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Narayan Karjee Vs. State of Orissa

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Court : Orissa

Decided On : Apr-03-1997

Reported in : 1997(I)OLR466

Judge : P.C. Naik and ;P.K. Mohanty, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Jail Criminal Appeal No. 325 of 1992

Appellant : Narayan Karjee

Respondent : State of Orissa

Advocate for Def. : J. Behera, Addl. Govt. Adv. and ;S. Jena, Addl. Standing Counsel

Advocate for Pet/Ap. : S.R. Mohapatra, Adv.

Disposition : Appeal allowed

Judgement :

P.K. Mohanty, J.

1. This is an appeal from jail against the order of conviction under Section 302, IPC and sentence of life imprisonment in Sessions Cose No. 14 of 1992 passed by the learned Additional Sessions Judge, Parlakhemundi.

2. Prosecution case, briefly stated, is that the accused-appellant is the brother of deceased Laxmi Karjee. It was alleged that on the evening of 15-10-1990, accused Narayan Karjee killed his sister Laxmi Karjee by means of stone in spite of the protests made by his two wives. The eye-witnesses reported the matter to the Ward Member of the village, who in turn lodged the First Information Report in the police station. After completion of investigation, the Investigating Officer submitted the charge-sheet against the accused for having committed murder of his sister under Section 302, IPC.

3. The defence plea is one of complete denial and that the deceased expired due to fall on the stone and this false case has been registered without any basis.

4. The deceased is the sister of the accused. PWs 2 and 3 are two wives, who are eye-witnesses to the occurrence. PW 4 is the brother-in-law of the accused being brother of PW 2. It is the prosecution case that the deceased and accused were temporarily residing in their respective bagada houses. Both the deceased and the accused have gottheir houses in village Katakumba. On the date of occurrence, the accused was residing with his two wives in the bagada house and the deceased was in her bagada house. It is the evidence of PWs 5 and 6, the post-occurrence witnesses that PW 1 is the Member of the village Katakumba. PW 1 on the next date of occurrence heard about the occurrence from PWs 2 and 3 and lodged the First Information Report.PW 4 is another eye-witness to the occurrence, who is the brother-in-law of the accused being the brother of PW 2, PWs 5 and 6 proceeded to the spot after hearing about the occurrence and saw the dead body of LaxmiKarjee. It is the evidence of PWs 1, 2, 3, 4 and 5 that the accused confessed his guilt of having killed his sister. PW 7 is the doctor, who had conducted the post mortem examination and PWs 8, 9 and 10 are the Investigating Officers.

5. PWs 2, 3 and 4 are the eye-witnesses to the occurrence. PW 2 is the first wife of the accused and according to her, she along with accused and PW 3 was residing in their bagada house and deceased is the sister of the accused in her own bagada. In the evening of the date of occurrence, she saw the accused chasing the deceased to kill and she protested, but in spite of her protest, he gave

stone blow on the head of the deceased, as a result of which Laxmi felldown. Soon after Laxmi fell down, the accused gave further blows by means stone, as a result of which, she died. It further transpires from the evidence of PWs 2 and 3 that they hid themselvesinside the bagada seeing the action of the accused and on the next date of the occurrence, they proceeded to their village and reported the matter to PW 1. It is the evidence of PW 1 that after getting the information, he came to the spot, saw the dead body, again went back to village and called the villagers, who also saw the dead body. This witness further says that he along with 10 villagers went to the accused, who was present in the bagada house and on being asked the accused confessed his guilt saying that he had killed his sister Laxmi by means of a stone. PWs 1 to 5 had got no enmity with the accused.

6. The learned counsel for the appellant contends that even though the names of four witnesses have bean mentioned in the First Information Report by the informant, two of them namely. PWs 4 and 6 have been examined. PW 6 is not aneye-witness and he does not support the version of PWs 2, 3 and 4. Thus, it is the contention of the learned counsel that the two material witnesses named in the FIR having not been examined, the prosecution has tried to suppress the truth. The learned counsel has referred to a decision reported in (1988) 1 OCR 346 (State of Orissa v. Dayal alias Dayanidhi Ghosh andOrs.) to contend that if the FIR witnesses have not been examined without any explanation, that is a serious infirmity to discredit the prosecution case. The contention of the learned counsel is misconceived. The FIR has been lodged by PW 1. who is admittedly not an eye-witness and only after he was informed by PWs 2 and 3, he lodged the FIR. Thus, ifin the FIR some names have been mentioned, non-examination of such witnesses would not prejudice the accused so as to discard the prosecution case. The learned counsel has also referred to a decision of the Apex Court in Ram Kumar Panda v. The State of Madhya Pradesh. reported in AIR 1975 SC 1026 to contend that no credence to the version of the eye-witnesses would be given in case their names are not mentioned in the FIR. The facts of that case are quite different and the FIR was lodged by one of theeye-witnesses. It is to be stated that the FIR having not been lodged by any eye-witnesses and in the present case by a third person, the naming or not naming of the eye-witnesses would not be an infirmity. The learned counsel further contended that the weapon of offence

according to the prosecution case being lathi and stones as per the FIR the prosecution has adduced evidence in Court to the extent that the assault was made by means of a stone, just in order to corroborate the medical evidence and as such it is vulnerable. As has been observed earlier the FIR is not lodged by any of the eve-witnesses or even the post-occurrencewitness who have seen the incident where it took place or immediately after the occurrence and as such this submission of the learned counsel does not impress us and is rejected.

