

(2002) 01 OHC CK 0037
In the Orissa High Court
Case No : Criminal Appeal No. 68 of 1986

Krushna Pradhan @ Krushna Chandra Pradhan and Others APPELLANT
Vs
State of Orissa RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 201, 34

Citation : (2002) 93 CLT 291

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.D. Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This appeal has been preferred against the order of conviction and sentence passed by the learned Second Addl. Sessions Judge. Berhampur, convicting the present appellants for the offence committed u/s 201/34 of the Penal Code for causing disappearance of evidence of commission of an offence of murder with the intention of screening the offender from legal punishment.

2. The case of the prosecution is that in the night of 4/5.10.1984 one Biswanath Sahu committed murder of his cousin deceased Ananda Sahu by assaulting him with a crow-bar in the premises of the Khaia of the deceased and left the place leaving behind the dead body inside the khala. Early in the morning these appellants are alleged to have removed the dead body of the deceased to the cremation ground for the purpose of cremation without reporting the matter to the Police, this fact came to the knowledge of the informant. P.W. 1 as well as the Grama Rakhi, P.W. 3 who went to the cremation ground and found the appellants making preparation for cremation. The further case of the prosecution is that the Grama Rakhi, P.W. 3 requested the present appellants not to cremate the dead body and wait till the Police arrive. Without hearing the Grama Rakhi, it

is alleged that the appellants cremated the dead body of the deceased and thereby committed offence u/s 201/34 of the Penal Code.

3. The learned Addl. Sessions Judge referring to the evidence of P.Ws. 1, 2, 3 and 8 found the appellants guilty of the charge u/s 201/34 I.P.C., convicted them thereunder and sentenced them to imprisonment for four years.

4. The learned counsel appearing for the appellants referring to the evidence of P.Ws. 1, 3 and 8 submitted that there is no iota of evidence to support the prosecution allegation that the appellants cremated the dead body of the deceased inspite of the request made by the Grama Rakhi, P.W. 3. Referring to the evidence of P.W. 1 (Informant), it is submitted by Sri Samantaray that this witness heard some female members saying that accused Bisu Sahu had killed the deceased and he went to the house of the Grama Rakhi, P.W. 3 to pass on the information. He saw the family members of the deceased and on being questioned, he was told that accused Bisu had killed the deceased and the dead body had already been taken to the cremation ground. Thereafter, this witness and P.W. 3 went to the cremation ground and found the appellants making preparation to cremate the body of the deceased. This witness has only said that after they requested the appellants not to cremate the body of the deceased, he left the place to inform the matter at the Polsara Out Post and had not seen what happened thereafter. According to Shri Samantaray, the evidence of this witness is of no help to the prosecution since he had not seen the actual setting of fire to the body of the deceased. Similar argument is also advanced so far as the evidence of P.W. 3 the Grama Rakhi is concerned. Sri Samantaray further submitted that since both the witnesses on whom much reliance has been placed by the learned Second Addl. Sessions Judge have not said anything about the persons who set fire to the body of the deceased, the offence so far as u/s 201 of the Penal Code is concerned is not attracted. In this connection, Shri Samantaray has placed reliance on a decision of this Court reported in 1987 (1) Crimes 365 : Batapa Bada Seth v. State.

5. Learned Addl. Standing Counsel on the other hand, referring to the evidence of these aforesaid two witnesses submitted that both the witnesses had seen the present appellants making preparation for cremation of the body of the deceased and P.W. 3 who is the Grama Rakhi had informed the present appellants that there is a rumour that the deceased has been killed and the dead body should not be cremated. Even after getting this information from the Grama Rakhi, P.W. 3, the appellants not only prepared pyre but also set fire to the dead body of the deceased by the time the Police came and, therefore, committed the offence u/s 201/34 of the Penal Code.

6. In the light of the arguments advance by the learned Counsel for the parties, I proceed to examine the evidence of P.Ws. 1 and 3. P.W. 1 is the informant who in his evidence has stated that after hearing about the killing of the deceased, he informed the matter to the Grama Rakhi, P.W. 3 and when they arrived in the house of the deceased, they were told that the dead body has been taken to the

cremation ground. Thereafter, they proceeded to the cremation ground and found the appellants preparing for cremation. They warned not to cremate the dead body since it was a case of murder. Thereafter, leaving the Grama Rakhi, P.W. 3 at the spot he went to the Police Station to lodge the report. In cross-examination, this witness has admitted that he had not seen the actual burning of the dead body. So far as P.W. 3 is concerned, in his deposition he has stated that he had gone to the cremation ground with P.W. 1 and found the present appellants making preparations to burn the dead body of the deceased. The appellants were informed by them that the deceased had been killed and the dead body should not be burnt. Remaining there for about ten minutes, he also left the place and waited for the Police to come and by the time the Police came the dead body was burning. There is nothing in his evidence to indicate that he had also seen any one of the accused-appellants setting fire to the dead body. On the other hand, in cross-examination, this witness has stated that apart from the present appellants, there were 40 to 50 other persons standing in the cremation ground and watching the cremation. In the reported case cited by the learned counsel for the appellants, has held that removal of the dead body of the deceased from place of murder to another place where the dead body was found will not attract Section 201 of the Penal Code. This Court has also observed in the aforesaid judgment that Section 201 of the Code would be inapplicable in cases where the dead body of a murdered person is removed from the scene of occurrence to another place and thrown or kept there or found hanging from a tree giving it a colour of suicidal hanging. This Court observed that these facts would not amount to causing disappearance of evidence of the commission of offence of murder. So far as the present case is concerned, even accepting the evidence of P.Ws. 1 and 3 the only material available against the appellants is that they removed the dead body of the deceased from the house of the deceased to the cremation ground and made preparations for burning the same. There is absolutely no material on record to show that the appellants or any one of them set fire to the body of the deceased. Materials are also available on record to show that not only these appellants but also 40 to 50 persons were present in the cremation ground. Under these circumstances, it cannot be said that the appellants set fire to the body of the deceased and committed the offence u/s 201 of the Penal Code. I, therefore, do not agree with the findings of the learned Second Addl. Sessions Judge and hold that there is absolutely no material to convict the appellants for the offence said to be committed u/s 201/34 of the Penal Code. Accordingly, the appeal is allowed and the appellants are acquitted on the charges.

7. Appeal allowed.