

Narayan Pradhan Vs. State of Orissa

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SooperKanoon Citation : sooperkanoon.com/529269

Court : Orissa

Decided On : Mar-07-2007

Reported in : 2007(1)OLR761

Judge : P.K. Tripathy and; S. Panda, JJ.

Appellant : Narayan Pradhan

Respondent : State of Orissa

Disposition : Appeal dismissed

Judgement :

S. Panda, J.

1. In this appeal, the appellant has challenged the judgment and order of conviction passed by the Sessions Judge, Ganjam-Gajapati, Berhampur, in Sessions Case No. 148 of 1996.

2. According to the case of the prosecution, on 31st December, 1995 at about 4.00 P.M. Kamadeb, the deceased, appeared at the betel shop of Bharat Samantra, (P.W. 1) and placed order for a betel. At that time, accused arrived there being armed with a Kati (M.O.1) and dealt a blow on the backside of the deceased. After sustaining that blow when the deceased fell down, accused dealt random blows by Kati on different parts of the body and left the place. Because of that assault

deceased suffered bleeding injuries and succumbed. The matter was intimated to the local police and investigation was undertaken in ritual manner. In course of investigation, the O.I.C. not only received the written F.I.R. Ext. 9 but also held inquest over the dead body, sent the dead body for post mortem examination, arrested the accused, seized the weapon of offence and sent the accused to the Court of J.M.F.C., Digapahandi to record confessional statement under Section 164, Cr.P.C. On completion of investigation he submitted charge sheet. The case was committed to the Court of Session and the accused faced trial in the aforesaid Sessions Case for the charge under Section 302, I.P.C.

3. To substantiate the charge, prosecution relied on evidence of 13 prosecution witnesses, documents marked as Exts. 1 to 10 and the weapon of offence marked M.O. 1. Amongst such evidence, evidence of P.W. 1 is that of solitary eye witness to the occurrence. P.W. 3 is the doctor (Professor of F.M.T. Department of M.K.C.G. Medical College, Berhampur), who conducted post mortem examination and proved the post mortem report, Ext. 2 and his opinion report Ext. 3, on examining the weapon of offence (M.O. 1). P.W. 13 is the Judicial Magistrate, who recorded the confessional statement of the accused marked Ext. 10.

4. On assessment of evidence learned Sessions Judge relied on the evidence of P.W. 1 with supporting evidence which squarely proved that the accused dealt blows as a result of which the deceased died and according to the evidence of P.W. 3 such death is homicidal and therefore the accused has committed offence of murder. Accordingly, he convicted the accused for the offence under Section 302, I.P.C. and sentenced him to imprisonment for life.

5. Learned Counsel for the appellant argues that evidence of P.W. 1 reveals that he remained complacent in course of the entire occurrence and that creates a doubt regarding he being an eye-witness to the occurrence. He further states that evidence of the relatives of the deceased, which includes his father and widow, does not indicate that soon after the occurrence they could sense the reason for which such crime was committed. In other words, according to him prosecution has failed to establish motive of the accused to commit that crime. Learned Counsel for the appellant further argues that keeping in view all such factums,

conviction of the accused under Section 302, I.P.C. cannot be sustained. Learned Counsel for the State on the other hand, wholeheartedly supports the impugned judgment and order of conviction and accordingly denies the contention raised by the appellant.

6. Before proceeding with the matter to consider the contentions raised by the parties we notice that the trial Court being presided over by a senior and experienced Judicial Officer has committed a fundamental mistake though that is not fatal, in as much as, he did not take as the first issue as to whether deceased suffered homicidal death, though he has dealt with that aspect after recording finding that accused is the author of the injuries. Under such circumstance, we record our observation for the posterity that the ingredients of the offence should be looked into for setting order of priority of issues which are to be considered and decided sequence wise. Section 302 I.P.C. under which the charge was framed provides punishment for the offence of 'murder'. Section 300 I.P.C. defines under what circumstances culpable homicide is murder. Therefore, while dealing with a murder trial, it is incumbent for the trial Court to record the finding as the first issue as to whether deceased suffered homicidal death.

7. We make a reference to evidence of P.W. 3 and the post mortem report, Ext. 2 and find that as many as eleven external injuries were there on the neck, head and the chest region. Though injury Nos. 8, 9 and TO as rightly suggested by P.W. 3 are defensive in nature {hat is to say such injuries were received by the deceased in course of attempting to protect himself, the remaining injuries were not only fatal but also crucial for homicidal death of the deceased.

We quote the evidence of the Doctor in respect of such external and internal injuries and the opinion thereof:

On post mortem examination I found the following external and internal injuries:

External Injuries:

i. Incised wound of size 7cm x 2cm x bone deep slight obliquely present in back aspect of skull right side involving the right ear and the part of right had been cut

thoroughly.

ii. Incised wound 10 cm x 4 cm extending from front aspect of the neck upto the vertebral column present over front aspect of the neck placed horizontally just below the thyroid cartilage.

iii. Incised wound 7 cm x 0.5 cm x bone deep present in left side of the face vertically in front of ear lobule from lower end of this injury linear incised wound of 6 cm extended downwards.

iv. Incised wound 9 cm x 3 cm x bone deep obliquely present on left side of lower part of the chest in front aspect extended from mid line to the lateral aspect of the chest.

