
(1981) 52 CLT 507 : (1981) CriLJ 1763

Orissa High Court

Case No: None

Jana Munda

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision: Sept. 21, 1981

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (1981) 52 CLT 507 : (1981) CriLJ 1763

Hon'ble Judges: P.K. Mohanti, J; B.N. Misra, J

Bench: Division Bench

Judgement

P.K. Mohanti, J.

This is a prisoner's appeal presented through the Superintendent of Jail against his conviction, u/s 302, I, P. C. and the sentence of imprisonment for life.

2. Prosecution case runs thus:

The appellant is a bachelor. He was living jointly with his mother Chami Bewa (P. W. 6) and his sister's daughter Bela Dei. His brothers Hadibandhu Munda and Routa Munda (P. W. 2) were living separate from him. Bela Dei was found to be pregnant although she was unmarried. The villagers suspected the appellant to be the author of her pregnancy and convened a panchayat meeting on 7-9-77 evening. While the meeting was being held, the appellant returned from his field with an axe in his hand and dealt a blow on the head of Bela Dei as a result of which she fell down unconscious with an injury on her head. P. W. 2 lodged information at Kaliahata Out Post on the basis of which a station diary entry was made vide Ext. 2. The appellant was produced at the police station along with the axe M. O. I. The A. S. I. of the Out Post proceeded to the spot and examined the witnesses. Then the O. I. C. of the Telkoi Police Station took charge of investigation and in due course submitted charge-sheet against the appellant.

3. At the trial, the appellant denied the charge and contended that he was falsely implicated by his brothers on account of previous enmity.

4. In order to establish the charge, prosecution examined 13 witnesses and on a consideration of the same the trial court held the appellant guilty and inflicted the sentence as indicated above.

Mr. Subas Das, the learned Counsel appearing amicus curiae for the defence contended that the order of conviction is not supportable on the evidence on record.

5. There can be no doubt that the deceased Bela Dei died a homicidal death. The post-mortem report prepared by Dr. S. K. Kar (P. W. 1) shows that the deceased had a swelling on the right side of her scalp on the temporo-parietal region extending to the frontal and occipital regions. On dissection, the doctor found that the membranes of the right side were congested and lacerated. There was collection of blood in the brain tissues On the right side. Right parietal bone and the temporal bone were fractured. The fractured bone had entered the brain tissues. There was effusion of blood on the right side of brain. In the doctor's opinion, the injuries were ante-mortem in nature and might have been caused by a hard and blunt weapon like the blunt side of the axe M. O. I. Death was due to shock and haemorrhage resulting from the injuries which were sufficient in the ordinary-course of nature to cause death. The doctor also opined that the external injury was possible by a single stroke.

6. There is no reason to doubt that the deceased was pregnant by the time of her death. The evidence of the doctor shows that the deceased was pregnant and had a bulky uterus. P. W. 6 Chami who is the mother of the appellant also testified that the deceased was pregnant before her death. There is, however, no evidence to show that the appellant was suspected to be the author of the illicit pregnancy of the deceased. There is also no evidence to show that the appellant or the deceased was called to the pancha-yat meeting.

7. The important question for consideration is. whether the appellant can be held guilty of murder? There is no direct evidence of any eye-witness to connect the appellant with the crime. P. W. 6, the mother of the appellant, who was cited as an eye-witness to the occurrence did not support the prosecution case at the trial and was cross-examined by the public prosecutor. She went back upon her previous statements before the police and the Magistrate to the effect that she had seen the appellant assaulting on the head of the deceased with the blunt side of an axe.

8. The learned Sessions Judge relied on the following circumstances in convicting the appellant u/s 302, I. P. C:

(1) Motive for the murder.

(2) The appellant was found entering the house with a tangia in his hand before the occurrence of murder.

(3) After the occurrence the appellant was found standing outside the house with the tangia in his hand.

(4) The appellant produced the axe M. O. I. at the police Out Post immediately after the occurrence.

(5) P. "W. 2 Rوتا Munda reported to the panchayat members that the deceased was assaulted by the appellant.

9. It is well settled that when a case rests wholly on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be firmly established by unimpeachable evidence; secondly, the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and thirdly the circumstances taken cumulatively are incapable of explanation of any reasonable hypothesis save that of the guilt sought to be proved against the accused. The circumstances should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

10. Having heard the learned Counsel on both sides, we are of opinion that in the instant case the above tests have not been satisfied.

11. The circumstances relied upon by the prosecution were sought to be proved by the evidence of P. Ws, 2, 4 and 5-These witnesses did not support the prosecution case at the trial. They introduced a story that the deceased lived with one Damodar Munda of village Barati-pira for some time and that by the time she returned to the house of the appellant she was pregnant, p. W. 5 stated that Damodar was declaring that he would take the deceased as his wife. P. W. 2 resiled from the statements made by him in the F. I. R. (Ext. 2) and contended that it was written by one Bijay Munda according to the instructions of Hadibandhu Munda and Siba Tanti, He further stated that the contents of the F. I. R. were not read over and explained to him. He went back upon his statement in the F. I. R. that he had reported to the panchayat members that the deceased was assaulted by the appellant. P. W. 4 Menia Dei stated in her examination-in-chief that on the date of occurrence while a meeting was being held in the village regarding the illicit pregnancy of the deceased, she found the appellant coming from the village with an axe in his hand and entering his house and that shortly thereafter she heard P. W. 6 shouting as "My son assaulted Bela Dei". She also stated that on hearing the shout of P.W. 6 she along with P. W. 5 Suru Dei rushed to the house of P. W. 6 and found the deceased lying in a state of unconsciousness and the appellant coming out of the house. But in cross-examination she denied having seen the appellant entering the house with the axe M. O. I. She stated that she could not say in what connection the meeting was being held

in the village. She further stated that she did not enquire from P. W. 6 about the name of the assailant of Beia Dei. Although she stated that she had seen the appellant coming out of the house, she denied having asked anything to the appellant about the occurrence. P. W. 5 Sum Dei stated in her examination-in-chief that she was not aware of any panchayat meeting in the village. she, however, stated that in the evening of the date of occurrence she heard P. W. 6 shouting that the deceased was assaulted by the appellant. She stated that she went along with P. W. 4. but did not find any body else except the deceased and P. W. 6 in the house of the appellant. According to her the appellant was outside the house and he simply said that his prestige had been lowered down. She did not say that she had seen the appellant coming out of the house. She went back upon her previous statements before the police that the appellant confessed before him that he had killed the deceased. She stated that P. W. 6 had named the appellant as the assailant of the deceased. As mentioned earlier, P. W. 6 did not support the prosecution case and stated during his evidence in Court that the deceased died of fever.

It will, thus, be seen that P. Ws. 2, 4 and 5 have given conflicting versions having no regard for truth. Their evidence on the whole does not inspire confidence.

12. P. W. 11 Siba Tanti did not support the prosecution case and was cross-examined by the public prosecutor. He resiled from his previous statements before the police that P. W. 2 Routa Munda went to the place of panchayat meeting and reported that the deceased was assaulted by the appellant. P. Ws. 9 and 13 no doubt stated that the appellant produced the axe (M. O. I) at the police Out post. But in our opinion M. O. I. has no relevance to the case as it has not been proved to be the weapon of offence.

13. In the light of the above discussion, we are of the view that the circumstantial evidence relied upon by the prosecution is too shaky and suspicious to furnish a sound foundation for conviction.

14. We allow the appeal, set aside the conviction and sentence and acquit the appellant of the charge u/s 302, I. P. C He be set at liberty forthwith.

B.N. Misra, J.

15. I agree.