

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.465/2012

BASYA NAYAK & ORS.

APPELLANT(S)

VERSUS

STATE OF KARNATAKA

RESPONDENT(S)

O R D E R

1. The appellants have been convicted and charged for the offences punishable under Sections 302, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC').
2. The case of the prosecution in a nutshell is that on 27.02.2005, Appellant No.1 made an objection to one Savya Nayak, being PW2, for washing the meat of a pig hunted from a nearby forest, in a water tank situated opposite to the house of the deceased's father. There was a quarrel between the deceased and Appellant No.1. It happened in the presence of some of the prosecution witnesses. Thereafter, Appellant No.1 brought the other three accused leading to a second quarrel. Appellant No.1 assaulted the deceased with a knife while the other three caught hold of his hands and legs. It was done in the presence of the eye witnesses, namely, PWs 1, 2, 3, 4, 6 and 12.
3. Before the Trial Court, 18 witnesses had been examined. Placing reliance upon the testimonies of the eye witnesses,

along with the post-mortem report, and the recoveries made, the Trial Court rendered a conviction for the offences punishable under Sections 504, 506 and 302 of the IPC read with Section 34 of the IPC. Much reliance had also been placed on the evidence of the doctor, PW-13 and the serological report, which finds a similarity of the blood found on the clothes of the deceased with that of the clothes recovered from Appellant No.2 and the knife.

4. Learned counsel appearing for the appellants submitted that, even if one goes by the version of the prosecution, the case at hand would at best come under the offence punishable under Section 304 Part I of the IPC. Though the prosecution has mentioned a story about a previous enmity, that was not the reason for the occurrence. If it were not for the quarrel, the occurrence would not have taken place. Even assuming that Appellant No.1 came back after 15 minutes along with the other three accused, there was indeed a quarrel. If we take these factors into consideration, the case at hand would come within the purview of Section 299 of the IPC, and therefore, warrants a conviction and sentence under Section 304 Part I of the IPC.
5. Learned counsel appearing for the State submitted that, it is Appellant No.1 who committed the offence. This was confirmed not only by the evidence of the eye witnesses but also by the serological report. The post-mortem report also indicates four injuries on the body of the deceased by a sharp weapon. The

recovery of the weapon also provides credence to the said evidence placed before the Court. The findings leading to conviction being concurrent, there is no need to interfere with the same.

6. When a homicide happens, the Investigating Officer should explore the possibility of an offence punishable under Section 304 of the IPC before arriving at a conclusion that it is punishable under Section 302 of the IPC. Admittedly, in the case at hand, there were two quarrels. Even as per the prosecution version, the first quarrel took place when the other three accused were not present. PW2 brought the meat of a pig which was objected to by Appellant No.1. There was a quarrel between Appellant No.1 and the deceased. It is only thereafter, that Appellant No.1 brought the other three persons. The intention to murder was not present at that point of time, as Appellant No.1 came to question PW2. There was a further quarrel between the parties. To put it differently, had the quarrel subsided, the occurrence would not have happened. It is only thereafter that Appellant No.1 attacked the deceased with a knife. The other three accused aided him. Even the post-mortem report indicates that the death was caused by the weapon recovered. Therefore, the other accused did not attack the deceased per se, although the rigour of Section 34 of the IPC has been attracted. We are conscious of the fact that Section 34 can be attracted even

for an occurrence which happens immediately. However, the facts of the case would lead to the conclusion that, at best it would attract the offence punishable under Section 304 Part I of the IPC.

7. In such view of the matter, we are inclined to modify the conviction from the one punishable under Section 302 of the IPC to Section 304 Part I of the IPC.
8. The appellants had been incarcerated for more than 8 to 9 years. The alleged occurrence was in the year 2005. More than nearly 20 years have elapsed since then. Thus, taking note of the mitigating circumstances, particularly, the fact that the appellants were rustic villagers and therefore, illiterate persons, we are inclined to modify the sentence to the one undergone already. Bail bonds stands discharged.
9. The appeal is allowed in part, accordingly.
10. Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[PANKAJ MITHAL]

NEW DELHI;
SEPTEMBER 11, 2024.

ITEM NO.103

COURT NO.12

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 465/2012

BASYA NAYAK & ORS.

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date : 11-09-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. Ashwani Bhardwaj, AOR
Ms. Mary Scaria, Adv.
Ms. Jasmine Kurian Giri, Adv.

For Respondent(s) Mr. D. L. Chidananda, AOR

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

The appeal is allowed in part in terms of the signed
order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI)
COURT MASTER (SH)

(POONAM VAID)
COURT MASTER (NSH)

(Signed order is placed on the file)