
(2009) 07 OHC CK 0053
In the Orissa High Court
Case No : Criminal Appeal No. 182 of 2003

Smt. Nirmala Mohapatra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Evidence Act, 1872 — Section 25, 26, 27

Penal Code, 1860 (IPC) — Section 300, 301, 302, 304, 342

Citation : (2009) CLT 1436 (Suppl Crl) : (2009) 2 OLR 583 Supp : (2009) OLR 1436 (Suppl Crl)

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Advocate : C. Kastur, for the Appellant; Kishore Mishra, A.G.A., for the Respondent

Judgement

A.S. Naidu, J.—Appellant, as accused, faced trial for commission of offences under Sections 342, 429, 436, 302 of the Indian Penal Code (in short, "IPC") in S.T. No. 15/83 of 2000 in the Court of learned Addl. Sessions Judge, Khurda. She was found guilty of the offences punishable under the said section and was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 1000/- in default to undergo rigorous imprisonment for six months. Being aggrieved, she has filed this appeal.

2. The prosecution case as would be apparent from the F.I.R. filed by Hadibandhu Mohapatra, P.W.6 on 4.10.1999 at Jankia Police Station is that he and the accused-Appellant are related to each other being brother and sister. About 15 years back he had sold his ancestral house and land situated in village Sadeigarh and had purchased a small piece of land at Naranaguda, constructed a thatched house thereon and was residing there with his wife and children. The house of the accused was also in the same vicinity. The accused was residing in her house with her husband, daughter and son. The accused always entertained grudge on her brother, the informant, mainly on the ground that he had not paid her any money out of the consideration amount of the joint family properties,

which he had sold. She had threatened him as well as his wife on several occasions and even assaulted the wife of the informant and his child. She had wanted the wife of the informant of dire consequences and threatened to set fire to her house. One day prior to the date of occurrence, the sister-in-law of the informant, her husband Rabindra and their daughter Pravasini aged about 10 years, residents of Barala Balunkeswar under Satyabadi Police Station had come to the house of the informant to see his ailing wife. After taking their meals, Rabindra along with his wife Pramila and daughter Pravasini slept in the house of the informant (P.W.6). The daughter of the informant Santi and son Ganesh slept on the floor of the house. The informant and his wife Pratima due to lack of space went to the house of their neighbour Narayan Mansingh (P.W.3) to spend the night. After witnessing TV for some time, all of them went to sleep at about 11.00 P.M. The informant (P.W.6) and his wife P.W.7 slept in the front room. About one hour after, P.W.6 had commotion. He came and saw that his house was burning. P.W.3 also came out of his house and saw that the house of P.Ws. 6 and 7 was on fire and the roof of the house had fallen being gutted by fire. They went near the house and found that the door of the house was chained from outside. With much difficulty, P.W.6 opened the chain and saw that both inside and outside of the house was on flames. His brother-in-law Rabindra rushed out of the house having sustained burn injuries. He fell down in front of the house of P.W.1: On entering inside his house, P.W.6 found that his son Ganesh, daughter Shantilata, sister-in-law Pramila and niece Pravisini had died having sustained burn injuries on their person. He also found that four goats that had been tied inside the thatched house had died due to burn injuries and all his house-hold articles were burnt due to fire. On hearing the hullah of P.Ws. 6 and 7, their neighbour P.W.1 and Ors. arrived at the spot. P.W.11, the Gramarakhi went to the house of P.W.3 to inform the matter at the Police Station over telephone. After some time, the police arrived and so also the fire brigade and they extinguished the fire. P.W.1 shifted the injured Rabindra to Khurda Hospital and filed the F.I.R. Rabindra was shifted to Capital Hospital, Bhubaneswar and then to S.C.B. Medical College and Hospital, Cuttack, but then, three days thereafter he succumbed to his injuries.

