
(2023) 06 OHC CK 0095
In the Orissa High Court
Case No : Criminal Appeal No.262 Of 2016

Rila Naik @ Nayak

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154
Indian Penal Code, 1860 — Section 302

Citation : (2023) 06 OHC CK 0095

Hon'ble Judges : D. Dash, J;Dr. S.K. Panigrahi, J

Bench : Division Bench

Advocate : Ashok Kumar Pattnayak, S.K. Nayak

Final Decision : Disposed Of

Judgement

Dr. S.K. Panigrahi, J.

1. By the impugned judgment of conviction and order of sentence dated 17.02.2016 passed by the learned 2nd Additional Sessions Judge, Khurda in S. T. No.34 of 2014, the present Appellant has been convicted under Section 302 of the Indian Penal Code, 1860 (for short 'the I.P.C.') for having committed murder of deceased Bikash Naik by poisoning. The Appellant has been sentenced to undergo imprisonment for life and to pay fine of Rs.20,000/-, in default to undergo R.I. for four months.

I. CASE OF THE PROSECUTION:

2. The prosecution case, as is revealed from the materials on record, is that on 1.10.2013 at about 10.10 A.M. Bhima Naik, the father of the deceased submitted a written report at Sadar P.S, Khurda to the effect that accused Rila and her other family members with an evil intention called Bikash to their house and Rila offered him a drink mixed with "DANADAR" (pesticide poison). Bikash drank the same and, subsequently, died due to the toxic effect of poison.

3. A small boy aged about 12 years named Kanhei had been used as messenger by Rila to call the deceased to her house and one Manoj Naik was present when Kanhei handed over the letter of Rila to Bikash. The FIR also contains the signatures of 28 villagers, who were acquainted with the incident. Based on the said written report, the I.I.C., Sadar P.S., Khurda registered Sadar P.S Case No.139 of 2013 and took up investigation. On completion of investigation, he submitted charge sheet for commission of offence punishable under Section 302 of the I.P.C. against the accused Rila Naik to face trial.

II. TRIAL COURT'S JUDGMENT:

4. The defence took the plea of denial and false implication.

5. In order to prove the allegation, the prosecution examined as many as 15 witnesses. Prosecution also placed reliance on the documents marked Exts.1 to 16. Out of the said 15 witnesses, P.W.2 is Bhim Naik, the informant and father of the deceased Bikash. P.W.6 is Basanti Naik, the sister of the deceased, P.W.5 is Kanhu Naik, a boy aged about 12 years, who alleged to have handed over the letter of Rila to Bikash while he was playing carom with Manoj at village club. P.W.10 is Dr. Narayan Rout, who conducted post mortem over the dead body of the deceased and also gave final opinion about his death. P.W.15 is the Investigating officer. P.W.14 Banamali Sahu, Government Examiner of question document. P.W.13 Banita Das C/348, seizer witness and remaining witnesses are independent witnesses to the occurrence.

6. No defence evidence, oral or documentary, was adduced.

7. On an appraisal of evidence on record and after careful examination of recorded evidence, the learned trial court held that the prosecution established its case beyond reasonable doubt by proving that Rila administered "DANADAR" poison to Bikash and that the death of the deceased was as a result of such poisoning. Once the prosecution proved that what was administered was poison, it established that Rila knew that the poison was so eminently dangerous that it must in all probability caused death. Such inference is of common sense. If, however, Rila had a different intention in administering poison by bonafide mistake or by way of love failure, such intention is a fact especially within her knowledge. It is for her to prove such an intention which would furnish a rational explanation consistent with her innocence. It is the duty of prosecution to anticipate and eliminate all such intentions. The non- examination of the Revenue Officer and other witnesses, as submitted by learned defence counsel, in Court's opinion would not affect the prosecution version as the same is backed by positive materials.

8. While concluding, the trial court has given the final appreciation of materials in the light of salutary authority (supra). In the case at hand, it came into the light that there was an illicit affair between the deceased Bikash and accused Rila, which is evident from the wording of letter of Rila (seized under Ext.2). The said letter is suggestive of latent intention of accused to have sexual intercourse with

Bikash. In her letter, she requested Bikash to come with liquor bottles and one bottle of Japani oil (Japani tela). It is known that "Japani oil" is meant for prolonged sex- play. All such wording of such letter was only to lure the deceased to the trap. It is also learnt from the evidence of father and sister of the deceased as well as from the evidence of Kanhu (P.W.5) that the deceased had been to the State of Jammu & Kashmir to earn his livelihood and in the meantime accused Rila had married to one Dilu. It is further established through the positive evidence of Kanhu (P.W.5) and Manoj (P.W.3) that the letter was duly served on the deceased. Even though nobody had seen the deceased going to the house of accused Rila and drinking the poisonous liquor but circumstances of entire transaction of administering of such drink was thoroughly exposed through the version of independent witnesses. The deceased himself disclosed the entire scenario of incident and his suffering as well as the role played by accused Rila before his death. The death of Bikash is the silent testimony of the culpability of accused. The opinion of doctor (P.W.10) and expert (P.W.14) clear the air suspicion and doubt. In other word, those are the last nail on the coffin.

