
(1985) 01 OHC CK 0012
In the Orissa High Court

Kondagiri Laltara and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 28-01-1985

Acts Referred:

Evidence Act, 1872 — Section 154
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1985) CriLJ 1611

Hon'ble Judges : D.P. Mohapatra, J;B.K. Behera, J

Bench : Division Bench

Judgement

B.K. Behera, J.—The two appellants stood charged u/s 302 read with Section 34 of the I.P.C. with having committed the murder of Tadingi Enkana (to be described hereinafter as "the deceased") by intentionally causing his death in furtherance of their common intention on April 15, 1979 at village Pudapai in the district of Koraput. The prosecution had alleged that P.W.2 and his father had performed a Puja in a hill and had sacrificed a goat and distributed meat to the villagers including the two appellants who took exception as they had not been pulling on well with the other side. The appellant Mina returned the meat to P.W.2 while P.W.2, his father and the deceased were present in the house. P.W.2 and the deceased then went to the house of the appellants and challenged them as to why meat was returned. At this, the appellant Laltara came out of his house with a Tangia (M.O.I.) and dealt a blow by its blunt side on the chest of the deceased as a result of which the latter fell down. The other appellant Mina, son of the appellant Laltara, then came to the spot, picked up a stone (M.O.II) lying there and dealt blows on the head, chest and testicles of the deceased. P. Ws.2, 4 and 6 were the witnesses to the occurrence. P.W.4, it was alleged, had snatched away M.O.I. from the hands of the appellant Laltara. The deceased succumbed to the injuries on the spot. On the basis of the first information report lodged by P.W.1, investigation followed and on its completion, a charge-sheet was placed and the appellants were prosecuted.

2. P.W.9 was the doctor who had conducted the autopsy and had noticed injuries

on the head and chest of the deceased sufficient in the ordinary course of nature to cause death. He had, however, not noticed any injury on the testicles of the deceased. There could be no doubt from the medical evidence that death of the deceased was homicidal in nature. This aspect has not been challenged before us.

3. Accepting the evidence of P.Ws.2, 4 and 6, the learned Sessions Judge held that the charge against the appellants had been established. We have been taken through the relevant evidence at the hearing of this appeal.

4. P.W.1 was the first informant and the first information report (Ext. 1) had been lodged in the presence of P.W.4 who was said to be a witness to the occurrence. Although P.W.1 had not witnessed the occurrence, he had claimed to be one in the first information report. A substantially different version had been given therein in that the quarrel and the assault took place near the house of the deceased and not near the house of the appellants as the prosecution sought to establish at the trial and the occurrence had taken place, as alleged in the first information report, when the appellants came to the house of the deceased for returning the meat and challenging the party of the deceased as to why meat was sent to them. The learned trial Judge had taken no notice of this important inconsistency in the story put forward in the first information report and the evidence of P.W.1 at the trial.

5. Although P.Ws.2, 4 and 6 had claimed to have witnessed the occurrence, it would clearly appear from the statements made by P.W.1 in his cross-examination that they could not have been present on the spot. P.W.1 had stated thus:

On the date of occurrence I had gone to Minajholla for coolie work. Minajholla is six miles from my village. I returned from Minajholla after sunset. Kalaka Dharma, Tadingi Masa, Mondagori Baraja, Kumbirika Adi had also gone with me to Minajholla and we all returned together. By the time we returned the dinner time was over. We found the dead-body kept on the pinda (verandah) of the house of Boduru and a Dibiri was burning, No male member was present there. On being asked by Boduru, 1 came to Rayagada to lodge the report.

After these statements were made, the prosecution had not taken any step for putting leading question to this witness u/s 154 of the Evidence Act. No question was put by the learned Sessions Judge to get any clarification from this witness with regard to the theories put forward by him at different stages, but he assumed without justification that this witness had tried to make out a case in his cross-examination that the dead body of the deceased had been seen by him and the other eye-witnesses when they returned to the village together from Minajholla after finishing their day's work, P.W.6 had stated in his cross-examination that he had gone with P.W.1 to Minajholla and both of them returned together to the village at dinner time and saw the dead body of the deceased. No doubt, P.W.6 had not stated that P.Ws.2 and 4 had also accompanied them, but P.W.1 had clearly and categorically stated that he and P.Ws.2, 4 and 6 had gone

and returned together and when they returned, they saw the dead body of the deceased.

6. The evidence of P.W.4 that he had snatched away M.O.I. from the hands of the appellant Laltara could not be accepted because of its seizure by the Investigating Officer on production by him in view of the aforesaid features in the evidence.

7. P.W.2, while asserting in his examination-in-chief that he had seen the entire assault, had stated in his cross-examination that as soon as the appellant Laltara raised the Tangia to assault, he left the place and did not go to the spot till the next morning. The court then put a question as to how having stated that he had seen the entire assault, he had departed from that statement and had spoken in the cross-examination in the manner indicated above and P.W.2 blurted out a statement that he saw the assault while running away from the spot by looking behind. This P.W.2 could not have at that part of the night, All this would show that P.W.2 was not a witness of truth for which he had made prevaricating statements.

8. The positive statement made by P.W.6 in his cross-examination was that when he and P.W.1 returned to the village, they saw the dead body of the deceased. The Court then put the following question ;

You have stated in your examination-in-chief that you have seen the accused persons assaulting the deceased but in your cross-examination you have stated that you have seen the dead body of the deceased. Which statement is correct?

This witness answered:

After return from Minajholla I saw -the occurrence of assault and from the spot Boduru and Masa took the dead body to their Pinda.

In view of what has been stated above, no reliance could be placed on the evidence of P.W.6,

9. The learned Sessions Judge did not give due consideration to the infirmities and inconsistencies in the prosecution evidence not with regard to minor details, but with regard to material aspects and unjustifiably recorded an order of conviction. In our view, the order of conviction cannot be sustained in law, Mr. Sahoo, the learned Standing Counsel, initially supported the order of conviction, but because of the aforesaid suspicious features, fairly submitted that it would not be safe and proper to accept the evidence of P.Ws.2, 4 and 6 and base an order of conviction thereon. We appreciate the fair stand taken by the learned Standing Counsel,

10. In the result, we would allow the appeal and set aside the order of conviction and sentences recorded against the appellants. The appellants be set at liberty forthwith,

D.P. Mohapatra, J.

11. I agree.