

Gadhapurni Vs. the State

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Court : Orissa

Decided On : Aug-27-1979

Reported in : 48(1979)CLT369; 1980CriLJ188

Judge : R.N. Misra and ;P.K. Mohanti, JJ.

Appellant : Gadhapurni

Respondent : The State

Judgement :

P.K. Mohanti, J.

1. This is a prisoner's appeal presented through the Superintendent of Jail against her conviction under Section 302 I. P. C. and the sentence of imprisonment for life.

2. Accusation against the appellant was that she gave birth to an illegitimate child and caused its death by throttling on 25-1-75. The dead body of the child was found lying on the threshing floor of one Bhima Meher of Rampur. The Grama Rakhi of the village lodged information at the Police Station and a U- D. case was started. Investigation revealed that it was a case of murder. The appellant is alleged to have made an extra-judicial confession before P. Ws. 3 and 6, After investigation, she was charge-sheeted under Section 302, I. P. C-

3. The appellant pleaded not guilty to the charge. She denied having made any confession before P. Ws. 3 and 6. She also denied having given birth to the child.

4. The doctor P. W, 1 performed post mortem examination over the dead body and opined that the child was born alive and it was killed by throttling. The doctor's evidence leaves no room for doubt that the death was homicidal. This was also not disputed by the appellant.

5. There is no direct evidence of any eyewitness to the factum of murder, The order of conviction is based solely on the so-called extrajudicial confession of the appellant before P. Ws. 3 and 6.

6. The relevant portions of the evidence of p. Ws. 3 and 6 are extracted below:

P.W. 3, Lokanath Meher : - 'Seeing the dead body I told the accused that the villagers were suspecting her and enquired from her as to whether she had given birth to any child and had thrown the dead body. The accused in reply stated to me that sometime in the month of Baisakh, prior to Pousa she had illicit connection with an unknown man as a result of which she became pregnant.'

P. W. 6, Ramesh Chandra Meher : - 'During the winter 2 years back the accused confessed before me that she had illicit connection with one unknown man and became pregnant and delivered a dead child on the previous night whom she threw out.

7. The expression 'confession' has not been denned in the Evidence Act. Stephen in his Digest of the Law of Evidence defines it thus:

A confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime.

This definition was modified by the Privy Council holding that only a direct acknowledgment of guilt should be regarded as a confession, A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession vide *Narayan Swami v.*

Emperor AIR 1939 PC 47.

8. To make an admission a confession, it must amount to a clear acknowledgment of guilt. A confession must relate to the particular crime with which the accused is charged. Any admission which is not connected with any of the ingredients of the offence charged would not amount to a confession.

9. In the instant case, the accused was charged with having committed the offence of murder of her newly born child and nothing else. The evidence of P. Ws. 3 and 6 extracted above would show that the appellant did not make any admission that she had caused the death of her child. Therefore, her statement before P- Ws. 3 and 6 does not amount to a confession so far as this trial is concerned. The learned Sessions Judge fell into an error in holding that the appellant's statements before P. Ws. 3 and 6 to the effect that she became pregnant by illicit connection with an unknown man amounted to a confession, The evidence of P. W. 6 shows that the appellant stated before him to have delivered a dead child. Thus, it is clear that there was no acknowledgment of guilt. The order of conviction based on the so-called confession is not sustainable.

10. We allow the appeal, set aside the conviction and the sentence and acquit the appellant of the charge under Section 302 I. P. C. She is directed to be set at liberty forthwith.

R.N. Misra, J.

11. I agree.

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