3. On the basis of the information received from P.W.11, the Gramarakhi, the S.I. of Police, Jankia Police Station made a station diary entry and P.W.13, the I.O. along with other police staff proceeded to the spot. They saw three dead bodies lying inside the house and some ashes and four goats. P.W.13 reduced the oral report of P.W.6 into writing and as it revealed a cognizable offence, took up investigation. He examined the informant and other witnesses at the spot, held inquest over the dead bodies vide Exts.2 to 5, also held inquest over the dead bodies of four goats, sent requisition to Veterinary Assistant Surgeon, Jankia for conducting post mortem examination over the said goats. The scientific team of State F.S.L., Rasulgarh was summoned, dead body chalan was prepared and bodies were sent for post-mortem examination. He also seized the relevant materials and arrested the accused. In course of investigation, P.W.21 took

charge of investigation of the case from P.W.13. As per the confession of the accused made u/s 27 of the Evidence Act, the "Dibri", (M.O.7) was recovered and charge-sheet was submitted in G.R. Case No. 1080 of 1999 in the Court of learned S.D.J.M., Khurda.

4. After perusing the police papers and on being prima facie satisfied, learned SDJM took cognizance of the offence and committed the case to the Court of Session for trial.

5. The plea of the accused was complete denial. She also took the plea that she had never demanded Rs. 2,000/- towards her share from P.Ws. 6 and 7. She denied to have set fire to the house. According to her, she was sleeping in her house and that she had not set fire to the house using the "Dibi". She also retracted from the statement made by her before the police u/s 27 of the Evidence.

6. On the other hand, the prosecution in order to establish the charges got examined 23 witnesses. On behalf of the accused, no evidence was adduced. Out of the prosecution witnesses, P.W.1 is a neighbour of the house of the informant and accused, P.Ws. 2, 3, and 4 are neighbours and have stated about the incident, P.W.5 is a seizure witness, P.W.6 is the informant and brother of the accused, P.W.7 is the wife of the informant, P.W.8 is the son of the informant, P.W.9 is a witness to the seizure of "Dibi" by the police and he is also a witness to the inquest over the dead-body, P.W.10 is the next door neighbour, where the informant and his wife slept in the night of the fateful night, P.W.11 is the Gramarakhi, P.W.12 is the doctor, who conducted post mortem over the dead-body, P.W.13 is the S.I. of Police, Jankia Police Station, who conducted preliminary investigation, P.W.14 is a witness to the seizure of "Dibi", and before whom the accused made the confession. P.W.15 is also a seizure witness, P.W. 16 is a post occurrence witness, P.W.17 is the son of Rabindra, P.W.18 is the doctor, who conducted post mortem over the dead bodies of Ganesh and Santilata, P.W.19 is a witness to the seizure, P.W.20 is the Veterinary doctor, who conducted post mortem on the dead bodies of the goats, P.W.21 is the I.O. who took over charge of investigation from P.W.13 and submitted charge-sheet, P.W.22 is the doctor who had examined the accused and P.W.23 is the doctor who examined the informant and the accused on police requisition.

7. After discussing the evidence in extenso and relying upon the autopsy report and other documents, learned Sessions Judge arrived at the conclusion that the accused was responsible for the death of Rabindra, Pramila, their daughter Pravasini as well as Santi and Genesh, daughter and son respectively of the informant who lost their lives due to fire while sleeping in the house and the death was homicidal.

8. Ms. C. Kasturi, learned Counsel appearing for the Appellant took pains to place the entire evidence once again before this Court and submitted that in absence of any direct evidence connecting the accused with the alleged occurrence,

learned Sessions Judge acted illegality and with material irregularity in finding the accused guilty. According to learned Counsel, neither any witness had identified the Appellant committing the crime nor there is any other reliable evidence. According to the prosecution, the entire prosecution story hinges on surmises and conjectures. It is alleged that in absence of any cogent evidence connecting the Appellant with the commission of the offence, learned Sessions Judge should have acquitted the Appellant in stead of convicting her. Much has been said with regard to not recording the dying declaration of Rabindra. Similarly, with regard to non-examination of any of the family members of the accused including her daughter to establish that she was all along in her house during the night of occurrence.

9. These submissions are strongly repudiated by Mr. K. Mishra, learned Addl. Government Advocate for the State. According to him, the accused had a grudge on her brother, the informant (P.W.6) because he did not pay her any amount out of the sale proceeds of ancestral property. Her conduct lends support to the prosecution case. She had threatened P.W.7 and the informant, P.W.6 and cautioned them that if no amount is given to her towards her share from out of the joint family properties, she will set fire to their house. Added to that in the night of occurrence, Rabindra clearly saw a lady carrying "Dibri" (lamp) was walking away from her house. Placing reliance on the statement made by the accused u/s 27 of the Evidence Act and the recovery of "Dibri" from the house of the accused, Mr. Mishra submitted that there is no iota of doubt that the accused and the accused alone had committed the heinous offence of killing five persons apart from four goats.

