

(1971) 04 OHC CK 0008

In the Orissa High Court

Case No : Criminal Appeal No. 80 of 1968

Gangu Munda and Others

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 28-04-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1971) 37 CLT 595

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

Bench : Division Bench

Advocate : J.K. Tripathy, for U.S. Misra, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—The Appellants were convicted on a charge u/s 302/34, Indian Penal Code for having committed the murder of one Basinga Munda of Bhuyan-Barpada and sentenced to undergo rigorous imprisonment for life by the Additional Sessions Judge, Keonjhar. The case against them shortly stated is this : On the night of 20-10-1966, which was a Thursday, the deceased Basinga Munda had entered the house of Appellant Gangu Munda. It is not exactly known for what purpose he had entered into Gangu Munda's house. He was, however, detected and Gangu munda chased him to a distance raising a hulla on hearing which the other Appellants came to the spot. They caught hold of the deceased near a black-berry tree and assaulted the deceased till the latter became unconscious. This is the first part of the occurrence. Thereafter, the Appellants carried Baiainga Munda to the nearby Kapraput jungle in order to kill him. It is alleged that inside the Jungle, Appellant Butu Munda brought an iron arrow bead, while the other Appellants pressed the body of Bsinga Munda to the ground, Appellant Shamu Munda cut the throat of the deceased with the blade of the arrow bead and severed the bead from the body. The Appellants concealed the head of the deceased at another place and returned home. As Basinga Munda did

not return home, his brother Demka Munda p.w. 6 searched for him at several places till the following Wednesday and being unable to find out his brother; reported the matter to the Sarpanch of Guali Grama Panchayat. The next day the Sarpanch convened a meeting of the villages at which Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda were present. These four Appellants made a confession that they along with the other four Appellants had killed Basinga at Kapraput jungle. Information was then lodged at the Police Station by p.w. 5. Investigation was taken up and in the course of which a dead body without its head, right leg and palms was discovered, The person before his death was wearing an underwear and a Khaki half pant, and these clothing were in tact. The dead body was in a highly decomposed state p.w. 6 however identified the dead body as that of his brother Basinga Munda. The dead body was sent for postmortem examination and the Appellants were arrested. While under arrest, the Appellant Bulu Munda led the Police to his house and produced before the Investigating Officer the arrow blade M.O.I. which had been kept concealed in the roof of his house.

2. All the eight Appellants confessed their guilt before a Magistrate who recorded their statements u/s 164, Code of Criminal Procedure. In the Court of the committing Magistrate, all the Appellants except Sukuru Munda and Pradhan Munda admitted having assaulted the deceased near the blackberry tree in the village. All the eight Appellants admitted having taken the deceased to Kapraput Jungle with a view to kill him. During trial before the learned Sessions Judge, however, they denied having either assaulted the deceased in the village or having taken him to the jungle and murdered him there. The learned Additional Sessions Judge believed the prosecution case and convicted the eight Appellants and sentenced each of them to undergo rigorous imprisonment for life.

3. The prosecution case consists of two parts, namely, the assault of the deceased near the blackberry tree inside the village and the subsequent murder of the deceased inside the jungle. P.w.s. 2 to 5 are eye-witnesses to the assault on the deceased inside the village. The learned Judge has discussed the evidence of these witnesses at considerable length and while discarding the evidence of p.w. 2 as unsatisfactory, he has accepted the evidence of p.w.s. 3 to 5 as consistent and reliable. We have also gone through the evidence of these witnesses and find nothing therein to disbelieve them. These witnesses have deposed not only that the Appellants had assaulted the deceased inside the village but thereafter they also carried him towards Kapraput jungle. The fact that these witnesses did not choose to disclose to the villagers what they had witnessed on the night of occurrence and that they did so only after the Police came to the village is not in our opinion a circumstance which would cast any doubt on their veracity if it is remembered that till the Police came to the village, the Appellants were at large and it is not unlikely that being afraid of them the witnesses did not come forward to disclose what they had been on the night of occurrence. We are, therefore, satisfied that the learned Additional Sessions Judge was right in believing the first part of the prosecution case.

