State Vs. Dhusa Kandy and ors.

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SooperKanoon Citation : sooperkanoon.com/529741

Court : Orissa

Decided On : Dec-12-1968

Reported in : 35(1969)CLT152; 1970CriLJ1322

Judge : G.K. Misra and ;S. Acharya, JJ.

Appellant : State

Respondent : Dhusa Kandy and ors.

Judgement :

G.K. Misra, J.

1. The three respondents stood trial under Sections 380 and 302/34, Penal Code and were acquitted. The State has filed this appeal against the order of acquittal.

2. The prosecution case may be stated in brief. Admittedly the accused had some land disputes with the deceased. On 15-1-65 the accused came to the house of the deceased and tried to remove paddy sheaves. The deceased was aroused from sleep. While accused No. 1 was removing a paddy sheave, the deceased caught hold of it. Accused No. 1 dragged him. Accused No. 2 gave the second (first -Ed.) stroke on the bead. Accused No. 1 then gave the second stroke, and when the deceased fell down with his face upwards accused No. 8 gave the third stroke. The deceased died instantaneously on the spot. Kasi Kandy (since deceased) a eon of the deceased, lodged the F. I. E. on 16-1-65 at 2 to 8 P. M.,

the police station being at a distance of 22 miles from the village. After necessary investigasion, a charge-sheet was submitted against the accused persons. The defence is one of complete denial. Two defence witnesses were examined in support of a story that the sons of the deceased killed him while he was almost on the point of death arising out of a severe ailment. The learned Sessions Judge held that the death was homicidal and that the defence story was fantastic. He however acquitted the accused persons on finding that the prosecution failed to establish the case beyond reason, able doubt.

3. It is to be noted that Kashi Kandy lodged the F. I. E. (Ext. 6). He did not disclose in the F. I. E. as to how the deceased was assaulted by these accused persons. He started the story from the point that the deceased made a hulla which aroused Kasi from sleep. On coming out he noticed accused Nos. 1 and 2 standing with lathis and the deceased lying in front of the door in a pool of blood with severe injuries. The deceased was dead. The two accused persons ran away on seeing him. Kasi was examined in the committing Court. There he made a development that accused No. 8 was also involved in the murder, He also gave out details as to in what manner the accused persons assaulted the deceased. The F. I. B. is a former statement of Kasi and it can be used only for the purpose of contradiction. His evidence in the committing Court is admissible under Section 38 of the Evidence Act. There was not only an opportunity for cross-examination by the defence, but in fact he was cross-examined. On reading his evidence in the committing Court we are unable to accept him as a witness of truth. If he were an eye witness, he could not have omitted; in the F.I.R. the name of accused no. 8 and the important details as to how the assault was made. We accordingly place no reliance on the evidence of Kasi who died before the sessions trial began.

4. P. Ws. 1, 2, 3, 4, 8 and 9 are the eye-witnesses. P. W. 9 is the son of the deceased. P. W. 3 is his brother. P. W. 7 is the son of P. W. 8. P. W. 1 has married the sister-in-law of P. W. 7. P. W. 1's first wife was a relation of the accused who was driven out by P. W 1 about 30 years ago, The father of P. W. 4 is the maternal uncle of P. W. 2. P. W. 4 had admittedly enmity with the accused. In a previous case he was alleged to have assaulted the accused. He was medically examined and his injury report was submitted by the Doctor. He was not

straightforward enough to admit the simple facts. From the aforesaid discussion, it would be apparent that all the prosecution witnesses are either relations of the deceased or inimically disposed of towards the accused, It is well settled that the evidence of the witnesses cannot be discarded merely on the ground that they are related to the deceased. That is based on the common sense view that ordinarily a relation should not implicate persons who are not involved in the murder. In such cages, however, the Court requires some sort of independent corroboration to lend assurance to the conviction that they are witnesses of truth.

In this case we do not get any corroboration. The positive story of the prosecution is that some bundles of paddy were removed from the house of the deceased by the accused, and there were trails of paddy falling in between. The I.O. did not find any trails of paddy falling on the way. He did not also seize any paddy sheaves from the house of the accused or from any place under the control of the accused. The lathis used as weapons of offence have not been recovered. There is therefore no independent corroboration of these witnesses. Added to this, there is some substantial discrepancy in the evidence of these witnesses. For instance, P. W. 2 states that by the time he arrived, other eye-witnesses excepting the two sons of the deceased had not come and all of them came after the deceased fell down. This knocks the very bottom of the prosecution story. Similarly he says that the deceased fell down after accused No. 8 gave a stroke with his lathi. This is contrary to the prosecution story of the remaining witnesses that accused no. 3 gave a stroke after the deceased fell down with his face upwards. There is thus material discrepancy as to the time when different witnesses arrived at the spot and as to the manner of assault,

5. In the aforesaid state of affairs, we are to consider whether the order of acquittal is to be set aside, Law is well settled that the power of this Court in the matter of assessment of evidence is as wide in an appeal against an acquittal as it is in an appeal against a conviction. This Court has got full powers to review the entire evidence and come to a different conclusion. This is, however, subject to the rider that the presumption of innocence in favour of the accused has been reinforced by the factum of acquittal. While setting aside an order of acquittal, the Court must keep in view the aforesaid juristic theory, and if on assessment of evidence it is

satisfied that the view taken by the lower Court is not a reasonable one, then the order of acquittal is to be set aside.

6. Keeping the aforesaid perspective in view, for reasons stated already, we are not in a position to say that the view taken by the learned Sessions Judge is not a reasonable one in the facts and circumstances of this case.

7. We accordingly dismiss this appeal. The respondents are in jail. They be set at liberty forthwith.

S. Acharya, J.

8. I agree.