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Saura Majhi Vs. State

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Court : Orissa

Decided On : Mar-14-1985

Reported in : 1985(I)OLR624

Judge : B.K. Behera and ;K.P. Mohapatra, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 164; Evidence Act, 1872 - Sections 27

Appeal No. : Jail Criminal Appeal No. 248 of 1981

Appellant : Saura Majhi

Respondent : State

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : R.K. Mohanty, Adv. (Through Legal Aid) and ;P.K. Nanda, Amicus curiae

Disposition : Appeal dismissed

Judgement :

B.K. Behera, J.

1. On April 24, 1980, the appellant and Katialu (to he described hereinafter as 'the deceased') were in the Dangarigaon Jungle in the district of Ganjam, the former

having gone to collect Salap juice and the latter for collecting leaves. In that summer afternoon, sexual appetite urged the appellant to invite the deceased both in their forties for sexual intercourse. The deceased refused. The appellant wanted to forcibly have sexual intercourse and the deceased gave out that she would report this fact to the villagers. Upon this, the appellant took out the axe (M. O. I) which the deceased had and by means of that instrument, dealt two blows, one on the head and the other on the neck of the deceased, resulting in her death. This then was the prosecution case. The appellant's plea was one of denial and false implication.

2. The learned Sessions Judge has accepted the case of the prosecution and has convicted the appellant under Section 302 of the Indian Penal Code and sentenced him thereunder to undergo imprisonment for life.

3. The order of conviction has been rested on the judicial confession (Ex. 13) made by the appellant before the Special Judicial Magistrate in the course of investigation, the evidence of the doctor (P. W. 1) who had conduced the autopsy and the discovery and recoveries of the axe (M. O. I) and its handle (M. O. II), which bad been kept concealed in the jungle, on the basis of the statement made by the appellant.

4. It has been submitted by the learned defence counsel that the order of conviction cannot be sustained, Mr. P. K Nanda, who has appeared amicus curiae and has assisted Mr. R. K. Mohanty, has argued this appeal with considerable earnestness and has invited our attention to the settled principles of law relating to reception of judicial confession in evidence and its probative value and with regard to the scope of Section 27 of the Evidence Act. The learned Standing Counsel has submitted that the order of conviction is well-founded on the evidence on record.

5. In order to act upon a judicial confession, it must be shown to be voluntary and true. In addition, when an accused retracts from the judicial confession, there should be general corroboration.

6. The appellant was produced before the Special Judicial Magistrate on April 28, 1980 and as be intended to confess inspite of due caution, he was remanded to

jail custody for cool reflection as to whether he would like to confess his guilt and was to be produced on the next day. When he was produced from the jail custody before the Special Judicial Magistrate on April 29, 1980, the latter gave him further time for reflection away from any police influence having kept the appellant in charge of his peon inside his Court room. The Special Judicial Magistrate had disclosed his identity to the appellant who had been told that be was not bound to make a confession and that if he made done, it would be used against him as evidence. The appellant had also been told that nothing would be done to him by the police authorities even if he did not make any confessional statement. Inspite of this caution and the observance of legal formalities, the appellant wanted to confess voluntarily and the Special Judicial Magistrate proceeded to record it. He has given a certificate stating the reasons for his satisfaction as to why he was of the view that the appellant had confessed voluntarily. Section 164 of the Code of Criminal Procedure had duly been complied with. In view of all this, it must be held that the appellant had voluntarily made the confessional statement admitting to have killed the deceased in the jungle, after she refused to have sexual intercourse with the appellant and threatened to inform the villagers, taking out the axe which the deceased was holding.

7. There was the evidence of the doctor, who had conducted the autopsy and had noticed two external injuries on the person of the deceased with consequential internal injuries including injuries to the brain which could be caused by an axe and he had opined that M. O. I. could cause the injuries. His evidence was that the death of the deceased was homicidal in nature and his clear evidence in this regard could not be assailed.

8. Coming next to the recoveries of M. Os. I and II, there was the evidence of the Investigating Officer (P. W. 6) and of the Sarpanch of the locality (P. W. 4) that while in custody, the appellant stated to them that he had kept the axe and the handle in the jungle and that he would produce the same. Both these witnesses had given substantially the same version in this regard. It would be clear from their evidence that after making the statement, the appellant led them to the jungle and at a place sixty yards away from the place where the dead body of the deceased had been found gave recoveries of M. Os. I and II after bringing M. O II from inside

a bamboo clump and M. O. I from the space in between two stones. Their evidence would give an indication that the articles had been kept concealed. The statement of the appellant that he had kept the articles would also be admissible under Section 27 of the . Evidence Act. {See AIR 1962 S. C. 1788. K. Chinnaswamy Reddy v. State of Andhra Pradesh and Anr.,) By making such a statement, the appllent ruled out the possibility of his having learnt from anyone that the articles had been kept there or that he had seen someone else keeping the articles there. His statement that he had kept the articles would establish that he was the author of concealment. No doubt. M. O. I. on chemical and serological test, was found to have contained blood and its origin could not be determined and it had not been established by the prosecution by independent evidence that M. O I did belong to the deceased and had been carried by her to the jungle on the day of occurrence, but the recoveries of M. Os. I and II coupled with the medical evidence that M. O. I could cause the injuries on the person of the deceased and in addition, the fact that these two articles had been recovered from a place of concealment near the place where the deceased had been done to death would substantially corroborate the retracted judicial confession made by the appellant.

9. We thus find, in agreement with the trial Court, that the appellant was the assailant of the deceased. The medical evidence would undoubtedly show that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause her death. The appellant had attacked the deceased and had dealt blows by means of a cutting instrument on vital parts like the head and neck. Evidently the appellant had the intention of causing the death of the deceased and had, with that intention, caused injuries sufficient in the ordinary course of nature to cause death. He had properly been convicted under Section 302 of the Indian Penal Code.

10. The appeal fails and is dismissed.

K.P. Mohapatra, J.

11. I agree.

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