
(2007) 12 OHC CK 0029
In the Orissa High Court

Bikram Mahali

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 203, 302

Citation : (2008) CLT 593 (Suppl CrI) : (2008) 2 OLR 23 : (2008) OLR 593 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard further and the judgment is as follows:
2. The appellant challenges the order of conviction and sentence imposed against him by the Sessions Judge, Mayurbhanj in S.T. Case No. 55 of 1995.
3. It appears on record that the appellant was charged under Sections 302/203 IPC on the allegation that on 24.10.1994 at about 7.00 P.M. he committed intentional murder of his wife and caused her death by strangulation and that gave false information to the police that his wife died due to taking of poison.
4. According to the case of the prosecution, the accused is the husband and Hira Mahali (hereinafter referred as "deceased") is his wife. After leading a happy conjugal life for long period with the accused, the deceased expressed her desire to stay with her sister's husband because he was more attractive. On the date of occurrence, when the deceased and the accused were returning home from the market, the deceased also expressed similar desire. They joined Ram Mahali, Raghunath Mahali and their wives and took Handia, Thereafter, they resorted to Keshapada route to reach their village Balma, whereas the others proceeded on the other route and reached the same village. The accused came and reported to his mother and brother-Jeda @ Jagannath Mahali (P.W.2) that his wife died by consuming poison and therefore the mother should not prepare fish curry. He

also called the villagers and narrated the story of death of his wife by taking poison. Thereafter, the accused along with the villagers went and reported the matter before the police station. On the basis of such information, inquest was held and an empty bottle was found near the dead body. In course of post-mortem examination however, it was found that she died due to homicidal strangulation and not because of taking poison. Under such circumstances, a case was registered u/s 302 IPC. On completion of investigation, charge sheet was submitted against the accused under the aforesaid offences.

In the trial appellant took the plea of complete denial to the allegation of commission of murder by him.

5. Admittedly, prosecution case against the accused is based on circumstantial evidence in absence of any direct evidence. There is no eye witness to the occurrence. To substantiate the charge, prosecution examined as many as six witnesses. Amongst them, P.Ws. 1 and 3 are the witnesses who met the deceased and accused on the way, P.W. 2 is the brother of the accused, P.W. 4 is the medical officer who conducted the post mortem examination and proved the report Ext. 7, and P.Ws. 5 and 6 are police officers who participated in the investigation. Exts. 4, 5 and 6 are the statement u/s 164 Cr.P.C. respectively of P.Ws. 1, 2 and 3. Ext.-11 is the report of the Chemical Analyst on examination of the bottle M.O.I, found near the dead body. Ext. 9 is the spot map and Ext. 3 is the inquest report.

6. On assessment of evidence on record, learned Sessions Judge held that the prosecution has not been able to prove that the accused made any extra judicial confession. He, however, held that facts admitted by the accused in course of trial are sufficient to complete the chain of the circumstances so as to find him guilty of committing murder of his wife. In that respect, learned Sessions Judge took note of the report Ext.7 to hold that the deceased suffered a homicidal death. He took note of the statement of P.Ws. 1 and 3 who stated to have last seen the accused with the deceased at the spot where they took handia and from there the accused took his wife to his village. Admittedly; accused resorted to a different route. Later, accused told the villagers and P.Ws. 1 and 3 that his wife died by taking poison and such fact was also reported by the accused to P.W.5, the police officer. Learned Sessions Judge also took note of the report Ext. 12 of the Chemical Analyst. Needless to say that the report is contrary to the statement the bottle was containing poison.

7. On careful consideration and perusal of the entire evidence, we find that the extra judicial confession said to have been made by the accused is not acceptable. However, the circumstances, which have been taken note of by the learned Sessions Judge, are acceptable to show the conduct of the accused and prove the charge. The medicolegal evidence also rules out the death of the deceased by taking poison, as pleaded by the accused. Therefore, we do not find any reason to interfere with the order of conviction and sentence. For the reasons stated, the JCRLA is dismissed

8. Before parting with case, we may observe that the accused is a tribal man in the district of Mayurbhanj, and there was no motive to murder but for the frail desire expressed by his wife. In such circumstance, the accused deserves special consideration u/s 433 Cr.P.C. The Government therefore, may take appropriate action in that respect and give due benefit to the accused if he is entitled to the same,