

Dhana Harijan Vs. State

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Court : Orissa

Decided On : Mar-16-2000

Reported in : 89(2000)CLT554; 2000(I)OLR457

Judge : B.N. Agrawal, C.J. and ;R.K. Patra, J.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : Jail Criminal Appeal No. 208 of 1993

Appellant : Dhana Harijan

Respondent : State

Advocate for Def. : Bijoy Das, Addl. Govt. Adv.

Advocate for Pet/Ap. : Kiran Rout, Adv.

Disposition : Appeal allowed

Judgement :

B.N. Agrawal, C.J.

1. The sole appellant has been convicted by the trial Court under Section 302 of the Penal Code and sentenced to undergo rigorous imprisonment for life.

2. Prosecution case, in short, is that on 9.3.1992 at about 10 P.M. when Jagannath Harijan, deceased and his wife Jamuna Harijan (P.W.3) were returning from the house of Jasoda Harijan (P.W.2) situate in village Mirganguda to their house in village Kojguda and on the way in the mango tope, the appellant and accused Bhagban Harijan suddenly appeared and Bhagban Harijan pushed wife of the deceased whereafter the aforesaid two accused persons including the appellant assaulted the deceased on his head by Tangia and thereafter both of them fled away with the same. Jasoda Harijan (P.W.2) came to the spot on hearing hulla of Jamuna Harijan and both of them removed the injured to Sub-Divisional Hospital for treatment. After her husband was admitted in the hospital, the wife of the deceased went to Nowrangpur Police Station and presented written report there stating the aforesaid facts. On the basis of the said report, a case was registered against the accused persons under Section 307 read with 34 of the Penal Code which later on was converted into one under Section 302 of the Penal Code as the victim succumbed to the injuries in the hospital. After registering the case, police took up the investigation and on completion thereof submitted the charge sheet. On receipt of the charge sheet, learned Magistrate took cognisance and committed the accused persons to the Court of Session to face trial.

3. The defence of the accused persons was that they were innocent, falsely implicated and no occurrence at all had taken place much less the occurrence alleged.

4. During trial, prosecution has examined 11 witnesses in all, out of whom, P.W.8 is nobody else than the wife of the deceased who claims to be an eye-witness. P.W.2 claims to have arrived at the place of occurrence on hearing hulla. P.W.2 claims to be a person from whose house deceased and his wife were returning and before whom the informant narrated about the occurrence and also name of the accused persons including the appellant. P.Ws.3 and 7 were the witnesses on the question of extra judicial confession of the appellant, but they have been declared hostile. P.Ws.5 and 6 are seizure witnesses. P.W.4 is the doctor who treated the victim whereas P.W.9 is the doctor who held post-mortem examination on the dead body of the deceased. P.W.1 claims to be a person who is said to have scribed the written report submitted by the informant at the police station.

P.W. 10 is the Sub-Inspector of Police who registered the case and partly investigated the case. P.W.1 1 is the Investigating Officer who took over charge of the investigation from P.W. 10 completed the same and submitted the charge sheet. It appears that two other persons, namely, Chaitan Harijan and Siibarna Harijan, were also made accused apart from the aforesaid two accused persons. Upon conclusion of trial, the Court below acquitted the other three accused persons whereas convicted the appellant as stated above. Hence this appeal.

5. In view of the fact that two witnesses P.Ws.3 and 7 who were the witnesses on question of extra-judicial confession of the appellant having been declared hostile, there remains no evidence on the question of extra-judicial confession and thus the decision of the appeal is based upon the evidence of P.Ws.8 and 2.

6. P.W.8 is nobody else than wife of the deceased. Though in the cross-examination at first she has shown her ignorance about any dispute between her husband and the appellant regarding collection of Mamulu for Nowrangpur Weekly Shandy, in the next breath, she has admitted that there was ill-feeling between the appellant and her husband. According to her evidence, on being sent by her husband, she went to the house of P.W.2 at about 9. O' clock in the night to call the husband of the said witness. But husband of P.W.2 expressed his inability to go to her house during night and assured that he will go in the morning. P.W.8 has further stated that when she returned to her house, she did not find her husband there, again went to the house of P.W.2 in search of her husband and found him there. The story of P.W.8 that her husband sent her to call the husband of P.W.2 from his house at 9.0' clock in the night does not appear to be natural conduct as no reason has been assigned why the deceased would send his wife to call the husband of P.W.2 at that hour of night instead of the deceased himself going to the house of P.W.2. The case that P.W.8 went to the house of P.W.2 and having not found her husband in her house on return, again went to the house of P.W.2 becomes highly doubtful. From this suspicion is. raised as to whether this witness would have remained present at the alleged place of occurrence. In our view, for the foregoing reasons. the presence of this witness at the alleged place and time of occurrence is doubtful. It has been admitted by her that there are 50 to 60 big mango trees in the said tope where the alleged occurrence is said to have taken

place and there was an electric bulb lighted on the road between the mango tope and R.C.M. godown and not in the mango orchard which creates doubts as to whether there was sufficient light at the place of occurrence. Though according to her evidence, it was a moonlit night but in the absence of any electric light in the mango tope it appears to be highly improbable that P.W.4 could have identified the appellant even in moonlit night as occurrence had taken place at a place where there were 50 to 60 mango trees. Therefore, in our view, identification of the appellant by P.W.8 becomes highly doubtful. In view of the aforesaid facts, I am of the view that it would not be safe to place reliance upon the solitary testimony of such a witness who is highly interested, inimical to, the accused and her presence and identification at the alleged place of occurrence become doubtful.

7. No reliance can be placed upon the statement of P.W.2 who claims to have arrived at the place of occurrence immediately on hearing hulla and claims that P.W.8 named the appellant before her as we have already disbelieved the version of P.W.8. The evidence of these witnesses has not been found to be reliable and therefore, the accused cannot be convicted merely on the basis of medical evidence and objective findings of the Investigating Officer,

For the foregoing reasons. I am of the view that prosecution has failed to prove its case beyond reasonable doubts and the Court below was not justified in convicting the appellant.

8. In the result, the appeal is allowed, the conviction and sentence awarded against the appellant are set aside and he is acquitted of the charge. The appellant who is in custody is directed to be released forthwith if he is not required in connection with any other case.

R.K. Patra, J.

9. I agree.