

(1964) 07 OHC CK 0009
In the Orissa High Court
Case No : Criminal Appeal No. 212 of 1963

Kandia Jani alias Muduli

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 29-07-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1964) 30 CLT 478

Hon'ble Judges : Misra, J;Barman, J

Bench : Division Bench

Advocate : G.R. Rao and G. Narasimham, for the Appellant; S.C. Mohapatra, for Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—Originally 8 persons were tried as accused. Seven have been acquitted and only the Appellant has been convicted u/s 302, Indian Penal Code, and sentenced to rigorous imprisonment for the life.

2. The prosecution case is that on 14-2-1963 Madhab Khara (p.w. 11) and his son-in-law Gobardhan Takri (the deceased) with one Baidyanath Khara (p.w.I) went out for purchase of goats. In the village of the accused, Kursa, one of the accused, promised to sell them goats. He conducted them to a place where a marriage was going on they were served "Landa", an intoxicant, which the persons assembled including the accused were taking. Kursa wanted Madhab Khara and his men to pay the price in advance promising that the goats would be handed over next day. The purchasers did not agree to this proposal. Accused Kursa and the Appellant said that they were Adibasis and not cheats like Dombs. The purchasers belong to the Domb caste. They retorted by saying that now-a-days all are cheats alike and left the place. The accused got enraged, pulled out sticks from the fence of Dhanapati and chased the three purchasers. P.W. I concealed himself in a garlic field of Dhanapati. The accused assaulted P.W. 11 who sustained some injuries. Then they chased the deceased towards jungle.

They could be seen to be chasing right upto a particular depression. Later on the accused returned in 2 groups by different routes and on the way back the Appellant divulged that they gave two blows to the deceased who fell down. Next day at about 3 p.m. the body of the deceased was discovered in the field of Masia Jani with multiple injuries. The Appellant produced Rs. 60/- before the Investigation Officer which, according to the prosecution was with the deceased. The defence is one of complete denial.

3. There is no doubt that the deceased died as a result of the multiple injuries found on his body. The doctor (p.w. 6) held the post-mortem examination and opined that the injuries was due to shock and hemorrhage due to the fracture at the base of the skull. Mr. Rangarao does not dispute that the deceased died as a result of those injuries.

4. The conviction of the Appellant is based on the following pieces of evidence:

(i) The evidence of the eye-witnesses that the deceased was chased by three accused persons including the Appellant upto the depression;

(ii) In the depression the dead body of the deceased was discovered on the following day;

(iii) The Appellant produced before the police a sum of Rs. 60/- which, according to P.W. 11, was with the deceased at the time he was chased; and

(iv) The evidence of P.W. 3 that on his return the Appellant told him that with two blows given to the deceased he fell down.

5. The extra-judicial confession made to P.W. 3 by the Appellant is not reliable. He was convicted and sentenced to three months imprisonment on the allegation that he burnt a paddy heap. In the Committing Court he gave a different version to the effect:

I inquired from Kandia (the Appellant) as to where the Dombs went. Kandhia replied that they drove him away assaulting

In the Sessions Court, his version is He said that they gave two blows with sticks when he fell down.

The conduct of this witness is also somewhat surprising. He did not disclose the extra-judicial confession to any body and left for his house. The learned Sessions Judge has not discussed the weak features in his evidence. We are not inclined to place reliance on the uncorroborated testimony of P.W. 3 which appears to be unreliable. This piece of evidence must therefore be excluded from consideration.

6. P.W. 11, the father-in-law of the deceased, stated that Gobardhan had Rs. 38/- in coins, and Rs. 22/- in the shape of 2 ten-rupee notes and 2 one-rupee notes. The Appellant no doubt produced Rs. 60/- before the I.O. having the same denominations as deposed to by P.W. 11. P.W. 11 has not given any evidence identifying that the sixty rupees produced by the Appellant were the identical

sixty rupees which were in possession of the deceased. No identifying mark had been brought into evidence also. In the absence of this link it cannot be held that the sixty rupees produced by the Appellant belonged to the deceased. This piece of evidence must therefore be excluded from consideration.

7. The residue of evidence is that the deceased was seen by the eye-witnesses being chased by three accused persons including the Appellant upto the depression and next day the deceased was found dead. There is no evidence that the Appellant assaulted the deceased. These two pieces of evidence do not lead to the irresistible conclusion that the deceased died as a result of the assault given by the Appellant. Circumstantial evidence must be such that no other conclusion excepting the guilt of the accused is possible. These two facts proved in the case are not incompatible with the innocence of the accused. The Appellant is therefore entitled to benefit of doubt.

8. In the result, the conviction and sentence passed against the Appellant are set aside and the appeal is allowed. He be set at liberty forthwith.

Barman, J.

9. I agree.