
(2021) 01 OHC CK 0007
In the Orissa High Court
Case No : JCRLA No.106 Of 2006

Barsu Khilla

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2021) 01 OHC CK 0007

Hon'ble Judges : S. K. Mishra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : Pami Rath, M.S. Sahoo

Final Decision : Allowed

Judgement

S. K. MISHRA, J.

1. In this appeal, the sole appellant-Barsu Khillar has assailed his conviction under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "Penal Code" for brevity).

This is a case of alleged uxoricide. The appellant has been convicted by the learned Addl. Sessions Judge, Malkangiri in Criminal Trial No. 51 of 2004 under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only), in default of payment of fine, to undergo R.I. for a further period of six months.

2. The case of the prosecution is that on 05.06.2004 afternoon at about 4 P.M., the accused-appellant, Barsu Khilla returned home and asked his wife,

Solai Khilla, the deceased to give him food (rice). Since the accused-appellant found that the deceased has not cooked rice, he assaulted the deceased

on her chest and belly by the handle of a tangia and then he gave a blow on the backside of deceased's right leg. She sustained profuse bleeding

injury and few minutes thereafter, she died.

3. The appellant in this case did not admit the prosecution case and at the time of charge, the appellant claimed for trial. Only two questions were put

to him, in his accused statement, regarding the incident. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter

referred to as 'Code' for brevity), the learned Sessions Judge had asked the appellant and stated that, it transpires from the evidence of P.W.4,

Iswar Golari that he confessed before him that while one goat was entering inside the varendah, the appellant threw a tangia, but it hit the leg of the

appellants wife, hence she died. The learned Sessions Judge recorded his answer as 'A:-(Murmurs) something which is in audible'. Basing

reliance upon this so called 'indirect admission', a term coined by the learned Addl. Sessions Judge in the impugned judgment the conviction has

been recorded.

4. Altogether six witnesses have been examined on behalf the prosecution. The doctor who conducted the postmortem examination has not been

examined. The postmortem examination report has not been exhibited. P.W.1 has stated that he has no direct knowledge about the case. P.Ws. 2 and

3 have turned hostile to the prosecution. P.W.4 has also denied the prosecution suggestion that the accused confessed before him about the murder.

P.W.5 has also not supported the case of the prosecution. P.W.6 is the Investigating Officer.

Miss. Rath, learned Amicus Curiae submits that there is absolutely no evidence on record against the appellant and the conviction of the appellant is

illegal and he should be set at liberty forthwith.

Mr. M.S. Sahoo, learned Addl. Government Advocate submits that there is no material on record to come to conclusion that this is a case of murder.

5. Basing on the contents of the F.I.R and the evidence of the Investigating Officer (P.W.6), conviction has been recorded. There is no evidence

regarding the extra judicial confession made by the appellant. However, such component of evidence has been taken into consideration.

6. So, in the result, we find absolutely no evidence on record to show that the deceased died a homicidal death as the doctor who conducted

postmortem examination has not been examined. Moreover, the postmortem report has not been exhibited. Only two exhibits have been relied upon by the prosecution, i.e., the F.I.R. (Ext.1) and the inquest report (Ext.2). No other document has been exhibited. So, there is absolutely no evidence in this case to convict the appellant.

Hence, the appeal is allowed. The judgment of conviction and order of sentence are hereby set aside. The appellant be set at liberty forthwith, if his detention is not required in any other case.

The L.C.R. be sent back to the concerned court below forthwith.