4. There are no eye-witnesses to speak about the second part of the occurrence which took place inside the jungle. Indeed it is idle to expect it having regard to the fact that part of the occurrence took place during the night time inside a jungle. The prosecution has however relied on certain circumstances to prove that it is the Appellant who had killed the deceased inside the jungle, and they are

(1) the extra-judicial confession made by the Appellants Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda in Guali Grama Panchayat which is deposed to by p.ws. 6, 8 and 10;

(2) the statements made by all the Appellants in the Court of the committing" Magistrate that they carried the deceased to Kapraput jungle with a view to kill him which is corroborated by the statement u/s 164, Code of Criminal Procedure made by them before the Magistrate p.w. 9;

(3) Recovery from the forest of the body of the deceased which was duly identified by p.w. 6 the brother of the deceased;

(4) recovery from the Appellant Butu Munda of the arrow blade M.O.I. with which the bead of the deceased is said to have been severed from his body; and

(5) recovery from the Appellant Butu Munda of a Chaddar stained with human blood.

5. Although extra-judicial confession is evidence of a weak type, it can be acted upon if there is material corroboration to the confessional statement. We have, therefore, carefully perused the evidence of p.ws 6, 8 and 10 who have deposed that Appellants Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda admitted before them in the Panchayat that they along with the other four Appellants had carried the deceased to the jungle and killed him there and we see no sufficient reason to discard their testimony especially when we find that what they have deposed about is materially corroborated in essential particulars. The corroborating circumstances are these p.ws. 3 to 5 have deposed that after the deceased was assaulted in the village, all the Appellants had carried him to the jungle with a view to kill him there. Even if the Appellants had not confessed their guilt either before the Panchayatdars or before the Magistrate p.w. 9 or before the Court of the committing Magistrate, the evidence given by p.ws. 3 to 5 would have gone so long way to show that it is the Appellants who must have killed the deceased. The confession made by Appellants Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda therefore lend corroboration to the evidence given by p. ws. 2 to 5 that the Appellants had carried the deceased to the jungle with a view to kill him. In fact, each of the Appellants had admitted before the committing Magistrate that they carried the deceased to the jungle to kill him there. Doubtless, none of the Appellants had stated in the Court of the committing Magistrate that they had killed the deceased in the jungle. Regarding killing of the deceased, we have to rely upon the extra-judicial confession made by the Appellants Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda.

Immediately after these four Appellants made the statement before the Panchayatdars, F.I.R. was lodged at the Thana and it was stated in the F.I.R. that these four Appellants made confessional statement before the Panchayatdars. As a result of such confession a search was made for the dead body in the jungle and the dead body was found there. True, it is, that it was a headless body which was discovered but with reference to the underwear and the half pant which were found on the dead body, p.w. 6, the brother of the deceased had identified the "dead body as that of his brother.

6. The doctor p.w. 1 who conducted the post mortem examination over the dead body has deposed that the arrow blade M.O.I cut out the throat but cannot separate the head from the body. Referring to this statement it was argued that it belies the confessional statement made by the Appellants before p.w. 9 that the head of the deceased was severed from the body of the deceased with M.O.I and that consequently the confessional statement should not be believed. It may be borne in mind that p.w.s. 6, 8 and 10 did not say that Gangu Munda, Sukuram Munda, Rout Munda and Mutu Munda had stated before them that the head of the deceased was severed from the body. All that they said was that the throat of the deceased was cut with the arrow head. To the same effect is the statement made in the F.I.R. It may as well be that after the deceased was left in the jungle with his throat cut, wild animals might have completely severed the head from the trunk. We do not, therefore, find that there is anything in the evidence of the doctor which would belie the extra-judicial confession.

7. It is next argued that as by the time the body was found it was in a highly decomposed state and the head had been found severed from the body, it was not possible to identify it and therefore the Court should not believe the evidence of p.w. 6 that the dead body was that of his brother. In the absence therefore of the head from the body, it was argued that it would not be safe to convict the Appellants of the murder of Basinga Munda. If there is reliable evidence direct or circumstantial, of the commission of the murder, the mere fact that the corpus delictum is not found is not a ground for refusing to convict the accused person of murder. To recognise any such condition precedent, as being absolutely necessary to conviction in any cases would be to afford complete immunity and certain escape to those murderers who are cunning or clever enough to make away with or destroy the bodies of their victims. This view finds corroboration from a decision of the Supreme Court in *Ram Chandra and Another Vs. State of Uttar Pradesh*, . But in the present case, we are satisfied for reasons already given that the dead body that was found in the jungle is that of the deceased Basinga Munda and that it had been correctly identified by his brother p.w. 6. After careful consideration of the evidence and circumstances of this case, we are satisfied that all the Appellants in furtherance of their common intention had killed Basinga Munda and that they have been rightly convicted u/s 302/34. Indian Penal Code....

8. The appeal fails and is dismissed.

R.N. Misra, J.

9. I agree.