
(2009) 10 OHC CK 0048
In the Orissa High Court
Case No : Government Appeal No. 48 of 1998

State of Orissa	Vs	APPELLANT
Rama Chandra Padhi and Others		RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2010) CLT 131 (Suppl CrI) : (2010) 1 OLR 370 Supp : (2010) OLR 131 (Suppl CrI)

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; D.P. Dhal, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 15.5.1997 passed by the learned Sessions Judge. Phulbani acquitting the accused persons of the charges under Sections 302/324/34 of I.P.C. in S.T. No. 122 of 1996 is assailed by the State in this appeal.

2. The prosecution case was set to motion on the basis of an F.I.R. lodged on 22.9.1995 at Baliguda Police Station, which was registered as Baliguda P.S. Case No. 86 (6) of 1995. According to the prosecution case, accused-Sudhir Padhi had a love affair with Sanjukta and wanted to marry her. The family members of Sanjukta did not agree with the said proposal. Consequently there was a quarrel between the accused persons and Ors. on 22.9.1995. In course of altercation P.W.3-Dasarathi Pradhan intervened. It was alleged accused Gouri Shankar @ Shankar Padhi expressed that due to fault of Sanjukta, such type of altercations were going on in the family. Hearing the said statement Gouri Shankar got enraged and dealt a blow by "tangia" on the left heel of P.W.3. Consequently he sustained bleeding injury. Seeing the said incident P.W.2, son of P.W.3 objected

and Gouri Shankar chased P.W.2 with the "tanga". Thereafter accused Sudhir, Gouri Shankar and Rama Chandra went inside the house of P.W.3. The informant-P.W.1 objected to such act of the accused persons. Being obstructed the accused persons pushed her. Consequently she fell down and became unconscious. The accused persons entered into the room where Sanjukta was staying and caused her death by strangulation by means of a lace of a Saya.

3. On the basis of the F.I.R., investigation commenced. The Investigating Officer visited the spot, recorded statements of different persons present in the vicinity, seized material objects and after completion of investigation submitted charge sheet in G.R. Case No. 322 of 1995 in the Court of the learned S.D.J.M., Balliguda. Learned Magistrate on being satisfied that a prima facie case was made out took cognizance of the offences and committed the case to the Court of Sessions for trial.

4. The plea of the defence was of complete denial. It was further pleaded that Sanjukta might have committed suicide. The allegation that P.W.4 went with a "tanga" was admitted but then it is stated the same was snatched away from his hand and in the process it fell on the leg of P.W.3 thereby causing bleeding injuries.

5. In order to substantiate its case the prosecution got 14 witnesses examined. Out of whom P.W.14 was the Investigating Officer, P.W.12 was the Police Constable, P.W.13 was the doctor who conducted postmortem examination and examined P.Ws.3, 10 and 11 who sustained injuries. P.Ws.1, 2, 3 and 4 are members of the family of Sanjukta. Other witnesses except P.W.8 were after occurrence witnesses. P.W.1 was the informant and the F.I.R. lodged by her was marked as Ext.9. After analyzing the evidence both oral and documentary threadbare the trial Court came to the conclusion that the prosecution had totally failed to establish the charges under Sections 302/324 of I.P.C. against the accused persons and acquitted them u/s 235 of Code of Criminal Procedure The said judgment as stated earlier is assailed before this Court.

6. During pendency of the appeal it appears, Respondent No. 3-Sudhir Padhi has expired and as such the appeal has abated as against him and it is now confined only to Respondent Nos. 1, 2 and 4. Learned Addl. Government Advocate strenuously took this Court through the evidence both oral and documentary. According to him the trial Court has not properly appreciated the evidence and the conclusions arrived at are based on surmises and conjectures. It is stated that in view of the evidence of P.W.1 coupled with the evidence of P.Ws.3 and 4 the trial Court should have arrived at the conclusion that the accused persons have committed the crime. This aspect according to him is corroborated by the evidence of the Doctor P.W. 10 as well as the postmortem report which reveals that the death was caused by strangulation.

7. All these submissions are repudiated by Mr. Dhal, learned Counsel appearing for the Respondents. According to him the learned District and Sessions Judge,

Kandhamal-Boudh has discussed the evidence in extenso and has not committed any error. He further submitted that the occurrence took place in the year 1995 and fourteen years have passed in the meanwhile. That apart while dealing with an order of acquittal the appellate Court should be slow to interfere with the findings and only if the conclusions arrived at by the trial Court are found to be not justified and shocking to the common sense the same should be varied. (See Bahal Singh v. State of Haryana reported in AIR 1994 SC 606). In other words according to Mr. Dhal after going through the evidence even if this Court finds that Anr. view is possible the same should not be adhered to unless the Court is satisfied that the conclusions arrived at are unjustified, perverse and contrary to the evidence on record.

8. After hearing learned Counsel for the parties diligently and going through the records meticulously this Court finds that in fact there are number of gaps in the prosecution case, which has not been properly explained. Admittedly P.W.1-informant, was the sole eye witness. According to P.W.1 the accused persons got into the room where she was staying and in course of altercation gave her a push. Consequently she fell down and became unconscious. But then it appears, in Court she had deposed that she found the accused persons enter into the room where Sanjukta was sitting on a cot. They throttled her neck with the lace of a red Sarya. This aspect was disbelieved by the trial Court as because there is no opening from the room where P.W.1 was staying to the room where the incident said to have taken place. The prosecution has also not come with clean hands and has not explained as to how P.W.1 who became unconscious and was lying on the room, could see the occurrence which took place in Anr. room. Apart from the said fact no other witness has directly or indirectly attributed any overt act to any of the Respondent. According to the Doctor the death was caused due to strangulation but then the postmortem report reveals that the ligature mark is absent in the back portion of the neck. The said fact also throws a cloud of suspicion in the mind of this Court. That apart trial Court after discussing the evidence has arrived at the conclusion that the prosecution has totally failed to establish the allegations levelled against the accused persons beyond all reasonable doubts. After going through the evidence and judgment this Court finds no error apparent on the face of the record so as to arrive at a different conclusion. The finding of the trial Court suffers from no infirmity. That apart as stated earlier the incident took place in the year 1995, fourteen years have passed and one of the accused has died in the meanwhile. Considering all these aspects, this Court is not inclined to interfere with the order of acquittal that too after lapse of so many years and dismisses the Government Appeal.

B.N. Mahapatra, J.

9. I agree.