
(2007) 05 OHC CK 0055
In the Orissa High Court

Dasru @ Dolamani Patra @ Bhue and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2007) CLT 767 (Suppl CrI) : (2007) 2 OLR 759 : (2007) OLR 767 (Suppl CrI)

Hon'ble Judges : S. Panda, J;P.K. Tripathy, J

Bench : Division Bench

Judgement

S. Panda, J.—This appeal is directed against the judgment dated 21.9.2001 passed by the Addl. Sessions Judge, Bargarh in Sessions Trial Case No. 306/19 of 2000.

2. Briefly the facts as disclosed by the prosecution are that, deceased Ahalya was the legally married wife of Appellant No. 1 Dasru @ Dolamani Patra @ Bhue, Appellant No. 2 Siba Patra @ Bhue is the younger brother of Dasru and Appellant No. 3 Usha Patra @ Bhue is the mother of Dasru and Siba. Ahalya married to Dasru as per their caste and custom, three to four years prior to her death. Some months after the marriage, the deceased was subjected to cruelty and harassment by her husband and other family members for which she came to her parents house and stayed there for about two to three years. After a compromise between the parties, the deceased went to her-in-laws house in village Karlajuri and on 25.4.2000 the deceased died in an unnatural manner while she was in the house of her-in-laws. Father of the deceased got information and reported the matter in writing under Ext. 5 at Bhatli Police Station on 27.4.2000. Police took up investigation and after completion of investigation, submitted charge sheet against the appellants.

3. Plea of defence is complete denial.

4. Before the trial Court, prosecution produced as many as thirteen witnesses in

support of its case. Entire case of the prosecution is founded on circumstantial evidence. P.W. 2 is the informant and father of the deceased, P.Ws. 1 and 3 are the co-villagers of the informant, P.Ws. 4 to 11 are the independent witnesses and P.W. 12 is the doctor. Accused persons did not examine any witness.

5. P.W. 12., the doctor who conducted post mortem examination on the dead body of the deceased found the following injuries:

- (i) Bruise over left lower neck.
- (ii) Bruise upper half of left chest.
- (iii) Bruise over and left anterior shoulder.
- (iv) Bruise over right cubital fossa and adjoining part.
- (v) Bruise over left thigh and adjoining pelvic area.
- (vi) Contusion left side face and adjoining neck.
- (vii) Bruise over left leg.
- (viii) Bruise over right tibia.

6. P.W. 12 has opined that all the injuries were ante mortem in nature and the cause of death was due to asphyxia. As per the report of the doctor Ext. 3, the time of death was within 72 to 96 hours at the time of post mortem examination. On a query made by the police on 1.5.2000 the doctor gave opinion that;

- (i) the external injuries mentioned in the post mortem report were ante mortem in nature, and
- (ii) such injuries were not sufficient enough to cause death of a person in ordinary course.

7. The aforesaid evidence of P.W. 12 along with the post mortem report and his opinion Ext. 4 leave no room for doubt that the deceased suffered homicidal death due to asphyxia. Appellants also do not challenge to such conclusion arrived at by the trial Court.

8. Deceased Ahalya died while she was in the house of her husband. Appellants are the husband, brother-in-law and mother-in-law of the deceased respectively. Without informing the matter to her parents they disposed of the dead body in a concealed manner. Her (deceased's) cousin brother got information about the death of the deceased and intimated the fact to her father P.W. 2, the informant. The matter was reported to the police and when the police went to the spot the appellants disclosed that the dead body of the deceased was burnt on the alleged night of her death showing a place where a dead body had been cremated. Investigating Officer seized some ash and bones and prepared a seizure list. The villagers suspected with regards to the death of the deceased and convened a meeting where P.W. 4 stated that he assisted the appellants to dispose of the

