

Jogi Sahu Vs. State

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Court : Orissa

Decided On : Oct-16-1968

Reported in : 1970CriLJ637

Judge : G.K. Misra and ;B.K. Patra, JJ.

Appellant : Jogi Sahu

Respondent : State

Judgement :

G.K. Misra, J.

1. The appellant has been convicted under Section 302 I.P.C. and sentenced to imprisonment for life. The prosecution case in short is that on 15-4-1965 sometime in the afternoon the appellant put a bamboo 'Funkanala' on the throat of his wife (deceased), stood on either side of the Funkanala with his two legs by holding a Khunta (big wooden pole fixed to the ground) and as a result of this she died of strangulation. The defence is one of denial.

2. The Doctor (P.W. 4) clearly stated that the death of the deceased was due to asphyxia as a result of strangulation of her neck resulting in the fracture of the larynx. His evidence has not been dislodged in cross-examination and no attempt has been made before us to establish that the finding of the doctor is not warranted by the post-mortem report and examination. The learned Sessions

Judge correctly held that the death was homicidal as a result of strangulation.

3. The only question for consideration is whether the appellant is responsible for the death of the deceased. P.W. 7, the daughter of the appellant and the deceased, is the only eyewitness. She is 11 to 12 years old. The learned Sessions Judge after putting some questions to her was satisfied that she was in a position to understand the questions and answers. Before the learned Sessions Judge she clearly supported the prosecution story that the appellant strangled the deceased by standing on the bamboo Funkanala on both sides after placing it on the throat of the deceased. Before the committing Court she however gave a completely different story. She clearly stated that her father did not kill her mother and that Krushna Bhanja and Dina Padhan killed her. It is to be noted that the admitted prosecution case is that a few days before this incident this Krushna Bhanja severely assaulted the deceased whereafter she was bed-ridden. The prosecution story is that as she continued ill for a fairly long time the appellant who is a beggar by profession wanted to get rid of her. In the committing Court P.W. 7 also stated that her father did not kill her mother by placing a bamboo Funkanala on her neck and standing over the same. In the Sessions Court she stated that her version in the committing Court was untrue and that she made such a statement as a result of tutoring by Krushna Bhanja.

4. We are thus confronted with a very difficult situation that a child witness who at one stage was the victim of tutoring has given two different versions, one before the learned Sessions Judge and another before the committing Court which has been treated as evidence under Section 288 Cr. P. C. The law on the point is now well settled. Though two different versions have been given it is open to a court of fact to examine both the versions. If the court is satisfied that the evidence before the Sessions court implicating the accused is true, that statement can be preferred to the state-men made before the committing Court subsequently resiled and vice versa. But generally when two conflicting versions are given and on the evidence the witness stands as a condemned liar the court needs corroboration in support of the statement on which the conviction is to be sustained. In this case we do not find any corroborating evidence to connect the appellant with the murder. We are not prepared to place reliance on her evidence in the sessions court without

corroboration. Not only she is a child witness, but on her own statement she was tutored at the earlier stage when she stated that her father was not the author of the murder. For the aforesaid reasons we place no reliance on the evidence of P.W. 7. There being no other evidence, the conviction cannot be maintained.

5. In the result, the order of conviction and sentence passed by the learned Sessions Judge is set aside and the Criminal Appeal is allowed. The appellant be set at liberty forthwith.

B.K. Patra, J.

6. I agree.

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