Brushava Bariha Vs. State

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SooperKanoon Citation : sooperkanoon.com/532105

Court : Orissa

Decided On : Jul-07-1988

Reported in : 1988CriLJ1916

Judge : K.P. Mohapatra and; V. Gopalaswamy, JJ.

Appellant : Brushava Bariha

Respondent : State

Judgement :

K.P. Mohapatra, J.

1. This appeal is directed against the order passed by the learned Sessions Judge, Bhawanipatna, convicting the appellant under Section 302,1.P.C. and sentencing him to undergo imprisonment for life for having caused the death of his wife Debaki (referred to as the 'deceased').

2. The facts in short are that on 30-3-1981 the appellant and the deceased went to their land in the forest to collect mahua flowers. Their two sons P.W. 1 Bhakta and P.W. 2 Nidhi also came to the forest and were tending cattle at a little distance. At about midday P.Ws. 1 and 2 heard the distresed cries of their mother 'Marigoli Marigoli'. They turned at the direction and saw that the appellant was assulting the deceased with the blunt side of a Tangia (M.O.I). They ran to the place of assault and attempted to intervene, but the appellant threatened them and so they left the

place out of fear. They came to the village and reported the incident to their uncle (P.W. 3) and their elder sister (P.W. 4), as well as others. When P.Ws. 3, 4 and some villagers came to the place of assault, they saw that the deceased was lying dead under a Kusum tree with injuries on her body which had been covered by her own saree. In the evening of the same day P.W. 1 lodged F.I.R. (Exit. 1) at Madanpur Rampur Police Station, whereafter, investigation commenced an ultimately charge-sheet was submitted against the appellant for having committed the offence of murder of his wife under Section 302, L P. C.

3. The appellant denied the charge framed against him and pleaded that a false case had been started against him.

4. The learned Sessions Judge accepted the evidence of P.Ws. 1 and 2, the eye witnesses to the occurrence and further believed that immediately after the occurrence they had reported the incident to P.Ws. 3 and 4. So believing the entire case of the prosecution, he reached the conclusion that the appellant was the author of the murder of the deceased and accordingly convicted and sentenced him.

5. The main contention of Mr. Parida, learned Counsel appearing for the appellant, is that accepting the prosecution case as presented, a case under Section 302,1.P.C. was not made out. According to him the evidence warrants a finding that it was case of homicide not amounting to murder punishable under Section 304, Part I, I.P.C.

6. There are two eye-witnesses to the occurrence, both sons of the appellant and the deceased. Both of them (P.Ws. 1 and 2) have stated in their evidence that on the date of occurrence while they were tending cattle at a little distance from the place where their parents were collecting mahua flowers, they heard the cries of their mother 'Marigoli Marigoli'. They turned at the direction and saw that their father was assulting their mother with the blunt side of an axe. They ran to the spot and saw the assult on her again. They tried to prevent the appellant from the assault, but were themselves threatened. Therefore, they could not render any assistance to the deceased and came running to the village and immediately reported the incident to P.Ws. 2 and 4. On going through the evidence of the eye

witnesses, we hardly find any ground to disbelieve their testimony. We are, therefore, satisfied that they were witnesses of truth and if the appellant had not committed the crime, they would not have spoken against him in court.

7. The next phase of the evidence is that of P.Ws. 3 and 4, both of whom are related as uncle and elder sister of P.Ws. 1 and 2. It will appear from the evidence of both that P.Ws. 1 and 2 came and reported to them that their father had assaulted the deceased with the blunt side of the axe and she was lying on their land inside the forest. Soon thereafter all of them came and saw that the deceased was already dead. From their cross-examination, nothing appears for which they can be disbelieved.

8. From the aforesaid clear evidence, we cannot but conclude that the appellant assaulted the deceased by means of the blunt side of the axe causing her death.

9. After arriving at the aforesaid conclusion it is necessary to consider the contention raised by Mr. Parida. In this connection, the evidence of P.Ws. 1 to 4 and that of the medical' officer (P.W. 7) is relevant. P.Ws. 1 to 4 have stated that there was no enmity or ill-feeling of any sort between the appellant and the deceased On the other hand, their relationship was normal. From this, it would be reasonable to assume that there was neither any motive nor any premeditation for the murder. The evidence of the medical officer (P.W. 7), who conducted the post-mortem examination vide report Ext. 4, shows that the deceased had the following external injuries:

(1) Multiple abrasions over umbilicus;

(2) Multiple abrasions on the right lumber rigion;

(3) Abrasion just above the left knee of the size of l1/2 X 1/2' X1/2' and

(4) Parallel bruise of the size of 2' X 1/2' below the right lower angle of the scapula.

It is significant to note that there was no external injury on the vital parts of the body of the deceased, such as. the head or the chest. On the face of it, the injuries do not appear to be serious, but on dissection he found the following internal

injuires:

(1) One haematoraa present below the skin over the right parietal bone of the size of 2" X 2';and

(2) Contention of small intestine and omentum.

According to his opinion, the injuries were ante-mortem in nature and were sufficient in ordinary course of nature to cause death. The immediate cause of death was due to contusion of small intestine and omentum, as well as due to shock caused by sudden blow on the head and abdomen. An analysis of the medical evidence will show that there could not be a sudden blow on the head, because there was no external injury present. Had a blow been given either with the blunt side of the axe or by its handle on the head, some sort of external injury was natural. From this, we conclude that there was no assault on the head, but when the deceased fell down on the ground her head came into contact with hard and blunt surface which explains the presence of the haematoma. The other injuries independently could not cause death. On consideration of the above facts and evidence, we are of the view that the appellant had neither any intention nor any premeditation or motive for causing death of the deceased Nevertheless, he assaulted the deceased by means of the blunt side of the axe, or may be by the handle of it, which caused her death. So, this was not a case coming under Section 302, but a clear case under Section 304, Part I, I.P.C. We, therefore, convert the conviction of the appellant from Section 302 to Section 304, Part I, I.P.C. Sentence of rigorous imprisonment for eight years would meet the ends of justice.

10. In the result, the appeal is allowed in part. Instead of conviction of the appellant under Section 302, we convict him under Section 304, Part I, I.P.C. and in lieu of imprisonment for life, sentence him to undergo rigorous imprisonment for eight years.

V. Gopalaswamy, J.

11. I agree.