
(2007) 05 OHC CK 0071

In the Orissa High Court

Case No : Jail Criminal Appeal No. 32 of 1997

Kula @ Kulamani @ Kulabandhu Suna

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 342

Citation : (2007) CLT 60 Supp : (2007) 1 OLR 634 Supp : (2007) OLR 60 Supp

Hon'ble Judges : R.N. Biswal, J; P.K. Tripathy, J

Bench : Division Bench

Advocate : B.M. Biswal, for the Appellant; P.K. Khuntia, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Conviction u/s 302 I.P.C. recorded by the learned Sessions Judge, Bolangir in Sessions Case No. 3 of 1996 is under challenge by the Appellant from the jail.

2. According to the case of the prosecution, Appellant had granted a loan under a promissory note to the deceased. The deceased repaid the amount but the Appellant did not return the loan document. On the date of occurrence i.e., on 18.9.1995 at about 7.00 P.M. when the deceased went to the house of Appellant, demanded return of the document, there was an altercation between the Appellant and the deceased. The wife of the Appellant joined with her husband in the altercation. The deceased retaliated, abused and gave a push to her as a result of which she fell down. Being enraged, Appellant went inside his house, brought out the bar of a cot, (charpoy) dealt blows on the waist and thigh of the deceased and when the deceased fell down tied his hands, legs and neck placing the bar under the tied portion of the body, dragged and put him inside his house. While doing so he cautioned the co-villagers-eye witnesses P.W.3, 4 and 5 not to interfere or to administer water to the deceased who was then asking for water. On the following day morning accused opened the door of the room where the deceased had been confined, untied him and found that the deceased had died.

The matter was reported to the police through co-villagers ward member and later on a written report was lodged by P.W.5. That was regarded as F.I.R. Ext.5.

3. In course of investigation dead body of the deceased was sent for post mortem examination. Dr. B.B. Jena, P.W.2 conducted autopsy and submitted post mortem report Ext.3 so also opinion report Ext.4. The Investigating Officer was examined as P.W.6. Prosecution relied on various documents marked as Exts.1 to 12 and the M.Os. I and II respectively the bar of the cot and the rope by which the deceased had been tied.

4. Appellant denied to the charge and pleaded innocence but did not adduce any defence evidence.

5. Learned Sessions Judge referring to evidence of P.W.2 and the post mortem report Ext.3 besides the opinion report Ext.4 hold that prosecution proved beyond reasonable doubt that the deceased suffered homicidal death because of asphyxia. In that respect evidence of P.W.2 indicates that there was clear cut ligature mark on the back of the neck, around both wrist joint and both the ankle joint. He also found contusion of stick marks on the right thigh and scratch marks on the chest and abdomen and that the face was puffy and cyanosed. P.W.2 opined that the cause of death was due to asphyxia and it was a homicidal strangulation. He also opined that the aforesaid injuries causing the homicidal death are possible by use of M.Os. I and II. The aforesaid evidence is sufficient to prove that the deceased suffered a homicidal death. Of course there is no challenge to the finding of the trial Court on homicidal death.

6. Trial Court recorded finding that P.Ws.3, 4 and 5 were the eye witnesses to the occurrence and proved that deceased was assaulted, tied, partially dragged and confined in the room by the accused and that in the night some of them heard that the deceased shouted for water and that on the following day morning the deceased was found dead. Appreciating such evidence learned Sessions Judge found the accused guilty of the offence of murder punishable u/s 302 of I.P.C. Accordingly, he sentenced the accused to imprisonment for life. For the charge u/s 342 I.P.C. learned Sessions Judge awarded the sentence of Rigorous Imprisonment for one year with direction to run the sentences concurrently.

7. Learned Counsel for the Appellant in his first attempt argues to disbelieve the evidence of P.Ws.3 and 5 on the ground of contradiction. Being unsuccessful in establishing any material contradiction he argues not to rely on such evidence in view of the statement of P.W.1 vis-a-vis the statement of P.W.5 as the informant. In that respect also we do not find any prospect of the defence to gain benefit as against the proved charges. Alternatively Appellant argues to record the conviction for the offence u/s 304 I.P.C. and in that respect his contention is that there was no intention on the part of the accused to commit murder of the deceased or to cause such bodily injury which is in ordinary course of nature is sufficient to cause death of the deceased. He argues that, according to the admitted prosecution case, it is the deceased who misbehaved the wife of the

accused caused physical violence on her. Thus at best accused had the intention to teach him a lesson and therefore accused tied and put him inside the room and under such circumstance conviction should be culpable homicide not amounting to murder. Mr. Khuntia, learned Addl. Government Advocate, argues in support of the order of conviction for the offence u/s 302 I.P.C. only on the ground that deceased suffered a tragic death. He does not reply to the aforesaid contention that accused had no intention to commit murder of the deceased.

8. Regard being had to the contention of both the parties and particularly taking note of the fact situation of this case that accused had no intention to kill the deceased and that at best with the intention to teach the deceased a lesson, he tied the hands and legs and put him confined in a room and because of that, deceased was found dead on the following day morning, the offence of murder is not established to punish him u/s 302 I.P.C. Since the death is homicidal in nature, we find that in this case accused is guilty of offence of culpable homicide punishable u/s 304 I.P.C. first part. For the said offence, we punish him to undergo Rigorous Imprisonment for 10 years. It appears from the lower Court record that he was in jail during trial of the case. We also see on record that bail was not granted to the Appellant. Under such circumstance, he might have served the aforesaid sentence in the meantime. Therefore, the period of detention be accordingly calculated and if the Appellant has already spent the aforesaid period of 10 years in jail custody and his further detention is not required in any other criminal case then he be set at liberty forthwith.

Accordingly, the Jail Criminal Appeal is allowed in part. The release order be issued accordingly but immediately.