
(2003) 03 OHC CK 0097

In the Orissa High Court

Case No : Criminal Revision No. 370 of 2002

Mrutyunjaya Konhar

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 03 OHC CK 0097

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

L. Mohapatra, J.—This revision has been directed against the order dated 30.10.2002 passed by the learned Additional Sessions Judge, Boudh in S.T. No. 8 of 2002 adding the Petitioner as an accused in the Sessions Case and issuing summons for his appearance.

2. The prosecution case as it appears from the record is that while the informant and her husband (deceased) and the children were sleeping inside the drawing room, she heard a sound and saw accused Mitiki in the room. The said accused was armed with a Kati and when the informant raised hulla, the said accused assaulted her husband on hand and head resulting in death of the husband of the informant. After investigation, charge-sheet was submitted against the accused Mitiki alias Sudhir Mukhi for commission of offence u/s 302 of the Indian Penal Code and in due process the case was committed to the Court of the learned Addl. Sessions Judge, Boudh. In course of trial, P.W.1 was examined on 28.10.2002 and some other witnesses were examined on the said date as well as on 29.10.2002. P.W. 1, 2 and 3 having implicated the present Petitioner in the commission of offence and the Petitioner not being an accused in the case, an application u/s 319, Code of Criminal Procedure was filed by Public Prosecutor

and on consideration of the said petition as well as the evidence of the aforesaid three witnesses, the learned Addl. Sessions Judge added the Petitioner as an accused and issued summons to him.

3. Shri Dhal, the learned Counsel appearing for the Petitioner submitted that neither in the F.I.R. nor during investigation the Petitioner was implicated as an accused in the case. According to Shri Dhal, no witnesses including the P. Ws. 1 to 3 during their examination u/s 161, Code of Criminal Procedure implicated the Petitioner in any way in commission of the offence and their subsequent development in the story during trial should be brushed aside and no reliance should have been placed by the learned Addl. Sessions Judge on such evidence. Shri Dhal further contended that a new story having been advanced at the stage of trial, the learned Additional Sessions Judge should have taken note of that while dealing with the application u/s 319, Code of Criminal Procedure filed by the Public Prosecutor.

4. The depositions of the three witnesses have been annexed to the revision. P.W.1 is the informant who in her statement before the Court has stated to have seen the Petitioner giving one blow with a Kati on her husband and the other accused giving two blows. P.W.2 is the father of the deceased, who has stated in his evidence that after hearing the cry of his son he got up and saw the present Petitioner and the other accused leaving the spot with Kati. P.W.3 is the mother of the deceased who has also stated that she has seen the present Petitioner and the other accused escaping from the house. On the basis of such evidence available on record, a prima facie case is positively made out against the present Petitioner with regard to his involvement in the offence. The contention of the learned Counsel Shri Dhal that during investigation these witnesses had not implicated the Petitioner and developed the story at the time of trial can be gone into after conclusion of trial and the value of such evidence can be assessed at that stage.

5. Since a prima facie case is made out against the Petitioner, I do not think there is any illegality in the impugned order by adding the Petitioner as an accused and issuing summons to him to face trial. After appearance it will be open for the Petitioners to confront the statements of these witnesses recorded during investigation and, therefore, I am of the view that it is not the stage where such point raised by the learned Counsel for the Petitioner can be dealt with Accordingly, I do not find any merit in the revision.

6. The learned Counsel further submitted that in view of the offence alleged, the Petitioner may not be granted bail by the learned Addl. Sessions Judge. I do not find any substance in such apprehension. When an application for bail is filed, the learned Addl. Sessions Judge is required to look into the material available against the Petitioner and other circumstances before passing any order. I am, therefore, of the view that as and when the Petitioner appears before the learned Addl. Sessions Judge and files an application for bail, the same shall be dealt with by the learned Addl. Sessions Judge in accordance with law. However, it is

directed that if the Petitioner appears before the learned Addl. Sessions Judge and moves an application for bail, the same shall be disposed of on the day it is moved.

The Criminal Revision is accordingly disposed of.