dead body and disclosed that the dead body was buried on the riverbed of Danta. On the basis of that information police seized the dead body of the deceased and sent for post mortem examination. The appellants have admitted marriage of the deceased with Dasru and that she was staying in the house of her in-laws" by the time of her death. Accused Dasru has also admitted that they buried the dead body in the river bed of Danta with the help of P.W. 4. Accused Siba has also admitted that they have buried the dead body in the river bed of Danta with the help of P.W. 4 and the deceased was staying in their house prior to her death. P.W. 2 the father of the deceased has corroborated the F.I.R. story, Ext. 5. He has stated that the deceased had come to her in-laws" house after a compromise between the husband and wife eight months prior to the incident. The co-villagers of the present appellants namely P.Ws. 4 and 10 have also stated about the deceased living in her in-law"s house at the time of death. Thus, the evidence of P.W. 2 gets support from the independent witness that the deceased as staying in the house of her in-laws" after the compromise. On the date of occurrence deceased was seen hale and hearty by the neighbouring witnesses i.e. P.Ws. 9 and 11. The deceased died in the night and her dead body was disposed of without the knowledge of the villagers or relatives which is a strong circumstance against the appellants. Motive is relevant factor in cases whether that is based on testimony of direct evidences or circumstantial evidence. From the statement of P.Ws. 9 and 11, it reveals that deceased was not pulling well with her husband and she was also doing mischief inside the house for which the in-laws" was annoyed with deceased. The doctor"s opinion that injury may be due to violence caused with the person in an attempt to cause asphyxia by smothering or strangulation. All those materials go to prove the motive behind the commission of offence. No doubt, if prosecution proves existence of motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the appellants. Even if the Investigating Officer would have succeed in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law. In the instant case, P.Ws. 9 and 11 said about the dissension between the deceased and her husband and the conduct of the deceased towards her husband and in-laws. Such a motive may appear to some persons as inadequate for liquidating one"s own parents. But any rancour burgeoning in the mind of an offender can foment wicked thoughts which may even flame up to flash point. In the instant case, the circumstances relating to the disinterment of dead body from the bed of river Danta at the instance of P.W. 4 strengthened the testimony of P.Ws. 9 and 11 as reliable.

8. An offender who attempts to misled others need not necessarily arm with a ready fool-proof explanation to any cross question from his listeners. Quite often such offenders might try to advance explanations, which strike them momentarily when they are compelled to explain incongruous aspects. If the

explanation offered by the offender appeared incredible to the listeners that is hardly a ground to conclude that the offender would not have given such explanation. In the instant case, the appellants mislead the villagers and the parents of the deceased that the deceased died due to vomiting and they have burnt the dead body but on the other hand dead body was recovered as per the statement of P.W. 4 the caste man who has helped to burry the dead body along with the accused persons in the bed of river Danta. The said circumstances positively inculcating the accused. Appellants in such circumstances would not be entitled to an order of acquittal.

9. During the investigation it reveals that in a hasty and concealing manner without notice to the parents of the deceased the appellants have tried to dispose of the dead body and mislead the villagers as well as the police that they have disposed of the dead body by consigning it to the fire. But in fact, they have buried the dead body in the river bed of Danta. From the evidence of P.W. 4 it appears that all the appellants were present in the house when the dead body was taken to the river bed and the appellants were aware of the cause of death of the deceased but no satisfactory explanation has been offered by them with regard to cause of death. It shows that the cause of death was known to the accused persons who are of one family. Therefore, on these circumstances it can be gathered that the appellants are in furtherance of their common intention have committed the offence and kept mum till the dead body was found. The appellants have also tried their best to cause disappearance of evidence by misleading the police and villagers with a view to escape from the offence committed. They have buried the dead body in a hasty manner without any intimation to the parents of the deceased or reporting the matter to the police. The doctor's opinion with regard to the cause of death is a circumstance to believe that the ante mortem injuries were caused while the deceased was struggling for life. This fact cannot escape notice in the above circumstances. In discussing the evidence above, the trial Court has rightly appreciated the circumstances presented by the prosecution through evidence and found them reliable and on the basis of such circumstances reached the conclusion that appellants were the author of the murder of deceased Ahalya and have convicted the appellants under Sections 302/201/34 I.P.C. This Court confirms the said conviction and sentence.

10. So far as the offence u/s 498A, I.P.C. is concerned, the prosecution has not proved the demand of dowry or torture. As it reveals from the evidence of P.W. 2, the father of the deceased and two neighbouring witnesses, P.Ws. 9 and 11, there is a dispute between the deceased and the appellant No. 1, Dasru, immediately after the marriage because the deceased was a strong lady whereas her husband was a weak person and she left him and stayed with her parents for three to four years and after the compromise on the intervention of the villagers she came to her in-laws' house. Hence, it cannot be said that the deceased was tortured or subject to cruelty and there was demand of dowry. Hence, conviction u/s 498A IPC is not sustainable on the materials available on records. So far as

the offence under Sections 302/201 read with Section 34, I.P.C. is concerned, the prosecution has brought home the charges on substantial evidence.

11. As such, while setting aside the order of conviction u/s 498A IPC and the sentence thereof we are not inclined to interfere with the order of conviction on the other offences or the sentences thereon.

12. The Jail. Criminal Appeal is partly allowed.

P.K. Tripathy, J.

13. I agree.