

Rinkula Raito Vs. State

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Court : Orissa

Decided On : Oct-08-1968

Reported in : 1969CriLJ703

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

Appellant : Rinkula Raito

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. On 24.3.65 at about 8 P.M. there was a quarrel between the appellant and the deceased. The appellant challenged the deceased as having taken away his liquor. The deceased denied the fact and gave some slaps to the appellant. The appellant in his turn slapped the deceased. P.Ws. 7 and 9 intervened and both the appellant and the deceased left for their houses. Thereafter the appellant returned back with a Pahurani (M.O.I.), came near the house of the deceased and challenged him to come out. When the deceased came out, the appellant gave him a stroke on the head. The deceased sat down. The appellant gave a second stroke as a result of which the deceased fell down. The appellant left the place leaving behind M.O.I.

P.W. 7 carried the deceased home. The-deceased died on 27.3.65 in the hospital at R. Udayagiri. His dying declaration (Ext. 2) was taken by the Magistrate (P.W. 2) in the presence of the doctor (P.W. 3). The appellant took to a defence of denial. He pleaded that the deceased fell down from a palm tree and sustained the injuries. The learned Sessions Judge, after thorough examination of the materials on record, rejected the defence plea of accidental fall and held that the death was homicidal.

2. The conviction is based on the evidence of the eye-witnesses P.Ws. 8 and 9, the dying declaration Ext. 2), the confessional statement (Ext. 1), and recovery of the blood-stained Chaddar (M.O. II) found to have been stained with human blood by the Serologist. We do not place any reliance on (M.O. II) the Chaddar as there is serious discrepancy in the evidence of the seizure witness (P.W. 10), a jail warder, and P.W. 13 (the I.O.). P.W. 10 admitted in 'Cross-examination that the Chaddar was not seized from the body of the appellant and all through it was lying in a room inside the jail. The I.O. on the other hand made a statement that at the time of the seizure M.O. II was on the body of the appellant. The learned Sessions Judge did not notice this significant discrepancy in the evidence of P.Ws. 10 and 13. We accordingly place no reliance on M.O. II.

3. We have carefully gone through the evidence of P.Ws. 8 and 9 who are eyewitnesses. They are absolutely disinterested and nothing is suggested to them as to why they would falsely implicate the appellant. They have clearly denied the suggestion that the deceased struck against the door and sustained the second injury. The suggestion that the deceased had a fall from a palm tree was not absolutely made to them. Their evidence would be enough to sustain the conviction.

4. Law is well settled that a conviction can be based solely on a dying declaration provided it is a truthful version of the deceased. To test whether it is truthful or not, the Court must always be very careful. The dying declaration is made in the absence of the appellant who has no opportunity for cross-examination. It is for these reasons that the Court is to carefully scrutinise the surrounding circumstances, and the intrinsic character of the dying declaration and come to the

conclusion whether it is true or not. The dying declaration here is of a simple nature, and clearly states that the appellant gave the stroke on the head of the deceased. It was made to a Magistrate (P.W. 2) in the presence of the doctor (P.W. 3). Both these witnesses are of unimpeachable character and nothing was suggested against them as to why they would depose falsely.

P.W. 2 stated that the deceased had full consciousness at the time when the dying declaration was recorded and furthermore it was read over to him, and he accepted its correctness. P.W. 3 deposed that the deceased was semi-conscious, but he could freely give the answers though haltingly. There is no difference in the two versions given by P.Ws. 2 and 3. It is clear from their evidence that the deceased was fully conscious when the dying declaration was recorded and was in a position to understand the implication of the questions put to him and the answers given by him. There is absolutely no suggestion that the deceased had either enmity or ill-feeling with the appellant so as to falsely implicate him.

On a careful scrutiny of the dying declaration and the surrounding circumstances we are satisfied that it records a true version of the story and without corroboration the conviction in this case can be sustained on the dying declaration itself. But as has already been stated, P. Ws. 8 and 9 the two eye-witnesses fully support the prosecution story.

5. In view of the aforesaid evidence it is unnecessary to examine if the confession (Ext. 1) is acceptable as a piece of evidence to sustain the conviction.

6. On the aforesaid analysis, the conviction of the appellant is well founded. The appeal fails and is dismissed.

B.K. Patra, J.

7. I agree.