9. On analysis of evidence on record and taking into consideration the documents exhibited in the aforesaid case, the learned 2nd Additional Sessions Judge, Khurda has held the accused guilty of the offence under Section 302 of the I.P.C. and sentenced him as aforesaid.

III. SUBMISSIONS ON BEHALF OF THE APPELLANT:

10(i). Learned counsel for the Appellant submitted that accused/ Appellant had no motive to commit the death of Bikash. He further submitted that the prosecution had not examined the Tahasildar, who alleged to have present during collection of specimen handwriting so also Dillu Naik, the husband of accused Rila. He categorically submitted that the death of Bikash was caused due to drinking of spurious liquor plentifully available in the locality.

(ii). Regarding cause of death of the deceased is concerned, it is undenied fact that the deceased had been to Rila's house but the role of the accused Rila in mixing the poison with the drink is not clear. There is also possibility that there is spurious liquor by the local wine shop. Further, most of the eye-witnesses account which reiterated about the role played by Rila in mixing poison with the drink is by the interested witnesses. Hence, culpability of the accused cannot be exposed nor can it be accepted.

(iii). It is submitted that the prosecution has not examined the Tahasildar who alleged to have present during the collection of specimen hand writing, so also the husband of the accused Rila. There was no motive for Rila to kill the deceased as she had already married and leading peaceful conjugal life.

(iv). He further submitted that the offence under Section 302 I.P.C. has not been proved beyond reasonable doubt. So, the Appellant should have been given the benefit of doubt.

III. SUBMISSIONS ON BEHALF OF THE STATE:

11. Per Contra, Learned counsel for the State placing reliance on the evidence of P.Ws.2, 5, 6, 10, 14 and 15 and the letter of the Appellant (under Ext.2) supported the impugned judgment fully and counters the argument advanced by the Appellant.

IV. COURT'S ANALYSIS AND REASONS:

12. As far as the charge of murder is concerned, the prosecution tried to establish the intention of causing death and the internal injury which inflicted on the deceased due to swallowing of poison is sufficient in the ordinary course of nature to cause death. In the instant case, the basic allegation of prosecution is that both the accused and the deceased are co-villagers having rustic background. There were some affairs between them. The deceased had been to the State of Jammu and Kashmir to earn his livelihood and he had returned just few days before the incident. On the fateful night, the accused invited the deceased to her house by sending a letter through a tender aged boy. Getting such information, the deceased arrived at the house of the accused. She offered him alcohol mixed with "DANADAR" (pesticide poison). The deceased had drunk the same and later experienced severe pain and bitterness in his stomach and all over his body. He was taken to hospital and during course of the treatment he died.

13. In order to bring home the charges, the prosecution heavily relied upon as many as 15 witnesses. Out of them, P.W.2 is Bhim Naik, the informant and father of deceased Bikash. P.W.6 is Basanti Naik, the sister of the deceased. P.W.5 is Kanhu Naik, a tender aged boy of 12 years old who allegedly handed over the letter of Rila to Bikash while he was playing carom with Manoj at village club. P.W.10 is Dr. Narayan Rout who conducted post mortem over the dead body of the deceased and also rendered final opinion about the death. P.W.15 is the Investigating Officer. P.W.14 is Banamali Sahu, who is a Government Examiner of question document. P.W.13 is Banita Das C/348 who is a seizure witness. The remaining witnesses are independent witnesses to the occurrence.

14. As per the testimonies of independent witnesses to the occurrence, the informant and the father of the deceased who examined himself as P.W.2 has stated that the incident had taken place in the night of 30.09.2023. In the same night at about 9.00 P.M., the deceased complained pain on his limbs and his head was reeling. He also complained of loss of eye-sight. He categorically disclosed that accused Rila called him to the backside of her house and gave something poisonous adding to liquor. He admitted to have drunk the liquor. P.W.2 took him to the hospital at Khurda and then to Bhubaneswar. He died at Bhubaneswar hospital. He categorically admitted to have lodged the F.I.R. He admitted to have handed over a letter written by accused Rila Naik to police which he had recovered from the shirt pocket of his son which is marked as Ext.2 and Ext.2/2 is his signature. He categorically testified to have mentioned in the inquest report

that Rial Naik had given poison to his son causing his death.

