
(2013) 06 OHC CK 0014
In the Orissa High Court
Case No : Criminal Rev. No. 659 of 2012

Rabi @ Rabinarayan Jena and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 114(b), 30
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2013) 116 CLT 774 : (2014) 1 ILR (Ori) 126 : (2013) 2 OLR 262

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : S.R. Mulia, R.C. Moharana, M. Mulia, H.K. Singh and R.R. Nayak, for the Appellant;

Final Decision : Disposed Off

Judgement

B.K. Nayak, J.—Heard learned counsel for the petitioners and learned Additional Standing Counsel. Perused the records.

2. Order dated 27.8.2012 rejecting application of the petitioners for discharge and framing charge against them u/s 302/34 of the Indian Penal Code by the learned Sessions Judge, Jaipur in C.T. (Sessions) No. 64 of 2011 is the subject matter of challenge in this revision.

3. Petitioner No. 1 is the father and petitioner Nos. 2 and 3 are his sons. In the morning of 14.06.2010 the petitioner No. 1 lodged information at the P.S. that his younger son, Bhimsen Jena went to the bank of River The Baitarani to attend call of nature in the evening of 13.06.2016 and thereafter he was to attend a marriage ceremony as a member of Barat Petitioner No. 1 and family members were assuming that his younger son (deceased) had already gone to attend the marriage after attending call of nature in the evening of 13.06.2010. On the morning of 14.06.2010 the mother of the deceased found the body of the deceased with cut injuries on his cheek and head lying on the river bank.

Suspecting it to be a case of murder, the petitioner No. 1 lodged the report at the P.S. without naming anybody as culprit. In his statement u/s 161 Cr.P.C. petitioner No. 1 expressed suspicion about involvement of co-accused-Prasanta Jena alias Babua, since Prasanta Jena alias Babua was a criminal and on one occasion he along with petitioner No. 3 Gunanidhi Jena had been arrested in a case of theft and after release on bail the deceased forbade Prasanta Jena to come to his house for which there was animosity between them. During the course of investigation, the co-accused Prasanta Jena was arrested and it was ascertained that Prasant Jena made extra judicial confession implicating the petitioners.

4. Learned counsel for the petitioners submits that the only material against the petitioner is that co-accused-Prasanta Jena alias Babua made an extra judicial confession before two co-villagers that since the deceased had illicit relationship with his aunt (wife of younger brother of petitioner No. 1), the petitioners had forbidden him to indulge in such activity, but he turned a deaf ear and therefore, at the behest of the petitioners co-accused Prasanta Jena along with the petitioners committed murder of the deceased, and that there is no other material except the extra judicial confession by the said co-accused. Therefore, the petitioners cannot be charged u/s 302/34 of the Indian Penal Code.

5. Learned Additional Standing Counsel after going through the entire case diary submits that except the confessional statement of co-accused Prasanta Jena there is no other incriminating material about the involvement of the present petitioners in the murder of the deceased.

6. Though a confession of a co-accused is relevant u/s 30 of the Evidence Act, at the same time u/s 114(b) the presumption is that an accomplice is not worthy of credit unless corroborated in material particulars. Confessional statement of a co-accused is a very weak piece of evidence and it is also not substantive in nature. No conviction can be recorded solely on the basis of such confessional statement of a co-accused. The, apex Court in the case reported in State of Madhya Pradesh and Others Vs. Paltan Mallah and Others etc., held that in absence of any substantive evidence against the accused persons, the extra judicial confession allegedly made by another accused implicating both loses its significance and there cannot be any conviction based on such extra judicial confession.

7. At the stage of framing charge the Court must on consideration of the record of the case and documents submitted thereunder if comes to the conclusion that there is ground for presumption that the accused has committed an offence exclusively triable by the Court of Session, he shall frame charge. But if it comes to the consideration that there is no sufficient ground to proceed against the accused he shall discharge him. The presumption must be strong enough about the guilt of the accused. Therefore, unless there is some corroborative evidence, direct or circumstantial, the confessional statement of co-accused will not have much value to prove the guilt of the accused. Therefore, in such an event

allowing the trial to proceed against the accused persons against whom the only material is a confessional statement of the co-accused will be an abuse of process of Court.

8. In the light of the aforesaid discussion, I am of the view that no charge u/s 302/34 of the Indian Penal Code can be framed against the petitioners. The impugned order is set aside. The petitioners are discharged from the offence u/s 302/34 of the Indian Penal Code.

9. Trial shall proceed only against accused Prasanta Jena alias Babua.

10. CrI. Rev is accordingly disposed of. Issue urgent certified copy.