

Mangal Munda Vs. State

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Court : Orissa

Decided On : Jun-19-2000

Reported in : 91(2001)CLT197

Judge : P.K. Patra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Jail Criminal Appeal No. 92 of 1996

Appellant : Mangal Munda

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Miss Sanju Panda, Adv.

Disposition : Appeal allowed

Judgement :

P.K. Patra, J.

1. The appellant has challenged the judgment dated 31-1-1996 passed by Shri P. B. Patnaik, Additional Sessions Judge, Jajpur in S. T. No. 467/44 of 1994 convicting him under section 304, Part II of the Indian Penal Code and sentencing

him to undergo rigorous imprisonment for seven years.

2. Prosecution case runs as follows:

The informant (p. w. 1) is the owner of a Stone Crusher at Aruha Chhak under Dharmasala P. S in the district of Jajpur. Aruha Chhak is at a distance of fourteen kilometres from Dharmasala P. S. On 6-6-1994 at 7 a. m. p. w. 1 lodged a written report at the Dharmasala P. S. stating that in the night of 5-6-1994 at 11 p. m, the appellant stabbed deceased Surendra Munda on his chest due to dispute among them. The appellant and the deceased were amongst the 10/12 labourers of p. w. 1 for crushing stones. There was profuse bleeding from the chest of the deceased and he was removed to the Aruha Hospital and as directed by the medical officer of that hospital the deceased was removed to the S. C. B. Medical College-Hospital at Cuttack where he succumbed to the injuries at about 2.30 a, m. (6-6-1994). After returning from the hospital, the witnesses who had removed the deceased to the S.C.B. Medical College-Hospital reported the occurrence to p. w. 1, who went to his office-room situated near the Crusher and found the appellant sitting inside the office-room with a blood-stained knife. The appellant had put on a Lungi and a banian which had been stained with blood. When asked by the informant, the appellant disclosed that since the deceased did not return Rs. 150-00 which belonged to him, he (appellant) pierced the knife on the chest of the deceased out of anger. It is further stated that the appellant showed the bloodstained knife and told the informant that with that knife he had killed the deceased. On further enquiry the informant learnt from the widow of the deceased that the deceased had to return Rs. 50-00 to the appellant, but the appellant insisted on payment of Rs. 150-00, for which the appellant pierced the knife on the chest of the deceased. The appellant was detained in the office-room and the informant went to the police station and lodged the report before the Sub-Inspector of Police (p. w. 7) who was in charge of the I. I. C., Dharmasala P. S. P. w. 7 treated the said report as F. I. R., registered the case and took up investigation. During investigation p. w. 7 visited the spot, examined witnesses, seived blood-stained earth, sample earth under the seizure-list Ext, 4/1 and the wearing apparels of the appellant viz., a Lungi (M.O.II), and a banian (M.O. III) as; also the weapon of offence --knife (M O I) under the seizure-list Ext. 3/1. The appellant was

forwarded to court in custody. P. w. 7 received the supplementary case diary from the I. I. C. of Mangalabag Police Station, Cuttack. He sent M. O. I. to the medical officer for his examination and opinion as to whether the injuries found on the deceased could have been caused by that weapon. The seized material objects were sent for chemical examination. After receipt of the chemical examiner's report as also the post-mortem examination report, the investigation was completed and charge-sheet was submitted against the appellant who stood his trial.

3. The plea of the defence is one of complete denial.

4. In order to bring home the charge against the appellant, prosecution has examined nine witnesses, of whom p. w. 1 is the informant, p. w. 7 is the investigating officer, p. ws. 2 and 3 are the two labourers working under p. w. 1 and are post-occurrence witnesses, p. w. 4 is a witness to the seizure before whom the appellant allegedly made extra-judicial confession, but he turned hostile and did not support the prosecution case, p. w. 5 is the medical officer who conducted the post-mortem examination of the deadbody of the deceased and submitted his report Ext. 5 and also Ext. 6, his opinion, after examination of the weapon of offence (M. O. I), p. w. 6 was the A. S. I. of Mangalabag Police Station, Cuttack who had conducted inquest over the deadbody of the deceased and sent the same for post-mortem examination. P. w. 8 is the younger brother of the appellant and brother-in-law of the deceased who has stated about the relationship of the appellant and the deceased and about their quarrel. P. w. 9 is the wife of p. w. 8 who did not support the prosecution case and has turned hostile and has been cross-prosecution case and has turned hostile and has been cross-examined by the prosecution. The defence has examined none.

