

Jotish Roy Vs. the State

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Court : Orissa

Decided On : Oct-26-1981

Reported in : 53(1982)CLT12; 1982CriLJ269

Judge : P.K. Mohanti and; J.K. Mohanty, JJ.

Appellant : Jotish Roy

Respondent : The State

Judgement :

P.K. Mohanti, J.

1. This is a prisoner's appeal against his conviction Under Section 302, IPC and the sentence of rigorous imprisonment for life.
2. Accusation against the appellant was that he caused the death of his daughter Gitarani Mandal on 19th Apr. 1978 at about 6.30 a.m. by means of an axe.
3. The prosecution case was that the deceased Gitarani Mandal had been given in marriage to P W 5 Manohar Mandal about a fortnight prior to the occurrence. It was discovered that she was pregnant by the time of her marriage. So she was sent back to the house of the appellant. On 18th Apr. 1978 a meeting was held at the village and she was asked to disclose the name of her paramour, but she refused to do so. The villagers advised the appellant to allow her to remain with

him till her delivery. In the next morning, her dead body was found lying at the residential house of the appellant with several cut injuries across her neck. The appellant is alleged to have admitted before the villagers that he caused her death as she did not disclose the name of her paramour. One of the villagers named Nirod Chandra Biswas (P W 1) lodged information at the Umerkote Police Station and investigation was taken up. In course of the investigation, the appellant made a judicial confession before the Special Judicial Magistrate of Umerkote. The wearing cloth of the appellant was seized at the time of his arrest as it was found to have been stained with blood. In due course, the appellant was charge-sheeted by the police and committed to the Court of Session to stand his trial.

4. During his examination Under Section 313, Cr. P. C. the appellant admitted that the deceased returned to his house about 15 days after her marriage; that he called a meeting of the villagers on 18-4-1978 and told them that the deceased had become pregnant by the time of her marriage and sought for their advice as to whether she should be accepted by the society. He, however, denied having made any confession and contended that his wearing cloth got stained with blood as he fell on the dead body of the deceased on account of extreme grief.

5. The learned Sessions Judge relying on the retracted confessions of the appellant and some other circumstantial evidence held the appellant guilty and inflicted the sentence of rigorous imprisonment for life.

The learned Counsel who appeared amicus curiae to defend the appellant contended that the formalities prescribed by Section 164, Cr. P. C. were not observed in recording the judicial confession and that the extra judicial confession was made in presence of a police officer and hence the confessions are not admissible in evidence. She also contended that there is no other evidence to sustain the conviction.

6. The evidence of the doctor PW 7, who performed post-mortem examination over the dead body of the deceased clearly establishes that the death was homicidal. The doctor found three incised wounds on the neck of the deceased and opined that these injuries could be caused by three successive strokes. The carotid artery and jugular vein were cut on the left side of the neck. The trachea

was also cut in its anterior half. In the doctor's opinion, the injuries were ante-mortem in nature and could be caused by an axe like M. O. I. The doctor also opined that the death was due to shock and haemorrhage and that the injuries were sufficient in the ordinary course of nature to cause death.

7. There is no ocular evidence about the occurrence of murder. The order of conviction is based on the retracted confessions of the appellant and some other circumstantial evidence.

8. It has been urged before us that the record of judicial confession (Ext. 8) should be excluded from consideration as it does not show that the Magistrate warned the accused that he was not bound to confess and that any confession made by him might be used as evidence against him. It appears that the Magistrate was examined in the case as FW 10 and he stated that he did warn the accused that he was not bound to confess and that any confession made by him might be used as evidence against him. Although the Magistrate had not made a record of the fact that he had given the necessary warnings and had questioned the accused, he had in fact done so and deposed to those facts in Court. Section 463, Cr. P. C, 1973 permits oral evidence to be given to prove that the formalities prescribed by Section 164, Cr. P. C. had in fact been observed when the Court finds that the record of confession produced before it does not show that that was so. According to Section 29 of the Evidence Act a confession otherwise admissible does not become inadmissible because the accused person was not warned that he was not bound to make a confession and that the evidence of it might be given against him. In a Full Bench decision on this Court in the case of Shanti v. The State, AIR 1978 Orissa 19 : 1977 Cri LJ 2053 it was held that where there is substantial compliance with the requirement of Section 164(3) of the Criminal P. C, reliance can be placed on the provisions of Sections 29 and 30 of the Evidence Act and any non-compliance with the provisions of Section 164 of the Cr. P. C. may be regularised by application of S- 533 of that Code (corresponding to Section 463 of the new Code).

9. Considering the evidence of the Magistrate along with the record of confession, we are of the view that sufficient time was given to the accused to reflect and to

free his mind from any possible influence of the police. We have no doubt in our minds that the confession made by the accused was not the result of any outside pressure having been brought to bear upon him. We hold that the confession was made voluntarily.

10. Next it is urged on behalf of the appellant that the confession having been retracted it needs corroboration and that in the present case there is absolutely no corroboration to the confessional statement. In our opinion, it is neither an inflexible rule of law nor practice nor prudence that in no circumstance conviction can be made on the basis of a retracted confession without corroboration, for a court may in a particular case be convinced of the absolute truth of a confession and be prepared to act upon it without corroboration. But as a matter of caution the Courts require corroboration to the retracted confession. This does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be corroborated. It is sufficient that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession.

11. The evidence on record clearly establishes that the deceased was pregnant by the time of her marriage and that in a meeting of the villagers the deceased was asked to disclose the name of her paramour, but she refused to do so and on the day following she was found lying dead at the residential house of the appellant. In his confessional statement the appellant stated that he caused the death of the deceased by striking blows with an axe. It is in evidence that an axe was lying near the dead body at the house of the appellant. On chemical examination and serological test human blood has been detected on the axe.

The wearing dhoti of the appellant was seized at the time of the arrest and on chemical examination and serological test it was found to contain human blood. The explanation offered by the appellant was that his wearing dhoti got stained with blood when he fell on the dead body on account of extreme grief. There is, however, no evidence worth the name to show that the appellant fell on the dead body. The evidence of the witnesses rather goes to show that when they visited the spot they found the appellant sitting quiet and he admitted before them that he

had caused the death of the deceased by means of an axe as she did not disclose the name of her paramour. In our opinion, the judicial confession though retracted gains general corroboration from the evidence of the witnesses as indicated above.

12. As regards the extrajudicial confession the learned Counsel appearing for the appellant invited our attention to a statement of PW 3 that such confession was made in presence of a police officer. On a careful scrutiny of the evidence on record, it appears that the extrajudicial confession was made by the appellant at two stages - once at his residential house before PWs 1, 2 and 4 and again before PW 3 at the Community Centre. The evidence of PW 3 only shows that the police officer was present when the confession was made by the appellant at the Community Centre. There is nothing to show that any police officer was present when the confession was made before PWs 1, 2 and 4. PW 1 is a respectable witness being the President of the Pallimangala amity. PWs 2 and 4 are the co-villagers of the appellant. Nothing substantial has been elicited in the cross-examination of these witnesses so as to discredit their sworn testimony. The confessional statement made before PWs 1, 2 and 4 finds general corroboration from the evidence on record as discussed earlier. On a review of the entire evidence on record, we see no reason to discard the evidence of PWs 1, 2 and 4 that the appellant admitted before them to have killed the deceased by means of an axe.

13. We see no reason to interfere with the order of conviction and the sentence. The appeal fails and is dismissed.

J.K. Mohanty, J.

14. I agree.