

State of Orissa Vs. Nirupama Panda

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Court : Orissa

Decided On : Feb-16-1988

Reported in : 1989CriLJ621

Judge : K.P. Mohapatra and ; A.K. Padhi, JJ.

Appellant : State of Orissa

Respondent : Nirupama Panda

Judgement :

ORDER

K.P. Mohapatra, J.

1. This appeal is directed against the judgment passed by the learned Additional Sessions Judge, Cuttack, acquitting the respondent of a charge under Section 302, I.P.C. for having committed the murder of Basanta Kumar Das (referred to as the 'deceased') at 3.30 p.m. on 13-5-1979.

2. Prosecution case is that respondent was a young widow living in the house of Bansidhar Das of village Patepur as his mistress. On 13-5-1979 at about 3.30 p.m. she called the deceased to the house of her master for repayment of loan of Rs. 600/- which she had incurred earlier by pledging a gold mohar and a pair of gold ear-rings. When the deceased went inside the house she stabbed him on the chest by a knife resulting in a severe bleeding injury. The deceased came out of

the house to the village lane with blood oozing out of the stab wound and related the incident to several persons including some witnesses. He was removed for treatment to the S.C.B. Medical College and Hospital, Cuttack, where he expired in the night. Intimation of the unnatural death was sent from the hospital to the Mangalahag Police Station which was treated as formal F.I.R. (Ext. 1) and the same was forwarded to Salipur Police Station. On 14-5-1979 in the morning the respondent herself lodged F.I.R. (Ext. 14) at Salipur Police Station stating therein that the deceased entered inside her bed-room and committed rape on her. When he was leaving the place after commission of the rape she shouted. The deceased forcibly caught her neck and attempted to throttle her. Therefore, she picked up a knife and in order to save herself assaulted him by means of the knife resulting in bleeding injury. On the basis of the F.I.R. (Ext. 14) G.R. Case 1416 of 1979 under Section 376, I.P.C. was registered. During investigation, autopsy of the dead body of the deceased was performed and the respondent was examined by a Medical Officer. While final report was submitted in G.R. Case No. 1416 of 1979 based on Ext. 14, charge-sheet was submitted against the respondent for having committed an offence under Section 302, I.P.C.

3. During trial, the respondent denied that she had borrowed Rs. 600/- from the deceased or his father by pledging a gold mohar and a pair of gold ear-rings which were suspected to be not of gold. She did not send words to the deceased to come to her house for repayment of the loan. On the other hand, the deceased trespassed into her bed-room and attempted to commit rape on her at the point of a knife and when she resisted, there was a tussle between them. During the tussle, the knife hit the deceased injuring him.

4. The learned Additional Sessions Judge on examination of the prosecution evidence held that the deceased attempted to commit rape on the respondent and so in order to save her honour the latter stabbed the former by means of a knife which ultimately resulted in his death. As the murder was committed in exercise of right of private defence, the respondent could not be convicted under Section 302, I.P.C. and so she was acquitted of the charge.

5. At the hearing, it was not disputed that the death of the deceased was homicidal and was a result of a stab wound caused by a sharp edged knife on his chest.

6. In order to prove the case against the respondent, the prosecution relied upon; (1) the dying declaration made by the deceased before P.Ws. 2, 3, 8 and 10; (2) the extra judicial confession made by the respondent before P.W. 10; (3) the judicial confession made by the respondent; and (4) her immoral character.

7. So far as the dying declaration is concerned, the evidence of P.W. 10 is very important. He stated that on the date of occurrence at about 3.30 p.m. while he was engaged in threshing paddy sheaves, he heard a hullah, came out of his house and proceeded towards the house of Bansidhar Das. He saw the deceased coming out to the village lane from the house of Bansidhar Das by opening the door of the gate. Blood was coming out from his chest. On his query, the deceased told him that the respondent had stabbed him. At that time the respondent was standing on the verandah of the house of Bansidhar Das. After proceeding some distance the deceased fell down on the ground. When some others arrived and made enquiries from the deceased he told them that he had been to the house of the respondent to demand his dues and she stabbed him. Although this witness was declared hostile by the prosecution, I find nothing to disbelieve him, because he seems to be an independent witness. His evidence with regard to the dying declaration has been corroborated by the other witnesses, namely, P.Ws. 2, 3 and 8. It will thus appear from the evidence of these witnesses that a few hours before his death the deceased had made statements to the effect that the respondent had stabbed him on the chest by means of a knife when he had gone to her for demanding his dues. There is, however, no good evidence of the alleged loan.

