

State of Orissa Vs. Mulia Adapadia

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Court : Orissa

Decided On : Feb-02-2009

Reported in : 107(2009)CLT747; 2009(I)OLR548

Judge : L. Mohapatra and; Pradip Mohanty, JJ.

Appellant : State of Orissa

Respondent : Mulia Adapadia

Disposition : Appeal dismissed

Judgement :

L. Mohapatra, J.

1. This appeal at the instance of the State is directed against the judgment and order recorded by the learned Sessions Judge, Koraput-Jeypore in Sessions Case No.110 of 1994 acquitting the respondent of the charge under Section 302, I.P.C.

2. The case of prosecution is that on 28.11.1993 in the evening while the informant (P.W.1) was in his threshing-floor, his wife, P.W.2, informed him that the respondent stabbed the deceased (his younger brother) and the deceased was lying dead in front of their house. After receiving the Information, P.W.1 came to the spot and found the deceased lying dead in front of his house. He noticed bleeding injury on the chest of the deceased. He also saw the respondent sitting

near the dead body. A Panchayat was convened and in presence of the villagers and the Panchayat, on being questioned, the respondent confessed to have killed the deceased by means of a knife. After the respondent confessed his guilt and produced the weapon of offence, he was kept on guard by the villagers and police was informed by P.W.1, after which a formal F.I.R. was registered, investigation was taken up and on completion of investigation, charge sheet was submitted for commission of offence under Section 302, I.P.C.

3. The prosecution, in order to prove the charge, examined nine witnesses but none was examined on the behalf of the respondent.

4. The plea of the defence is complete denial of the prosecution case. The trial Court on analysis of the evidence did not find any material to support the charge and acquitted the respondent.

5. From the evidence, it appears that P.W.1 is the informant. P.W.2 is the wife of the informant who had informed P.W.1 regarding death of the deceased. P.W.3 is a witness, who had gone to the spot and found the deceased lying dead. Similarly, P.Ws.4 and 5 had gone to the spot and found the deceased lying dead. P.W.6 is the doctor who conducted the post-mortem examination. P.W.9 is the I.O.

6. We have carefully gone through the evidence of the witnesses examined in course of trial. P.W.1, who is the informant, has deposed that on the date of occurrence while he was in the threshing-floor, he was informed by P.W.2, his wife, that the deceased was lying dead in front of his wife after the deceased and the respondent had a fight amongst themselves. Thereafter he rushed to the spot and found the deceased lying dead with bleeding injury on his left side chest. The respondent was also sitting nearby. Thereafter, the villagers came to the spot, a Panchayat was called and on being asked the respondent confessed his guilt stating that the deceased assaulted him whereafter out of anger he stabbed the deceased by means of a Kati. In cross-examination, this witness has stated that when he asked the respondent as to why he killed the deceased, the respondent said that while he was sitting, the deceased assaulted him severely being drunk and thereafter, out of anger he stabbed the deceased. P.W.2 is the wife of P.W.1. She has stated in her evidence that after hearing the noise of a fight between the

respondent and the deceased, she came out of the house and found the deceased lying dead in front of their house. Thereafter she informed about the incident to P.W.1. P.W.3 is the village Nayak, who came to the spot after receipt of information about the incident. He has also stated that in the Panchayat the respondent admitted to have killed the deceased for the reason stated earlier. Similar is the evidence of P.Ws.4 and 5. P.W.6 is the doctor who conducted post-mortem examination and found one penetrating incised wound at thoracic cavity with clean-cut margins. Apart from the above injury, one abrasion was also found on the left side of the back. P.W.6 was of the opinion that the external injury No.1, i.e., the penetrating incised wound, was sufficient to cause death. He also opined that M.O.I., the knife, could cause such injury. P.W.8 is the doctor who examined the respondent and found one lacerated injury near the left eye. P.W.9 is the I.O. On analysis of the above evidence, it appears that nobody has seen the respondent assaulting the deceased. P.W.2 came out of her house only after the assault was over. She has specifically admitted that when she came out of the house, she found the deceased lying dead and the respondent was sitting nearby. P.W.1 had also seen the respondent sitting nearby the deceased, but admits to be a post-occurrence witness. Similarly, P.Ws., 3, 4 and 5 are all admittedly post-occurrence witnesses.

7. Now, coming to the question as to whether the statement made before the Panchayat can be accepted as an extrajudicial confession or not, we find from the evidence of P.Ws.1, 3, 4 and 5 that immediately after the occurrence a Panchayat was called in which several villagers were present. The respondent did not make any statement on his own but was asked to make a statement as to why he killed the deceased. On being questioned by the Panchayat, the respondent made a confession. In our considered opinion, such a statement can neither be accepted as a voluntary one and consequently cannot be accepted as an extrajudicial confession. Apart from the above, from the evidence of P.Ws.1, 3, 4 and 5 we find that there are variations with regard to the exact statement made by the respondent admitting his guilt. Law is well settled that unless the extrajudicial confession is made voluntarily before a witness on whom the accused can have trust and confidence, such statement should not be acted upon. In the present case, there is no evidence to show that the respondent made a statement

voluntarily before the Panchayat in presence of several villagers. On the other hand, the evidence shows that the respondent was asked by the Panchayat to make a statement. We, therefore, do not find any reason to differ from the trial Court rejecting the evidence with regard to extrajudicial confession.

8. It further appears that the respondent has made a statement before the Panchayat to have used a Kati in assaulting the deceased. But as it appears, a knife has been seized, and the distinction between the knife and Kati is well known.

9. In view of the discussions made above, we find no justification to interfere with the impugned judgment. The Government Appeal being devoid of merit is dismissed.

Pradip Mohanty, J.

I agree.

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