v. Incised wound 3 cm x 2.05 cm x muscle deep present obliquely left Side of the chest 11 cm below the lobule of left ear.

vi. Two parallel incised wounds 10 cm x 0.2 cm x skin deep and 2 cm x 0.2 cm x skin deep one cm apart present in front aspect of left side of the chest starting from left sterno - clavicular joint, extended downwards.

vii. Incised wound 4 cm x 0.2 cm x skin deep situated parallel to injury No. 6 in front aspect of the body 3 cm above the injury No. 6.

viii. Incised wound 3 cm x 2 cm x bone deep directed below upwards present at the back aspect of proximal phalanx of left ring finger.

ix. Incised wound 2 cm x 0.2 cm x muscle deep present in proximal phalanx of back aspect of left middle finger.

x. Incised wound 0.5 cm 0.2 cm x skin deep present at the back of proximal phalanx left little finger.

2. Injury Nos. 8, 9 and 10 were situated in one line and could have been caused by one stroke, and these injuries are defence injuries.

xi. Abraded contusion of size 5 cm x 4 cm present 10 cm below the right scapula in back aspect of the chest. 3. Internal Injuries.

i. On dissection of external injury No. 2 the soft tissue, lower part of the thyroid cartilage and upper part of cricoid cartilage, both the jugular veins and carotid vessels and total thickness of lower part of larynx, pharynx had been cut thoroughly, and the injury extended upto inner part of vertebral column and the spinal cord had been cut partially at the level of. 4th and 5th cervical vertebra.

ii. On dissection of external injury No. 5, the sternum of left side also found to be cut partially.

4. Opinion:

i. External injury Nos. 1 to 10 and internal injury No. 1 and 2 could have been caused by sharp cutting weapon. External injury No. 11 could have been caused by blunt force impact.

ii. External injury Nos. 8, 9 and 10 were defence wounds.

iii. The injuries were homicidal in nature and sufficient to cause death in ordinary course of nature.

iv. Death was due to shock and haemorrhage as a result of injuries mentioned above.

v. Time since death was about 24 hours at the time of post mortem examination.

The aforesaid evidence of P.W. 3 as quoted above, leaves no room for doubt that the deceased suffered homicidal death. Indeed, the appellant does not challenge before us such conclusion arrived at by the trial Court.

8. When the matter stands thus, the other aspect is relating to the complicity of the appellant in the crime and in that aspect the conduct of P.W. 1 is questioned. Evidence of P.W. 1 is that he was in his betel shop when the deceased came and ordered for a betel and was standing in front of the betel shop and then the accused appeared with a Kati and dealt blows. Under such circumstances, we do

not find any reason to entertain the criticism made by the appellant that P.W. 1 did not caution the deceased and therefore such inaction of the P.W. 1 makes his evidence not credible. On perusal of depositions, we find that in that regard no cross-examination was made on P.W. 1. It might have so happened that P.W. 1 had no occasion or sufficient time to caution the deceased. Be that as it may, that circumstance alone is not sufficient to discard the veracity of P.W. 1 when admittedly his evidence remains unshaken in relation to his presence at the spot and witnessing the accused dealing blows and committing murder of the deceased.

The quality of the evidence of the single witness is found by the Court to be clearly reliable, hence there is no legal impediment for conviction of the accused persons on proof of the charge of murder by such evidence. When the evidence of sole eye witness has been found to be cogent, trustworthy and medical evidence corroborates his testimony, the conclusion based on such evidence is proper. See the case of *Vahula Bhusan alias Vehuna Krishna v. State of Tamilnadu* : AIR 1989 SC236 .

Evidence of P.W. 13 and the confessional statement made by the appellant under Ext. 10 further strengthen the case of the prosecution. Confessional statement Ext. 10 coupled with the other evidence on record unerringly brings home the charge against the appellant. It is now well settled that in order to sustain a conviction on the basis of a confessional statement, it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is sufficient. See the case of *Subramania Goundan v. The State of Madras* : 1958 CriLJ238 .

We thus find that evidence of P.W. 1 proves that appellant is the person who inflicted the injuries which resulted in homicidal death of the deceased. That aspect is totally corroborated by the medical evidence and proved confession made by the appellant.

So far as the motive is concerned, it is seen from the evidence of relatives of the deceased that immediately after the occurrence they were unable to pin point the reason of dispute between the accused and the deceased. The accused has

explained that he dealt blows killing the deceased out of annoyance. Under such circumstances the heinous offence raged for some time does not give any excuse to the accused and does not make him entitled to any benefit. Therefore, we do not find any reason to interfere with the impugned order of conviction.

9. So far as last contention raised by the appellant, we are unable to subscribe to the view that the offence committed is culpable homicide not amounting to murder on the face of Ext. 2 which reveals eleven external injuries by sharp cutting weapon having been dealt by the accused in a heinous manner. There is no evidence worth the name on record that annoyance which generated with the accused was at the instance of the deceased at the spur of the moment. In other words, the ingredients of Section 304 I.P.C. are not satisfied and consequently the offence committed by the appellant comes within the meaning of term 'murder' as defined under Section 300 read with Section 299 I.P.C. and punishable under Section 302 I.P.C.

10. Regard being had to the aforesaid facts and submissions and the reasons assigned by the trial Court, we find no reason to interfere with the impugned order of conviction. Accordingly, the Jail Criminal Appeal is dismissed.