

Gopal Chandra Ghosh Vs The State

Court: Orissa High Court

Date of Decision: Dec. 5, 1975

Acts Referred: Penal Code, 1860 (IPC) " Section 302

Citation: (1976) 42 CLT 21

Hon'ble Judges: R.N. Misra, J; N.K. Das, J

Bench: Division Bench

Advocate: A.K. Patnaik, for the Appellant; Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Das, J.

This appeal is directed against conviction of the Appellant u/s 302, Indian Penal Code and sentence of imprisonment for life.

2. The prosecution case is as follows:

The deceased is the wife of the Appellant. On 18-5-1972 at about 7 a. m. the Appellant quarrelled with the deceased as the latter did not go to

uproot Mung crops. While the deceased was going away the Appellant followed her, then dragged her and assaulted her with a stick. The

deceased was dragged up to the front Pinda while being thus assaulted and the Appellant gave a kick at the abdomen of the deceased. The

deceased succumbed to the injuries: It is further alleged that the Appellant tried to suppress evidence by disposing of the dead body but P.W. 1,

the informant, directed the Gramarakhi to keep watch over the dead body and lodged the F.I.R.. After due investigation the Appellant was

charge-sheeted and committed for trial.

The plea of the Appellant is denial of the occurrence. His case is that the deceased was suffering from dysentery and the Appellant brought her to

the Pinda for easing and went to uproot Mung crops. When he came back he found that the deceased had fallen down from the Pinda and had

expired, The doctor (P.W.10) who held the postmortem examination found as many as 9 external injuries. These injuries were ecchymosis on the

temporal area, right cheek, left chest, left breast, 3 injuries on the abdomen, one on the middle of back and another on the left thigh. On dissection

be found that the spleen, the liver and the small intestine were ruptured. The abdomen was filled up with 2 pounds of blood clots. According to

him, the injuries were ante mortem in nature and cause of death was due to shock and hemorrhage as a result of the multiple injuries. He has also

opined that the injuries on the abdomen which correspond to the internal injuries of rupture of spleen, Liver and small intestine can be caused by

push or kick and such internal injuries are possible by one kick. It was suggested to him if some of these injuries were due to fall from the Pinda

and he has flatly denied the same. In view of the opinion of the doctor and the oral evidence to which we will shortly refer, we hold that the

deceased died as a result of the injuries inflicted on her body.

3. Prosecution relies on the testimony of PWs. 2 to 4. P. ws. 2 and 4 are eye-witnesses to the occurrence and they are independent witnesses.

They have clearly stated that they found the Appellant dragging the deceased while holding her by one hand and at the same time assaulting her

with a stick. They have also found the Appellant giving a kick at the abdomen of the deceased. P.w. 4 also made protests at the spot as to why the

Appellant was mercilessly assaulting his wife. The Appellant did not listen to him and went away. Nothing has been brought out on record to

disbelieve the statements of PWs. 2 and 4. From the evidence of P.W. 6 and others it is noticed that when they reached the spot they found that

the deceased was lying on the Pinda and had passed stools. From the inquest report (Ext. 2) made by the I. 00 on 20-5-1972 at 7 a. m. it is found

that the dead body had injury marks on the thighs, cheek, breast and chest. This fact is also corroborated by the evidence of P.W. 1. From the

evidence of PWs. 1, 7 and 8 it is found that at about 1 p. m. on the date of occurrence they came to know from the Appellant that the latter had

killed his wife. It is also apparent from their evidence that the deceased was not suffering from any disease prior to the occurrence. This fact also

corroborates the statements of PWs. 2 and 4.

4. Thus on the evidence of PWs. 2 and 4 coupled with other circumstances as discussed above, we hold that the prosecution has established

beyond any reasonable doubt that the Appellant caused the death of his wife by assaulting her and giving a kick at her abdomen.

5. It is contended by Mr. Patnaik appearing for the Appellant that the Appellant had no intention to kill his wife. But considering the injuries

inflicted by the Appellant on the vital parts of the body it cannot be said that those injuries were not sufficient in the ordinary course of nature to

cause death. When sufficiency exists and death follows and causing of such injuries is intended the offence is murder. The question so far as

intention is concerned is not whether the Appellant intended to kill or to inflict the injuries of a particular degree or seriousness but whether he

intended to inflict the injuries in question and once the existence of the injuries is proved the intention to cause the injuries will be presumed unless

evidence or circumstances warrant an opposite conclusion. In this case no evidence or circumstances are available on record to warrant an

opposite conclusion. Therefore, the contention of Mr. Patnaik is of no avail.

6. In the result the appeal fails and is dismissed.

R.N. Misra, J.

7. I agree.