
(2009) 07 OHC CK 0016
In the Orissa High Court
Case No : Government Appeal No. 28 of 1998

State of Orissa

APPELLANT

Vs

Budha @ Chintamani Das and Another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) CLT 1762 (Suppl CrI) : (2009) 2 ILR (Ori) 313 : (2009) 2 OLR 589 Supp : (2009) OLR 1762 (Suppl CrI)

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 15.2.1997 passed by the learned Sessions Judge, Kalahandi-Nuapada at Bhawanipatna acquitting the accused persons of the charges under Sections 302 / 34 I.P.C in S.C No. 25 of 1996 is assailed by the State in this appeal.

2. The prosecution case, bereft of unnecessary details, is that on 16.10.1995 at about 5.00 P.M. one Santosh Kumar Das-P.W.1 who was serving as a Teacher in a Primary School while returning home was informed that his wife has been burnt. On hearing the said fact he rushed to his house and found that his wife Jyotimayee was lying on the ground outside the house with burn injuries all over her body. He got startled and ran to the Government Hospital to call the Doctor. The Doctor, however, advised him to bring the patient to the hospital. Consequently he arranged a vehicle and took her wife to the hospital. After examining her wife the Doctor advised P.W.1 to admit her in the District Headquarters Hospital, Bhawanipatna, for better treatment. Consequently she was removed to the said hospital. Unfortunately, however, as her condition deteriorated, she was removed to Visakhapatnam and reached there on 17.10.1995 at 10.00 P.M. The Doctors at Visakhapatnam examined Jyotimayee

and declared her dead. The dead body was brought to the village and a written F.I.R. was lodged by P.W.1 on 19.10.1995. On the basis of the said F.I.R., U.D Case No. 7 of 1995 was registered. In course of investigation, it revealed that the accused persons after pouring Kerosene oil on the body of Jyotimayee set fire. It further appeared that Jyotimayee and her husband-P.W.1 were earlier leaving at Golamunda where P.W.1 was working as a Teacher and during the said period the accused persons were looking after the cultivation of the lands belonging to P.W.1. Subsequently P.W.1 was transferred to the village and he looked after his own cultivation. Being enraged, the accused persons in order to take revenge, took advantage of the absence of P.W. 1 and set fire to Jyotimayee.

3. The Officer-in-Charge, Kegaon Police Station lodged a report, on his own information, and the same was treated as F.I.R and charge sheet was submitted against the accused persons for commission of offences punishable under Sections 302 / 34 I.P.C. After taking cognizance of the offences the case was committed to the Court of Sessions.

The plea of the accused persons was complete denial of the charges and the allegations levelled against them.

4. In order to substantiate its case the prosecution got twenty witnesses examined and exhibited several documents. After discussing the evidence in extenso and taking into consideration the circumstances learned Sessions Judge entertained a genuine doubt and held that such doubt should always be for the benefit of the accused persons and accordingly passed an order of acquittal. The said order is assailed in this appeal by the State mainly on the ground that the learned Sessions Judge acted illegally in not relying upon the evidence of P. Ws.1 and 2 as well as the dying declaration said to have been made by Jyotimayee before P.W.3.

According to learned Addl. Standing Counsel, conviction can be based, only on the basis of oral dying declaration and the court below did not keep the said principle in mind.

This submission is strongly repudiated by learned Counsel appearing for the Respondents.

5. In order to appreciate the inter se argument this Court sacrosanctly went through the evidence both oral and documentary. This is a peculiar case where two F.I. Rs are available on record. The informant-P.W.1 had submitted a written report on 19.10.1995 before the Officer-in-Charge, Kegaon P.S. after the occurrence. The said report was treated as U.D F.I.R and U.D Case No. 7 of 1995 was registered. The incident took place on 16.10.1995 and the F.I.R was lodged on 19.10.1995 i.e. three days after. Perusal of the F.I.R clearly reveals that P.W.1 had not named any person as the assailant. In fact the said F.I.R gives an impression that Jyotimayee sustained burn injuries out of an accident. Subsequently the Officer-in-Charge, Kegaon P.S. filed a report on his own information which was treated as a F.I.R (Ext. 16) and on the basis of the same

further investigation was made.

6. Out of the twenty witnesses examined, P.W.1 was admittedly the husband of the informant. Though much has been stated in the F.I.R (Ext.16) with regard to inter se disputes prevailing between P.W.1 and the accused persons about cultivation of lands belonging to P.W.1, in his deposition, had given a clean cheat to the accused persons. He had categorically stated that there was no dispute inter se between them. Such statement made by the husband of the deceased creates an impression that the prosecution tried to exaggerate the event for the reasons best known. P.W.3 was the neighbour. It appears that the dying declaration was made before him by Jyotimayee. P.Ws. 2 and 7 the other two witnesses who were also neighbourers and present at the spot. The evidence of P.W.3 is full of contradictions and do not get corroborated by the evidence of P. Ws.2 to 7. Even otherwise if according to P.W.3, Jyotimayee disclosed the names of the accused on 16.10.1995, it is strange that in the F.I.R which was lodged on 19.10.1995 by P.W.1 there was no allegation. The learned Sessions Judge in paragraphs 7 and 8 of his judgment has vividly discussed the discrepancies between the evidence of different witnesses. After going through the same and the evidence of corresponding witnesses this Court finds that the conclusions arrived at by the learned Sessions Judge does not suffer from any infirmity.

7. So far as the dying declaration is concerned it is no more res integra that while dealing with a dying declaration in consonance with Section 32 of the Evidence Act, the court has to be satisfied that the circumstances and surroundings when the dying declaration said to have been made were proper and the statement made is clear, cogent and convincing and that the same is from a reliable sources. In other words, if the dying declaration is tainted with some doubt, the same should not be relied upon. In the case at hand, the evidence of P.W. 3 is not very convincing so as to believe their evidence with regard to the dying declaration. That apart though P. Ws.7, 8, 9, 10 and 11 were present in the vicinity they do not disclose that the deceased at any time had disclosed before them that the accused persons, by pouring Kerosene oil her had set fire. In the case at hand the inquest report was prepared by the Investigating Officer on 19.10.1995. The said report does not contain any remarks with regard to the fact that the deceased got the burn injuries due to any mischief. P.W. 13 after receiving information came to Bhawanipatna Hospital to see Jyotimayee. He had questioned P.W.1, the husband of the deceased, as to how the incident took place. It appears that P.W.1 told him that the incident took place due to burst of stove. P.W. 12 the doctor who conducted the autopsy did not rule out the possibility that the injuries could have been caused otherwise than homicidal.

8. In view of the aforesaid discussions and as the dying declaration does not inspire confidence in the absence of corroboration and in absence of any eye witnesses to the occurrence or any other cogent evidence connecting the accused persons, this Court finds that the learned Sessions Judge has rightly entertained doubt with regard to involvement of the accused with the alleged

crime. This Court therefore, finds no reason to interfere with the order of acquittal, that too after lapse of fourteen years and dismisses the Government Appeal.