

(2004) 06 OHC CK 0009
In the Orissa High Court
Case No : Jail Criminal Appeal No. 12 of 1996

Butu Naik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 29 OCR 10

Hon'ble Judges : Sujit Barman Roy, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : Gyanendra Chandra Swain, for the Appellant;

Final Decision : Allowed

Judgement

Sujit Barman Roy, C.J.—This is an appeal at the instance of the sole Appellant Butu Naik against the judgment dated 18.11.1995 passed by the learned Sessions Judge, Keonjhar in Sessions Trial Case No. 76 of 1993 convicting the Appellant u/s 302 I.P.C. and sentencing him hereunder to suffer R.I. for life.

2. The prosecution case in brief is that on 19.4.1993 at about 7.30 P.M., P.W. 6-Nrushingha Charan Swain, the Officer-in-charge of Champua police station lodged an F.I.R. alleging, inter alia, that he received an information on that day at 5.20 P.M. in a casualty memo issued by the Medical Officer Dr. S. Sethi of Sub divisional Hospital, Champua stating therein that a female patient, namely, Sukramani Dei (since deceased), wife of Butu Naik died in the hospital due to head injury. Said information contained in the aforesaid casualty memo was duly entered into the station diary of the police station under entry No. 495 of that date. As nothing was indicated as regards the cause of death, he left for Sub divisional Hospital, Champua for inquiry. Upon reaching the said hospital, P.W. 6 came to learn that Sukramani Dei was admitted on that day at 7 A.M. in the Hospital in unconscious condition with injury on head and right arm. There was also bleeding from her nose. She succumbed to the injuries at 1 P.M. at the hospital while she was undergoing treatment. It was further ascertained by P.w.6

from the attending doctor - Dr. K.N. Bisoi that the injuries were possible either due to fall or due to assault by hard and blunt object. He also came to learn that in the previous evening at about 9 P.M., the deceased had a quarrel with her husband-Butu Naik. The deceased was actually the wife of Parmesh Naik. After death of Parmesh Naik, the deceased along with her children remained as kept of the Appellant since the last three years. Rajesh Naik @ Kanduri (P.W. 1), the son of the deceased, stated that in the previous night at about 9. P.M. Butu Naik picked up a quarrel with his mother and assaulted her with a wooden plank. The deceased cried and sustained bleeding injuries on her face and arm. Rajesh Naik (P.W. 1) was present at that time and hence he saw the occurrence. The Appellant also threatened him not to disclose the incident anywhere otherwise P.W.1 would be murdered. It was further learned from one Kuldip Naik and his wife Karat Naik that Appellant Butu Naik was quarrelling with the deceased in the previous evening at about 9 P.M.. On hearing this, they both visited the house of the deceased and found the deceased lying unconscious with bleeding injuries on her face. Inside the house they found some pieces of broken bangle and blood-stained clothes. On he basis of the said complaint lodged by P.w. 6, and F.I.R. u/s 302 Indian Penal Code was registered in the said police station. After investigation, police submitted charge sheet u/s 302 I.P.C.. In course of time, aid case was committed to the learned Sessions Judge Keonjhar. On perusal of the materials on record, the learned Sessions Judge framed charge u/s 302 I.P.C. against the Appellant. To prove the case, six witnesses were examined on behalf of the prosecution. No one was examine on behalf of the Appellant. The defence of the Appellant was that of complete denial of the prosecution case. However, on conclusion of the trial, the Appellant was convicted and sentenced as already stated.

3. P.W. 1 is the son of the deceased. At the time when his deposition was recorded, he was aged about 13 years. Therefore, at the time of occurrence this P.W. 1 was about 11 years. It appears from the noting of the trial Court on the deposition sheet that it put questions to ascertain whether P.w. 1 was capable of giving rational answers and being satisfied, it proceeded to record his evidence. In his evidence, P.w. 1 stated that the deceased was his mother. His father was Paramesh Naik who died since long. After death of his father, his deceased mother along with himself and his younger sister were staying in their house where the accused was staying with them. According to P.W. 1 otherwise the Appellant was no way related to them. He further stated in his evidence that the incident in question took place in the evening. In the night of occurrence, the Appellant killed his mother with a split wood. He claimed to have seen the occurrence. His mother sustained severe bleeding injuries as the Appellant assaulted her with a split wood in the night of occurrence. The Appellant also threatened this witness that he would take away his life and therefore, out of fear, he left that house. After some time, when he again entered into his house, this witness found that his mother was injured and was groaning. To his queries, the deceased did not give any reply. Seeing the incident, this witness cried. In

the following morning, the Appellant took the deceased in a rickshaw to Champua Hospital where she succumbed to the injuries. However, it is strange that during cross-examination, this witness stated that neither the police came to his house nor he saw the incident. He also stated that he gave evidence in Court as dictated by his grand-mother. He further stated that he did not disclose the incident to anybody.

P.W. 2-Lenga Mahakud stated in his evidence that about two and half years before on a certain day early in the morning, the Appellant called him to bring his rickshaw and take his wife to the hospital as the case was of emergency. Accordingly, this witness came to the house of the Appellant with his rickshaw and took the wife of the Appellant to the Hospital. Besides this, he claimed to know nothing about the incident. The prosecution declared this witness hostile. and with the leave of the Court, cross-examined him. However, nothing could be elicited from him during the cross-examination.

P.W. 3-Gour Naik is the mother of deceased. In her evidence she stated that the relationship between the deceased and the Appellant was strained. Apart from this, she could not throw any light on the main incident. However, she stated in her evidence that the deceased with her two minor children was living with the Appellant. P.W. 4 is a witness to the inquest, P.W. 5 is the doctor who conducted post mortem on the deceased and P.W. 6 is the Investigating Officer.

4. This is in short the entire evidence on record. P.W. 1 made certain statement during the cross-examination which entirely demolished what he had stated in his examination-in-chief and therefore, we are unable to place any reliance on his testimony. Apart from this evidence, there is no other evidence on record to hold the Appellant guilty for the murder of the deceased. We are constrained to observe that the impugned judgment was passed by the trial Court virtually on the basis of no evidence at all. Hence the impugned judgment cannot be sustained. In the circumstances, a case of conviction and sentence of the Appellant was not at all warranted. However, the Appellant is in jail for the last 12 years.

5. In the result, we allow the appeal and set aside the impugned judgment. We further direct that the Appellant be set at liberty forthwith if his detention is not required in connection with any other case.