
(2019) 03 OHC CK 0039
In the Orissa High Court
Case No : Jail Criminal Appeal No.40 Of 2007

Kabasi Ganga

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2019) 03 OHC CK 0039

Hon'ble Judges : S. K. Mishra, J;Dr. A. K. Mishra, J

Bench : Division Bench

Advocate : Pravat Ku. Mohanty, J. Katikia

Final Decision : Allowed

Judgement

S. K. Mishra, J

1. In this JCRLA, the convict/ appellant (Kabasi Ganga) has assailed the correctness of the judgment of conviction and order of sentence dated

08.02.2007 passed by the learned Additional Sessions Judge, Malkangiri, in Criminal Trial No.42 of 2004, whereby he has been convicted and

sentenced to undergo imprisonment for life for commission of offence under Section 302 of the I.P.C. But, no fine has been imposed.

2. The case of the prosecution in short is that the appellant on 05.03.2004 at about 12.00 P.M. at village Gathanpalli committed murder of his wife

Kabasi Nande by assaulting her by means of handle of a Tangia on her left ear region and she died due to profuse bleeding from her left ear.

3. The defence took the plea of denial and false implication.

4. In order to prove its case, prosecution examined as many as six witness. Prosecution also placed reliance on the documents marked Exts.1 to 4.

No defence evidence, oral or documentary, was adduced.

5. It may be noted here that the Investigating Officer and the informant have not been examined in this case. P.W.1 (Pravat Majumdar) has stated

that he was the Ward Member of the village and the accused confessed before him that he had dealt two stick blows on his wife in previous night

causing her death. However, P.W.2 (Udayanath Kawasi) has stated that when son of the appellant was crying, he and other villagers went there and

on being asked, the appellant confessed that being intoxicated, he assaulted his wife causing her death. In the cross-examination, he has categorically

stated that the appellant confessed his guilt in presence of the police. The Sarapanch of the village was also present there by the time. He has also

stated that by the time I reached the spot, the police had already arrived.

6. On an appraisal of evidence on record more particularly the evidence of P.Ws.1 and 2 before whom the appellant has made his confession

regarding commission of murder of his wife, the learned Additional Sessions Judge, Malkangiri has proceeded to convict the appellant.

7. Learned Additional Sessions Judge, Malkangiri has mentioned in the impugned judgment of conviction and order of sentence that the

memo declining the charge-sheet witnesses was accepted by him as defence had not objected. The fact remains that on behalf of the accused, State

defence counsel was engaged. As a result of acceptance of the memo, the informant and the Investigating Officer amongst others could not be

examined. The weapon of offence was not produced in the trial. We feel expedient to remind the following observations of the Honorable Apex

Court made in the case of Bablu Kumar and others v. State of Bihar and another: reported in (2015) 8 SCC 787

It seems that everyone concerned with the trial has treated it as a farce where the principal protagonists compete with each other for gaining supremacy in

the race of closing the case unceremoniously, burying the basic tenets of fair trial, and abandoning one's duty to serve the cause of justice devoutly. It is a

case where the prosecution has played truant and the learned trial judge, with apathy, has exhibited impatience.

8. It is also well settled principle of law that any confession made by the accused in presence of the police is not admissible in evidence unless it is

made in the immediate presence of a Magistrate. In this case, it is not the case of the prosecution that the accused has made confession in presence

of a Magistrate. On the basis of the inadmissible evidence, conviction against the appellant has been recorded.

9. Therefore, we have no hesitation to set aside the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Malkangiri.

10. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 08.02.2007 passed by the learned Additional

Sessions Judge, Malkangiri in Criminal Trial No.42 of 2004 convicting the appellant for commission of offence under Section 302 of the I.P.C. and

sentencing him to undergo imprisonment for life without imposing separate sentence of fine, are set aside. The appellant is acquitted of the said charge.

Since the appellant, namely, Kabasi Ganga is in jail custody, he be set at liberty forthwith, unless his detention is required in any other case.

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