7. The next submission of the learned counsel is that the place of occurrence is shrouded with deep mystery. According to the learned counsel, the place of occurrence has not been disclosed in the FIR. PW 1 in his Examination-in-chief stated that they saw the dead body of Laxmi lying near the hut of Laxmi. That hut is in the bagada of Laxmi. In paragraph 9 of the cross-examination,PW 1 stated that the distance between the bagada of the accused and the deceased is at 200 yards and at the time of occurrence Janna crops (plants) were on both the bagada and the height of such plants ii about 6 feet. It is further contended that the PWs 2 and 3 who are the eye-witnesses according to the prosecution, have not stated regarding the place of occurrence except baldly saying that they saw the appellant chasing Laxmi to kill. PW 4 has stated that the appellant gave blows while she was standing, but in paragraph-4 of the cross-examination he has stated that occurrence took place just after sunset but however darkness had not prevailed and as such, at a distance the possibility of the assault being seen by this witness is doubtful. It is further contended that the spot map indicated that the bagada and hut are two different places, but the prosecution has been silent and has offered no explanation as to how the dead body was removed to the bagada house and by whom. In essence, the learned counsel submits that in view of such discrepancy in the evidence or the witnesses and the improbabilities of the case, the prosecution witnesses specially PWs 2, 3 and 4, the so-called eye-witnesses should have been disbelieved by the learned trial Court. The learned counsel has referred to a decision in Amar Singh andOrs. v. State of Punjab, reported in AIR 1 87 SC 826 and contends that the evidence of eyewitnesses on the place of incident if found inconsistent, the accused is entitled to the benefit of doubt. In the present case, the Investigating Officer has not seized the blood-stanined earth from the alleged spot, no chemical report of the blood has been produced before the learned Addl.

Sessions Judge. The contention of the learned counsel needs consideration.

8. The Investigating Officer has not seized any blood-stained earth from the spotof occurrence inasmuch as the spot of occurrence, according to the eye-witnesses PWs 2, 3 and 4, is near the bagada, whereas the dead body of the deceased was found by the post-occurrence witnesses and the Investigating Officer inside the Begada house. According to these witnesses, the hut was in the Bagada of the deceased and the distance between the bagada of the accused and the deceased will be 200 yards and at the time ofoccurrence Janna crops were standing between the two bagadas, which were of 6 feet height and as such, the assault as well as the further assault after the deceased fell down probably could not have been witnessed by the eye-witnesses. Another interesting feature is that PWs 2 and 3 have not stated the exact place of occurrence except saying that they S3v the appellant chasing Laxmi to assault and thereafter said that the accused assaulted the deceased by means of a stone. PW 4 has stated that theappellant gave blows while she was standing, without saying the spot where she was assaulted.

9. On consideration of the evidence of these witnesses, their evidence is not free from doubt and as such, complete reliance cannot be placed on the version of these witnesses in the facts and circumstances of the case. It also further transpires from the evidence of PW 2 that PWs 3 and 4 and Laxman have seen the occurrence. Out of these witnesses, Laxman, who is an independent witness, has not been examined by the prosecution, which creates doubt about the prosecution case. PW 4 has also stated that PWs 2, 3, himself andDandapani have seen the occurrence. but Dandapani, who is examined as PW 6 does not say that he has witnessed the occurrence. This discrepancy also lends support to the submission of the learned counsel that the witnessescannot be wholly relied upon.

10. The medical evidence of PW 7, the doctor, who conducted the autopsy, reveals that there was a lacerated wound on the left forehead and no external injury was found except the injury on the forehead. In cross-examination, he has stated that he has found a hole on the forehead ofthe deceased; besides, there were injuries above the left ear. PW 1 in his statement said that theysaw three

injuries on the head of Laxmi. According to PW 2, the accused gave stone blows on the head of the deceased, as a result of which she fell down and the accused gave another blow. It transpires from the evidence of PWs 2, 3 and 4 that two blows in all were given to the deceased by the accused and according to PW 4 one blow by store was given when the deceased was standing.Thus, this discrepancy in the evidence of the doctor and the eye-witnesses with regard to the number of blows and the corresponding injuries in the person of the deceased goes a long way to create serious doubt on the prosecution version.

11. Mr. S. Jena, learned Addl. Standing Counsel appearing for the State has referred to adecicion Raghunandan v. State of Uttar Pradesh reported in AIR 1974 SC 463 to contend that non-sending of theblood-stained earth to the Chemical Examiner will always not affect the prosecution case where there are several reliable evidence on record. In the facts and circumstances of the case, reliability of the evidence of PWs 2, 3 and 4 is not free from doubt, inasmuch as PW 10 in para-1 of his cross-examination has stated that ha has not marked the trail of spot leading to the house of the deceased. The dead body of the deceased was found inside the hut whereas the soot of occurrence, according to the eye-witness is far away and outside the hut. In view of the discrepancies in the evidence of the witnesses and the actual spot of occurrence, the prosecution case is not free from doubt and under the facts and circumstances of the case, benefit of doubt has to be given to the appellant.

12. In the facts and circumstances of the case, we allow the appeal and set aside the order of conviction and sentence passed by the learned Addl. Sessions Judge. The accused-appellant is acquitted of the charges under Section 302,IPC. The appellant be set at liberty forthwith, if he is not required in any other case.

P.C. Naik, J.

13. I agree.

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