceased might have received the injuries by falling on a hand made bomb and the prosecution case that Bimbadhar Parida hurled the bomb at her, cannot be accepted.

6. It must be noted that both the courts have accepted the evidence of P.Ws 17,21, 22, 27 and 32. However, we have also gone through their depositions and we do not find anything significant which affects their veracity. The occurrence at the house of P.W. 17 is not open to any doubt. That the deceased Kandhi Dei received injuries due to explosion of a bomb is also not in doubt. In such a situation if the witnesses are not able to clearly say whether first she fell on the back or on her front is immaterial. The answer of the Doctor to a suggestion that the deceased could have fallen by herself on a bomb violently thereby detonating the bomb, does not in any manner affect the

prosecution version that the appellant Bimbadhar Parida threw the bomb at her.

7. Learned counsel, however, submitted that the case of Bimbadhar Parida is no way different from that of the other appellants and his conviction under Section 304 Part II I.P.C. is not warranted. We see no force in this submission. There is positive evidence that he hurled the bomb which resulted in the death of the unfortunate lady. The act committed by him is a very serious one and does not warrant any interference even in respect of the sentence which is not at all excessive. Coming to the other appellants, their presence and participation have been spoken to by the injured witnesses and their evidence has been discussed in great detail by both the courts below and having gone through their evidence, we see no ground to come to a different conclusion. In the result both the appeals are dismissed.