15. Admittedly, there was no document relevancy relating to the treatment of Bikash at Khurda hospital. He further testified to have reached at Khurda hospital at 10.30 P.M. and shifted Bikash to Vivekananda Hospital, Bhubaneswar where the doctor declared Bikash as dead. He then returned to the village and after consulting with the villagers, he lodged the F.I.R. He also admitted in his cross-examination that his son died due to administering of poison by the accused which the deceased had disclosed before the family members. The said fact was also disclosed before the villagers. It is also the fact that the deceased Bikash Naik returned home from the house of Rila Naik and he was feeling uneasy on his head and the entire body. He told to the family members about the fact of consuming poison that was given in the drink by Rila Naik and after drinking such liquor he was suffering. The letter of Rila Naik alleged to have been recovered from the shirt pocket of the deceased. This has been well supported by the witnesses who proved the respective signatures and seizure list Ext.2 and his signature Ext.2/1 prepared by the I.O. in their presence. The fact of administering poison by Rila Naik was also stated by P.W.4 who was a neighbor. He had been examined by the police during cross-examination. He further testified that Bikash was his nephew being the son of his brother and added that about 10 to 20 villagers were present when the deceased disclosed that the accused Rila had given him poison mixing the same with liquor. Similarly, the sister of deceased Bikash named Basanti Nayak (P.W.6) also testified that in the relevant night deceased Bikas was sitting in our goat shed. On being asked, he replied that Rila had called him and had given poison to him added with liquor and he was suffering from throat pain and headache. She also testified that she has never seen her brother taking alcohol. But can smell that from his mouth and added that Bikash vomited in the house of Sahadev dada (P.W.3).

16. The evidence of P.Ws. 4 and 6 can be considered as a perfect corroboration of the statement of other two witnesses, as stated supra. It is a fact that the version of above prosecution witnesses have not been shattered by the prolonged cross-examination. Further, since the witnesses are rustic villagers, 100 percent accuracy in their statement cannot be expected. Similarly, P.W. 7, 8 and 9 during their respective examination expressed their ignorance about the incident. They have been promptly declared hostile as per the provision under Section 154 of the Cr.P.C. The deposition of P.W.5 (Kanhua Naik @ Kanhei) who was a tender aged boy of 12 years testified that the deceased Bikash was his uncle and the accused Rila is the wife of his other uncle Dillip. He categorically testified that on the relevant afternoon when there was nobody in the house, Rila called him and gave him a letter requesting him to hand over the same to Bikash. He testified to have handed over the letter to Bikash while he was playing carom with Manoj at village club. It is also a fact that he being a minor witness, the court asked him some general questions to test his rationality and degree of understanding. Though he could not remember the date properly, but the fact vividly remembered by him. His version was also supported by Manoj

(P.W.3) who was playing carom with Bikash at village club. The version of above two witnesses have remained unchallenged during their respective cross-examination and no material contradiction was brought out from their mouth.

17. From the evidence of P.W.5 and 3 it is apparent that the role of the accused Rila cannot be ruled out. The factum of letter written by Rila or not has been clarified by P.W.14 (Banamali Sahu), the Government Examiner of the Questioned Document. He categorically opined that Rila Naik had written the said letter. In order to establish such fact, he employed his expertise with the help of scientific equipments available in the laboratory and accordingly, reached to the conclusion that the letter was written by Rila Naik.

18. Starting from the letter written by the accused carried by P.W.5, the child witness and given to the deceased and followed by the deceased's arrival to the house of the accused has been a weak chain. The deposition of P.W.2 and non-availability of treatment document of Khurda hospital smack and weak link of the chain. P.W.2 also admitted that illicit distilled liquor is sold in their village and denied to name of the vendor also. His family had no prior enmity with the family of the accused nor was there any intention to kill the deceased. He also denied strongly about any kind of love relationship of his son with Rila Naik. He has also denied any one sided love of his son with the accused. The factum of delay in lodging F.I.R. also creates a lot suspicion. After lodging the F.I.R. it was not read over and explained to him.

19. The factum of illicit affair between the deceased Bikash and accused Rila may be accepted. The factum of calling by accused Rila to the deceased Bikash to her house may also be accepted. However, the fact of the deceased going to the house of accused Rila and consuming poisonous liquor is not coming forth clearly. There is huge shadow of doubt. Though the deceased himself had disclosed the entire scenario of the incident and his suffering as well as the role played by accused Rila before his death, the death of Bikash due to poisonous drink given by the accused/ Appellant is not coming forth directly. There is a missing link in the chain. The fact of mixing of poison with the drink is still in illusion. The vomited materials also not seized for examination. Hence, there is huge gap in the chain and it is not possible to conclude that the death of the deceased has been caused by the accused/ Appellant. Therefore, the benefit of doubt may be extended to the Appellant.

20. In that view of the matter, we are of the opinion that on the basis of the materials on evidence, the prosecution has not proved its case beyond all reasonable doubt.

21. Hence, the Appeal is allowed. The impugned judgment of conviction and order of sentence dated 17.02.2016 passed by the learned 2nd Additional Sessions Judge, Khurda in S.T. No.34 of 2014 convicting the Appellant under Section 302 of the I.P.C. and sentencing her to undergo imprisonment for life and to pay fine of Rs.20,000/-, in default to undergo R.I. for four months, are set

aside. The Appellant is acquitted of the said charge.

22. Since the Appellant- Rila Naik @ Nayak is in custody, she be set at liberty forthwith in the aforesaid case, unless her detention is not required in any other case.

23. Accordingly, this CRLA is disposed of being allowed.

.....