5. Miss Sanju Panda, learned counsel appearing for the appellant, and the learned Additional Standing Counsel for the State, were heard at length. Miss Panda assailed the judgment of the trial court conceding that the learned Additional Sessions Judge has failed to appreciate the evidence on record properly and is come to the erroneous conclusion that the appellant as the author of the crime. Learned Addl. Standing Counsel supported the impugned judgment as

unassailable. The rival contentions require careful consideration.

6. The learned Additional Sessions Judge has found the appellant not guilty of charge under section 302, I. P. C. but found him guilty under section 304, Part II, I. P. C. relying on the circumstantial evidence and the extra-judicial confession of the appellant made before p. w. 3.

7. The medical officer (p. w. 5) has stated that he conducted post-mortem examination over the deadbody of the deceased on 6-6-1994 at 1.30 p. m. and found the following injuries :--

(i) Abraded contusion 1 cm X 1 cm situated on the middle of forehead 5 cm above the mason.

(ii) Stitched wound of size 3.5 cm with 3 black stitches placed obliquely 3 cm lateral to midline at the left 6th intercostal space 5 cm below and medial to left nipple, directed downward and outward. On opening the stitches, one stab wound of size 3 cm X 1 cm X chest cavity spindled separate the lower and having an acute angle which is continued in a linear superficial cut of 1.5 cm the upper and is slightly broader.

(iii) One superficial linear wound of size 3 cm situated 2.5 cm below the injury No. (ii) extending obliquely downward and inward: On dissection injury No. (ii), the external wound communicates into the chest cavity at the 6th inter costal space, 14 cm. below the left sterno clavicular joint cutting the lower border of 6th rib as the costo chondral junction of size 3 cm X 1 cm with extra extravasation of clotted blood at the retrosternal area extending from the manubrium to the xiphisternal sternum in an area of 15 cm x 7 cm x 1 cm thickness. The stab wound communicates to the pericardial side on the anterior surface on the left side cutting the pericardium of size 3 cm with lodging of clots over the wound surface. The pericardial space contained 250 ml of fluid and clotted blood. The stab wound has got the anterior ventricular surface of heart 3 cm above the apex of size 3 cm involving the left ventricle and portion of inter ventricular septum communicating to the left ventricular cavity. Portions of chordae tendineae and papillary matter had also been cut. The right chamber is empty, left chamber contains small amount of clotted

blood.

Opinion :

(i) The injuries are ante-mortem in nature.

(ii) Injury No. (i) caused by hard and blunt object. Injury No. (ii) and its corresponding internal injury have been caused by a pointed and flat cutting weapon and consistent with homicidal nature. Injury No. (iii) could have been caused by the pointed end of the same weapon.

(iii) Death was due to syncope (cardiac) in the result of injury to vital organ, that is heart which is fatal in ordinary course of nature and resulted from external injury.

(iv) Time since death within about 6 to 12 hrs.'

Ext. 5 is the post-mortem report. The medical officer also examined the weapon of offence M.O. I and opined that injury Nos. (ii) and (iii) could be possible by such weapon, Ext. 6 is his opinion. Thus from the medical evidence on record, it is evident that death of the deceased was homicidal.

8. In view of the medical evidence on record it is to be considered whether the appellant inflicted the injuries on the chest of the deceased resulting in death of the deceased.

9. The informant p w. 1 has stated to have lodged the F.I.R. (Ext. 1) after hearing about the occurrence from p. w 2. P. w. 2 has stated to have seen the deceased lying on the ground with injuries on his chest and the appellant standing there being armed with a blood-stained knife. According to p. w. 2, the widow of the deceased and others snatched away the knife from the appellant and the appellant was kept inside the office room which was locked up being brought by the widow and daughter of the deceased with the knife and that the knife was not snatched away from the hands of the appellant by the widow of the deceased and others. Thereafter the deceased was shifted to the village hospital and when the medical officer refused to attend, the deceased was shifted to the Cuttack Medical College-Hospital. P. w. 3 has also stated that he went to the spot hearing hulla and found