10. To appreciate the submissions inter se, we once again meticulously examined the evidence. There is no doubt that the house of P.W.6 was gutted down by fire, consequently all the five persons including three children, who were sleeping in the house apart from four goats sustained burn injuries and out of them four died in side the house apart from goats and Rabindra, who was rescued at the last moment, breathed his last in S.C.B. Medical College and Hospital.

11. Perusal of the evidence of different witnesses leaves no doubt in our mind that the accused, who happens to be the sister of P.W.6 (the informant) entertained anger on her brother as no amount was paid to her from out of the sale proceeds of the joint family properties. It appears that she had expressed her anger earlier and even assaulted P.W.7, her sister-in-law and also the children of her brother. There is also evidence to reveal that she had threatened P.W.7 that if the amount is not paid very shortly she will set fire to their house, which he had purchased utilizing the amount. On the date of occurrence, Rabindra, who sustain injuries made a statement that he saw a lady with lamp moving away from the house and that the door of the house was locked from outside.

12. Ext.20 is the statement made by the accused u/s 27 of the Evidence Act. The said statement is very clear and unambiguous. The accused has not only

confessed about her guilt but also disclosed the location where she had kept the "Dibri" with which she set fire to the house of the informant. According to Ms. Kasturi, this statement was made in presence of police and is not admissible and as such, no credence should be given to the same.

13. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved against a person accused of any offence. Similarly, Section 26 of the Evidence Act stipulates that no confession made by any person while he/she is in the custody of a police officer unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. Section 27, however, is little differently worded. The said section stipulates that so much of the information supplied by an accused as relates to the fact thereby leading to discovery, may be proved whether it amounts to confession or not. In other words, the fact must lead to discovery in consequence of the information supplied by the accused. In the present case whether the information supplied by the accused amounts to confession or not becomes immaterial when pursuant to such confession discovery is made.

14. In the case in hand, as would be evident from Ext.20, the confession made by the accused while in custody and seizure of "Dibri" consequent to such statement from inside the house in presence of witnesses, satisfies the ingredients of Section 27 so far as discovery part is concerned.

15. Apart from the aforesaid facts, the conduct of the accused needs to be considered for arriving at a conclusion. It appears that in the night after hearing the hullah and commotion all the neighbourhood assembled near the house, which was set to fire and was burning, the accused however, did not bother to come out, which leads to an impression that she was aware of the incident. The said conduct has not been explained by the accused at any place.

16. A cumulative assessment of the entire evidence coupled with the conduct, both past and present, of the accused and the reasoning assigned by the learned Sessions Judge for convicting the Appellant, leads to an irresistible conclusion that the prosecution was able to successfully prove the guilt of the accused beyond all reasonable doubt. The judgment passed by the learned Sessions Judge does not suffer from any infirmity. After coming to the conclusion with regard to the involvement of the accused with the alleged crime, the only other thing which needs to be considered is the sentence, which deserves to be imposed upon the accused.

17. Section 300, IPC defines murder and reads as follows:

300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is

caused, or-

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Section 301, IPC defines culpable homicide by causing death of person other than person whose death was intended.

The discussions made in the preceding paragraphs would reveal that due to the overt-act committed by the accused, two innocent persons and three children lost their lives apart from four goats, but then the sequence of events reveal that the accused had no intention to murder any of the persons, who were present in the house at that time, who unfortunately lost their lives. She had a grudge on her brother and at best, her sister-in-law. With an intention to destroy the house purchased by her brother out of the income derived from the joint family properties, without giving her share, she set fire to the house. Of course, it appears that she had chained the house from outside so that no body could come out of the house and extinguish the fire. Be that as it may, fact remains, due to her action due to her action, five persons have died though she had no intention to kill them.

18. Considering all these facts and the fact that the Appellant is a lady and is in custody for little more than six years and odd, this Court feels that ends of justice and equity will be better served if the order of conviction is modified to one u/s 304, Part-II, IPC and the sentence is modified to the period already undergone and we direct accordingly. We further impose a fine Rs. 3,000/- (three thousand) and in default to pay the said fine, we direct that the Appellant shall undergo further imprisonment for a period of one year. The appeal is accordingly partly allowed.

S.C. Parija, J.

19. I agree.