

Mulia Kirsani Vs. the State

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Court : Orissa

Decided On : Aug-11-1983

Reported in : 56(1983)CLT349; 1984CriLJ123

Judge : B.K. Behera and ;R.C. Patnaik, JJ.

Appellant : Mulia Kirsani

Respondent : The State

Advocate for Pet/Ap. : Mr. Routray

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Section 302. of the Penal Code and sentenced thereunder to undergo imprisonment for life by the judgment and order passed by the Court of Session after accepting the case of the prosecution that after a quarrel between the appellant on the one hand and the deceased on the other in the evening of May 18, 1978, the appellant, being armed with bow and arrows, came at about midnight to the outer courtyard of the house of the deceased where the deceased and P.W. 2(his widow) were sleeping and shot an arrow (M. O. II) which missed the deceased and shot another arrow (M. O. I) which hit and pierced into the abdomen resulting in his death. Of the witnesses examined for the prosecution. P.W. 1 was the sole witness to the occurrence and

P.W. 2 is the widow of the deceased. While Mr. Routray appearing for the appellant, has submitted that the evidence of P.W. 1 was not true and trustworthy, it has been contended by the learned Standing Counsel that the order of conviction is well-founded.

2. It admits of no doubt from the evidence of the doctor (P.W. 8). who had conducted the autopsy, that the death of the deceased was homicidal in nature and this finding of the learned Sessions Judge has not been assailed. The evidence of P.W. 2 was that there had been a quarrel between the appellant and the deceased in the evening and the appellant had admitted this in his statement. The evidence of P.W. 1 was that while he was awake at about midnight, he saw from his courtyard that the appellant came and shot two arrows, one of which missed the deceased and the other hit him. P.W. 1. a front-door neighbour of the deceased v/ho was only 15 cubits away from the place of occurrence and within a visible distance in a moonlit night was a. natural and competent witness. Besides, nothing had been shown as to why he would support the case of the prosecution and falsely rope in the appellant. He was thus an independent and disinterested witness. The evidence of P.W. 1 did find support in that of P.W. 2. the widow of the deceased, who had pulled out M.O. I which had pierced into the abdomen of her deceased husband and she had shown M. Os. I and II to P.W. 3 and others. These articles had been seized in the course of investigation and on chemical examination, blood had been detected in M.O. I although its origin could not be determined. The evidence of P.W. 1 had found support in the medical evidence, as rightly noticed by the learned Sessions Judge. P.W. 1 had not intervened when the occurrence had taken place nor was there any evidence that he had raised a cry. But different persons may react differently when they see a murderous assault and the clear and acceptable evidence of an eye-witness is not to be discarded merely because he had not intervened at the time of the occurrence. See : 1981 CriLJ733 Angad v. State of Maharashtra and : 1983 CriLJ1272 Rana Partap v. State of Haryana.

3. After the occurrence. P.W. 3 had sent information to the Ward Member Mangala Muduli Mangala (not examined) and P.W. 3 came to the village of the deceased and were informed by P.W. 1 about what he had seen naming the appellant to be

the author of the crime. After a Panchayati was held, the first information report was lodged at the police station by P.W. 1 on May 21. 1978. Living as these illiterate and unsophisticated persons do in hilly tracts and in view of the fact that after the occurrence, P.W. 1 had sent information to P.W. 3 and others, some delay in lodging the first information report, in the circumstances of the case, would not affect the bona fides of the case of the prosecution.

4. An order of conviction can be based on the evidence of a solitary witness if the evidence is found to be true and trustworthy and above reproach. In the instant case, the evidence of P.W. 1. besides being of that character, had found support in other evidence.

5. The occurrence had not taken place in a flash. The quarrel between the appellant and the deceased had occurred in the evening. Some hours thereafter, the appellant, being armed with bow and arrows, came and shot two arrows at the deceased one of which hit and killed him. As could be seen from the medical evidence, the injury was sufficient in the ordinary course of nature to cause death although the doctor (P.W. 8) had not in terms, said so. The appellant had intended to cause the death of the deceased and had with that intention, caused an injury which had resulted in his death. The appellant had rightly been convicted of the offence of murder.

6. In the result, the appeal fails and is dismissed.

7. Before we close, we would like to observe that in a case of homicidal death the duty of the prosecutor is to bring in the evidence of the Medical Officer who had conducted the postmortem examination as to whether or not the injuries on the person of the deceased were anternortem in nature and sufficient in the ordinary course of nature to cause death and in addition, as to whether the injuries could be caused in the manner deposed to by the witnesses to the occurrence. We notice that in a number of cases, this is not being done although it must be done to get at the truth. If certain matters are not made clear in the evidence by the prosecution or the defence, the court should obtain clarification from the Medical Officer and remove the obscurities.

R.C. Patnaik, J.

8. I agree.

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