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Narasingha Karwa Vs. the State

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Court : Orissa

Decided On : Feb-13-1974

Reported in : 40(1974)CLT491; 1975CriLJ1560

Judge : G.K. Misra, C.J. and ;P.K. Mohanti, J.

Appellant : Narasingha Karwa

Respondent : The State

Judgement :

P.K. Mohanti, J.

1. The appellant Narasingha Karwa has been convicted under Section 302, Indian Penal Code and sentenced to imprisonment for life for having committed the murder of Kandra Karwa, a boy aged about 16 years, on 2-11-1969 at about 11 A. M.

2. The occurrence took place at the Sweepers' Colony at Barbil. The appellant and P. W. 2 Chandra Mohan Pechmukhi are sweepers in the Barbil N. A. C. The prosecution case was that on the evening of 1-11-1969 there was a quarrel between P. W. 2 and the appellant in course of which the former assaulted the latter with a bamboo pole. In the morning of 2-11-1969 P. W. 2 went to the liquor shop to have a drink. The appellant also went there along with his father. A quarrel broke out between P. W. 2 and the father of the appellant at the liquor shop. While

they were returning, P. W. 2 severely assaulted the father of the appellant and fled away. Then the appellant returned home and threatened to finish the family members of P. W. 2. As neither P. W. 2 nor his father-in-law Raibu was at home, Lata Dei, the mother-in-law of P. W- 2, apprehended trouble. So she went out of the house along with her two daughters and the son Kandra Karwa (deceased). After they had gone a few yards from their door on the main road in front of their hut, the appellant came from behind with a patia (iron grass cutter) and assaulted the deceased who was going behind his mother and sisters. He gave several blows on the head and neck of the deceased and fled away with the patia. The deceased died at the spot as a result of the injuries sustained by him. On receipt of information the officer-in-charge of Barbil P. S. arrived at the spot and recorded the F. I. R. lodged by Kandri Dei who is the wife of P. W. 2 and the sister of the deceased. He held inquest over the dead body and despatched it for post-mortem examination. He also recorded the statements of P. Ws. 1, 3 and 4. On the same day the accused was arrested and in consequence of the information given by him. the Patia (M. 0. 1) having stains of blood was recovered from a bush. In due course the appellant was charge-sheeted under Section 302, Indian Penal Code.

3. The appellant denied the charge and pleaded innocence.

4. The order of conviction is based mainly on the direct evidence of the eye-witnesses-P.Ws. 1, 3 and 4 and the circumstantial evidence of P. Ws. 6 and 7 about the recovery of the weapon of offence. On appeal it is urged that the order of conviction is not warranted by the evidence on record.

5. It is not disputed that the death of the deceased was homicidal. This has been satisfactorily proved by the evidence of the eye-witnesses which is confirmed by the medical evidence. The doctor (P. W. 8) performed the post-mortem examination on 3-11-1969 and found two incised wounds and one lacerated wound on the head and one bruise on the upper part of the left side of the neck of the deceased. Internal examination revealed fracture of the right parietal bone, left parietal bone and the occipital bone. In the doctor's opinion, all the injuries were ante-mortem in nature and the death was due to syncope. We are, therefore, satisfied that the deceased died as a result of the injuries sustained by him.

6. The direct evidence about the murder consists of the testimony of P. Ws. 1. 3 and 4. P. W. 3 is the mother and P. Ws. 1 and 4 are sisters of the deceased. Their evidence shows that on the evening of 1-11-1969 there was a quarrel between P. W. 2 and the appellant in course of which the former assaulted the latter with a bamboo pole. The evidence of P. W. 2 also shows that he had assaulted the appellant on the evening of 1-11-1969 and he sang (slang songs) alleging that his wife had illicit pregnancy. He also stated that in the morning of the date of occurrence he had assaulted the father of the appellant. The evidence of P. Ws. 1 and 3 reveals that at about 10 A.M. the appellant returned home and said that he would finish the family members of P. W. 2 as he had assaulted his father and that apprehending danger they left the house after locking the door. P. Ws. 1, 3 and 4 have uniformly stated that while they were proceeding on the road, the appellant came with the Patia and committed assault on the deceased as a result of which he died instantaneously. They were cross-examined at length and stood unshaken. Their evidence is corroborated by P. W. 5 Subal Chandra Das who is a Vaccinator attached to Barbil N. A. C. This witness stated that on hearing the cries of P. Ws. 1 and 3 he came to the spot and found the deceased lying there with bleeding injuries and P. Ws. 1 and 3 narrated the occurrence before him implicating the appellant as the assailant of the deceased. His evidence has not been shaken in any manner. It is also not shown that he has any axe to grind against the appellant.

7. The only criticism against P. W. 4 is that she is a child witness and that no oath had been administered to her. Her age as estimated by the learned Sessions Judge is about 12 years and her evidence was recorded after an initial test as to her capacity to understand the questions and give rational answers. A child's evidence is not inadmissible merely because no oath was administered to it. Under Section 118 of the Evidence Act all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender age. Thus the only test of competency is capacity to understand questions and to give rational answers. From the preliminary questions put to the witness and the answers given by her, we are satisfied that she was able to give rational answers though she did not understand the implications of an oath. We find nothing in her

evidence which is adverse to her veracity.

8. The learned Sessions Judge has relied upon P. Ws. 1, 3 and 4 and we see no reason, far less any compelling reason, to take a different view of their evidence.

9. The iron Patia (M. O. 1) with blood stains was recovered from a bush being pointed out by the appellant, as stated by P. Ws. 6 and 7. The Serologist has detected human blood on it. P. Ws. 1 and 3 have identified it as the weapon of offence. Although no information leading to its discovery was furnished by the appellant yet his conduct in leading the searching party to the place of recovery and his bringing out the same from the bush is relevant under Section 8 of the Evidence Act.

10. It follows from the foregoing discussions that the direct evidence of P. Ws. 1, 3 and 4. which though interested is none-the-less acceptable, coupled with the corroborative evidence of the doctor and the conduct of the appellant before and after the occurrence conclusively proves the case of the prosecution and establishes the guilt of the appellant to the hilt.

11. We, therefore, confirm the order of conviction and sentence and dismiss the appeal.

G.K. Misra, C.J.

12. I agree.

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