the deceased lying with injuries and the appellant standing there with a knife. The widow of the deceased was holding the hands of the appellant and asking him as to why he killed her husband. He has not stated about the reply of the appellant. He has stated regarding shifting of the deceased to the Aruha Hospital and then to the Cuttack Medical College-Hospital. P. w. 8, the younger brother of the appellant, has stated that there was quarrel between the appellant and the deceased who had married his younger sister, but he could not say why the quarrel between them ensued and has stated that when he was loading a truck he was informed by his wife (p. w. 9) that the appellant and the deceased were holding each other and so he went to the spot and found the deceased lying on the ground with bleeding injury, seeing which he shifted the deceased to the Aruha Hospital and from there to the Cuttack Medical College-Hospital. But he has stated that he did not enquire how the deceased sustained the injuries. As stated earlier, p. w. 9 who has been examined as an eye-witness to the occurrence has turned hostile and resiled from her earlier statement made before the investigating officer and did not support the prosecution case. From the statement of the investigating officer (p.w. 7), it appears that the weapon of offence (M.O.I) and the wearing apparels of the appellant, i.e. Lungi (M. O. II) and banian (M. O. III) were seized from inside the room where the appellant had been detained. But in the seizure-list Ext. 3/1 there is no mention as to whether the knife was lying on the floor of the room or was recovered from the possession of the appellant. The witnesses to the seizure (p. ws 3 and 4) have denied to have witnessed the seizure. P. w. 3 has not stated anything regarding the extra-judicial confession made by the appellant either in his examination in chief or in his statement in cross-examination. Hence the learned Additional Sessions Judge has committed an error of record by holding that p. w. 3 has stated in his Statement in cross-examination that the appellant made extra-judicial confession. Rather it is found from the statement of p.w. 4 who has turned hostile and was cross-examined by the prosecution that he has denied the suggestion of the prosecution that the appellant made any extra-judicial confession before him. It is found from the statement of p.w. 2 in his cross-examination that when he asked the appellant as to why he did so, the appellant replied that the deceased did not give his money and so he killed the deceased. This statement as to extra-judicial confession before p.w. 2 cannot be believed to

be true and cannot be relied upon. No question was put to the appellant in his examination under section 313, Cr.P.C. regarding the extra-judicial confession allegedly made by him before p.w. 4 or any other witness. Therefore it is found that the learned Addl. Session Judge has failed to appreciate the evidence on record properly and wrongly held that the extra-judicial confession made by the appellant before p.w. 3 was an incriminating material against the appellant. P.w. 8 has stated to have heard about the occurrence from his wife (p.w. 9) who has turned hostile and has resiled from her earlier statement made before the investigating officer, So the statement of p.w. 8 cannot be safely relied upon to consider the same as circumstantial evidence against the appellant. Though p.w.s. 2, 3 and 4 who are post-occurrence witnesses have stated to have seen the appellant standing at the spot holding a knife in his hand where the deceased was lying with injuries on his chest, they did not make any effort to snatch away the knife from the hands of the appellant which they ought to have done in normal course of human conduct. On the contrary, it is the prosecution case that the appellant was detained inside the office room with the knife and that during the whole night the appellant was there and in the morning after arrival of the investigating officer the room was opened when the knife stained with blood as also the blood-stained Lungi and banian of the appellant were seized. The detention of the appellant inside the office room with the weapon of offence appears to be improbable and the seizure of the weapon of offence (M.O.I.) from the possession of the appellant also appears to be incredible. In the above circumstances, the statements of p. ws. 2, 3, 4 and 8 cannot be safely relied upon to hold that the chain of circumstances of evidence is complete against the appellant, for which conviction of the appellant cannot be sustained and he will be entitled to acquittal. Accordingly, the impugned judgment cannot be sustained and is liable to be set aside.

10. In the result the Jail Criminal Appeal is allowed The impugned judgment is set aside and the conviction of the appellant under section 304 Part II of I. P. C. and the sentence passed against him are also set aside. The appellant is found not guilty of the charge and is acquitted. He be set at liberty forthwith if his detention is not otherwise required in any other case.

11. Jail Crl. appeal allowed.

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