

D. Ramalingam Vs. State

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Court : Orissa

Decided On : Apr-15-2005

Reported in : 2005(I)OLR740

Judge : S. Barman Roy, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 50 of 1987

Appellant : D. Ramalingam

Respondent : State

Advocate for Def. : D.C. Mohanty, Government Adv.

Advocate for Pet/Ap. : None

Disposition : Appeal allowed

Judgement :

S. Barman Roy, C.J.

1. This appeal at the instance of appellant D. Ramalingam is directed against the judgment dated 28.2.1987 passed by the learned Additional Sessions Judge, Jeypore in connection with Sessions Case No. 78 of 1986 convicting the appellant under Section 304, Part II, IPC and sentencing him thereunder to undergo rigorous

imprisonment for six years.

2. Prosecution case, in brief, is that on 23.4.1986 at about 11 P.M. P.W.5 Dhanalakshmi lodged an or complaint before the Jeypore town P.S. alleging, inter alia, that on that day itself P.W.5 Dhanalakshmi with her mother had gone to cinema hall to see movie. After watching the movie when they returned home the appellant being her grand-father scolded her asking as to why she was frequently going to watch movie. Thereafter an altercation took place between the two. During such altercation, mother of the informant came along with her husband and intervened. Both of them asked the appellant as to why he was scolding Dhanalakshmi. Upon hearing this, the appellant being furious picked up a knife and tried to attack the father of P.W.5. At that time, the deceased being the mother of P.W. 5 intervened and stood between the father of the informant and when the appellant attempted to stab the father of the informant which ultimately fell on the chest of the deceased. The deceased happens to be the mother of the informant. From there the deceased was taken to the hospital and upon arrival at the hospital she was declared dead. This is, in brief, the oral complaint by P.W.5 before the Police Station which was reduced into writing and registered as an F.I.R. against the appellant under Section 302. IPC. After usual investigation, the case was committed to the Court of learned Sessions Judge, Jeypore. On transfer, the case was ultimately tried before the learned trial Court.

3. On perusal of the materials on record, learned trial Court framed a charge under Section 302, IPC against the appellant to which he pleaded not guilty.

4. In all, eight P.Ws. were examined on behalf of the prosecution. The appellant adduced no evidence.

5. However, the case of the appellant before the trial Court was of complete denial of the prosecution case, as alleged.

6. On completion of trial, the appellant was ultimately convicted and sentenced, as already stated.

7. P.W.5 Dhanalakshmi being the informant in this case stated in her evidence before the trial Court that some ten months back on a Wednesday her mother fell down near a tube-well and died. P.W.5 brought the deceased home. She denied any knowledge as to whether the deceased was stabbed by any body. At this stage, the witness was declared, hostile and with the permission of the trial Court this witness was cross-examined by the prosecution. In course of her cross-examination by the prosecution, she stated that she lodged an FIR at the Police Station about the death of her mother and in that F.I.R. she stated that on the date of occurrence her grand-father abused her and therefore her mother protested him. At that time the appellant tried to stab the father of the informant. But the father of informant (P.W.5) moved away and the stab attempted by the appellant with the knife fell on her mother. This version was given by her out of fear of three police men. She gave the statement as desired by the police. She also admits that Ext.7 is the F.I.R. and contains her signature. Therefore, it appears from her evidence that she completely resiled from her earlier statement made in the F.I.R. and therefore, this F.I.R. can be used only for contradiction and not for corroboration inasmuch as she did not claim in her evidence that, the appellant stabbed the deceased.

8. Evidence of P.W.1 Manasaram Sahu, in brief, is that he knew the appellant, his wife and the deceased. On 23.4.1986, wife of the appellant came to his house around 9 P.M. and informed him that in course of an altercation, the appellant inflicted a knife blow on the deceased and the deceased had been taken to the Police Station or to the hospital and therefore, the wife of the appellant requested this witness to ascertain as to what was the exact position. Thereafter this witness along with his wife started for the hospital. On the way to the hospital, husband of the deceased told them that what was to happen had happened and there was no necessity of this witness to go to the hospital. So he started to return back to his house. While so returning back home, this witness saw police personnel in the house of the appellant and the son of the deceased handed over a knife to the Investigating Officer, which was seized in his presence and in the seizure memo of the knife he put his signature. Therefore, his evidence is based on hearsay so far as the alleged assault on the deceased by the appellant is concerned.

9. P.W.2 Dr. Pravakar stated in his evidence that on 23.4.1986 he was attached to Jeypore Subdivisional Hospital as an Assistant Surgeon. He received a dead body. The husband of the deceased told him that the deceased died being hit by a stone while coming from the tube-well at or around 7.30 P.M. on that very day. On his inspection, this witness found an injury on the right side of the chest, which appeared to him like a stab wound. He informed the fact to the Police Station at 10.15 P.M. Ext.2 is the written information given by this witness to the Police.

10. Likewise, P.W.4 R. Kasinath is the son of the appellant. He also turned hostile and did not support the prosecution case at all. In fact he echoed the version of P.W.5 before the trial Court by saying that his wife was lying on the public road near the tube-well in a wounded condition. He stated his ignorance as to how the deceased sustained the injury. He was cross-examined by the prosecution with the permission of the Court. He resiled completely from his previous statement recorded by the Police.

11. P.W.6 Pannamba is the wife of the appellant. As usual, she too did not support the prosecution. She also completely resiled from her previous statement recorded by the Police during investigation. She was also cross-examined by the prosecution with the permission of the Court.

12. P.W.3 is Dr. Suresh Chandra Nayak, who held post mortem examination over the dead body of the deceased. This is, in brief, the entire evidence on record.

13. On perusal of the impugned judgment, it appears that the trial Court acted upon the statements made by P.W.5 in the F.I.R. The trial Court forgot the law in this regard that a statement in the F.I.R. is not a substantive piece of evidence and on that basis none can be convicted. The statement in the F.I.R. can be used for the purpose of contradiction or corroboration. There is no evidence on record to which the contents of the F.I.R. can lend any corroboration. Apart from the aforesaid, there is absolutely no evidence on record that the appellant stabbed the deceased for which she was taken to the hospital. In these circumstances, I am constrained to hold that the trial Court committed serious mistake in holding the appellant guilty under Section 304, Part II, IPC and therefore, the impugned judgment of conviction and sentence cannot be sustained in law as well as on

facts.

14. In the result, I allow the appeal and set aside the impugned judgment.

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