8. Along with the evidence of dying declaration it is necessary to consider the statements made by the respondent before P.W. 10, For this purpose, it is necessary to make a further reference to his evidence where he stated that after hearing from the deceased about the cause of the chest wound, the witness found the respondent standing on the verandah of Bansidhar Das and enquired from her. The respondent told him that she stabbed the deceased, because he outraged her

modesty (Atyachar). The above statement of the respondent was inculpatory in part and exculpatory in the other part. But considered as a whole, it did not tantamount to an extrajudicial confession for the reason that she had justified her action of stabbing the deceased in exercise of her right of private defence. Even if the statement is received as a piece of extrajudicial confession because of its inculpatory part, yet on the basis thereof and on consideration of the exculpatory part, it cannot be used as an incriminating piece of evidence against her, because she had every right to save her honour even by causing the death of the person who either committed rape on her or attempted to commit the same. The above being the position, the statement made by the respondent on the query of P. W. 10 instead of supporting the prosecution actually worked as a defence which was quite acceptable.

9. Now coming to the judicial confession (Ext. 15), the respondent stated that she was having her siesta in a room of the house of Bansidhar Das. The deceased came there and attempted to commit rape on her. As she shouted, the deceased put cloth inside her mouth and by application of force committed rape on her. At that time in order to save her honour, she stabbed the deceased by means of a knife. After assault, the deceased was injured and so he left her and ran away. The confessional statement has to be accepted as a whole. Once it is done, it supports the defence version and not the prosecution case. The learned Standing Counsel drew our attention to the slightly different statements made by the respondent before P.W. 10, the confessional statement (Ext. 15), and in her examination under Section 313, Cr. P.C. In the last statement (under Section 313, Cr. P.C.) the respondent told a slightly different story of the deceased attempting to throttle her, when in order to save her from his clutches and in exercise of her right of private defence, she picked up a knife and gave a stab on the chest of her assailant. Despite the fact that she made a slightly different statement at the last leg of the trial, yet the substratum of the defence case remains unaltered, which is, the deceased attacked her chastity and in order to save her honour she had to use the knife in exercise of her right of private defence. We did not, therefore, find any discrepancy worth the name in the defence version.

10. The evidence of P. W. 4 discloses that the respondent was married, but after her widowhood she led an immoral life by living as a mistress of Bansidhar Das. Even though for the sake of argument it is accepted that she was the mistress of Bansidhar Das, yet she was within her rights to save her honour from a rapist. Even a whore is entitled under law to protect herself from attacks of an intending rapist. Therefore, immoral character of the respondent, even if it is true, is of little consequence.

11. Law is well settled that a judgment of acquittal should not be interfered with unless the assessment of evidence and the conclusion drawn by the trial court are unreasonable, erroneous or perverse. Reversal of a judgment of acquittal will not be justified merely on the ground that the appellate court's view on the evidence on record may be different from that of the trial court or on the same set of evidence two views are reasonably possible See : 1979 CriLJ51 , Ganesh Bhavan Patel v. State of Maharashtra (1984) 58 Cut LT 101, Smt. Dhare Dei v. Prafulla Swain and : 1987 CriLJ1119 , Babu Lodhi v. State of U.P.).

12. In the ultimate analysis and in view of the principle of law indicated above, we are firmly of the view that the learned Additional Sessions Judge took a correct view of facts and law by holding that the respondent was legally entitled to cause the death of the deceased in order to save her honour and in exercise of her right of private defence. There are absolutely no materials to interfere.

13. In the result, the appeal is dismissed. Bail bond furnished by the respondent is cancelled

A.K. Padhi, J.

14. I agree.