

Mandangi Relli Vs. State of Orissa

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Court : Orissa

Decided On : Apr-12-2005

Reported in : 99(2005)CLT689

Judge : P.K. Tripathy and ;Pradip Mohanty, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Jail Criminal Appeal No. 134 of 1996

Appellant : Mandangi Relli

Respondent : State of Orissa

Advocate for Def. : A.K. Mishra, Stg. Counsel

Advocate for Pet/Ap. : Rabindra Nath Nayak, Adv.

Disposition : Appeal dismissed

Judgement :

Pradip Mohanty, J.

1. In the above appeal, the appellant challenges the Judgment and Order dated 15.3.1996 of the Learned Sessions Koraput, Jeypore camp at Rayagada, in Sessions Case No. 130 of 1995 whereby the appellant has been convicted under

Section 302, IPC and sentenced to undergo imprisonment for life.

2. The case of the prosecution in succinct is that on 22.12.1994 the appellant called the deceased, his elder brother-Mandangi Bandhu (P.W. 1), Kadraka Jagabandhu (P.W. 2) and Mandangi Gobi (P.W. 3) to take Salap juice. Accordingly, in the afternoon, they are including the appellant went to Godamati mountain, where existed the Salap tree of the appellant and took Salap juice. While returning, at Sulangi Bandha all on a sudden the appellant dealt successive blows on different parts of the body of the deceased by means of Tangia, which he was then holding. As a result, the appellant fell down over a heap of stone and succumbed to the injuries.

FIR was lodged by P.W. 1 whereupon police sprang into action. In course of investigation, inquest was held over the dead body and it was sent for autopsy. The doctor who held post-mortem opined that the injuries where ante mortem in nature and the deceased died a homicidal death. While in custody, the appellant also gave recovery of the weapon of offence under Section 27 of the Evidence Act. On completion of investigation, police filed charge-sheet against the appellant.

3. The defence plea is one of complete denial.

4. In order to substantiate the charge, prosecution examined as many as nine witnesses. P.W. 1 is the informant and an eyewitness, P.W. 5 is the doctor who conducted autopsy over the dead body, P.W. 6 is another doctor who collected the nail clippings of the appellant and P.W. 9 is the Investigating Officer. The defence has examined two witnesses, including the wife of the appellant, who have stated about the partition effected among the family members of the appellant and the deceased.

5. Learned Sessions Judge, after evaluating the evidence on record, held appellant guilty under Section 302, IPC and convicted and sentenced him as mentioned above. In order to arrive at this conclusion, Learned Sessions Judge mainly relied on the evidence of P.W. 1 coupled with the fact of recovery of the blood stained Tangia (weapon or offence) pursuant to the disclosure made by the appellant.

6. Mr. Nayak, Learned Counsel for the appellant, contended that P.W. 1, who is stated to be the solitary eye-witness, has contradicted his own version and, therefore, his evidence does not inspire confidence. He further contended that discovery of an incriminating material under Section 27 of the Evidence Act must be deposed to and the information given by the appellant while in custody must be recorded. In the instant case, neither the investigating officer nor any other witness has indicated the exact information or statement made by the appellant, therefore, Section 27 of the Evidence Act is not applicable. In support of this contention, he relied on the case of Bhaga Gouda alias Vainra v. State, 1988 (II) OLR 120.

7. Mr. Misra, Learned Standing Counsel, on the other hand, contended that evidence of P.W. 1, who is an eye-witness, is quite reliable. He is none but the brother of the deceased and the nephew of the appellant. P.W. 1 specifically stated that appellant gave blows to the deceased by a Tangia. Though he has been cross-examined at length, nothing has been elicited from him to discredit his testimony. Rather, his evidence finds corroboration from the evidence of the doctor-P.W. 5.

8. P.W. 5, the doctor who conducted post-mortem examination over the dead body, found five incised wounds, all on the vital parts like eye, forehead, occipital region and frontal region of the head and neck. He opined that all the injuries were ante mortem in nature. Death was due to shock and haemorrhage resulting from the multiple injuries on head and neck, left carotid artery and brain matter. Thus, it is proved beyond doubt that deceased suffered homicidal death. Appellant does not challenge to such evidence and the finding recorded by the Trial Court.

9. We have carefully gone through the evidence on record. In this case, prosecution tried to prove the discovery of the weapon of offence through P.Ws. 4 and 9. However, it is found that P.W. 4 has not supported the prosecution version regarding the discovery of the Tangia at the instance of the appellant. He has simply stated that police showed him a Tangia at the house of the appellant saying that the same was produced by the appellant. Police seized the said Tangia and he signed in the seizure list. In the present case, neither the Investigating Officer nor the witness in whose presence the appellant is said to have given the

information has indicated the exact information given or statement made by the appellant. Therefore, seizure of the axe cannot be held to have been made under Section 27 of the Evidence Act. But P.W. 1 has categorically stated that on the date of occurrence when they had been to take Salap juice, the appellant was holding that Tangia and he (appellant) used that to commit murder of the deceased. He has given a vivid description as to how the incident took place. Though he has been cross-examination at length, nothing has been brought out from him to make his version unreliable. The injuries found on the dead body by the doctor also lend assurance to the statement of P.W. 1. There is no material before this Court to disbelieve the evidence of P.Ws. 1 and 5. Though the defence has examined two witnesses, their evidence is of no assistance either to discredit the prosecution evidence or to prove the plea of denial of the accused.

10. Though the ratio decided in Bhaga Gouda's case (supra) is squarely applicable to this case so far as the discovery under Section 27 of the Evidence Act is concerned, with regard to acceptability of the evidence of the solitary eye-witness, it has no application, inasmuch as evidence of the eye-witness in that case was not accepted because of material contradictions. But the situation in the present case is totally different. Here P.W. 1 is very clear and categorical in his statement about the part played by the appellant. That apart, he being the brother of the deceased would not like to implicate anyone other than the real assailant, particularly when the appellant is none but his uncle.

11. For the reasons stated above, we are of the opinion that the prosecution has been able to bring home the charge to the accused-appellant beyond all reasonable doubt. We do not find anything wrong or illegal in the order passed by the Learned Sessions Judge. We, therefore, see no merit in this appeal and dismiss the same.

P.K. Tripathy, J.

12. I agree.