

**Niranjan Mallick Vs. State of Orissa**

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**Court :** Orissa

**Decided On :** Mar-24-2000

**Reported in :** 2000(I)OLR564

**Judge :** P.K. Patra and ;L. Mohapatra, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302

**Appeal No. :** Jail Criminal Appeal No. 368 of 1993

**Appellant :** Niranjan Mallick

**Respondent :** State of Orissa

**Advocate for Def. :** Mira Das, Addl. Government Adv.

**Advocate for Pet/Ap. :** O.N. Ghosh, Adv. through High Court Legal Aid and Advice Committee

**Disposition :** Appeal allowed

**Judgement :**

**L. Mohapatra, J.**

1. The appellant has been convicted Under Section 302. IPC committing murder of his wife Neelabati Mallick and has been sentenced to imprisonment for life.

2. The prosecution case is that on 24.2.1993 at about 10 a.m. the appellant picked up quarrel with his wife Neelabati in their house in course of which he inflicted blows on the head of Neelabati. as a result of which she fell down and died. On the same day Kubera Mallik who is The brother of the appellant informed about the said incident to the Grama Rakshi, P.W.I before whom the appellant confessed his guilt. Thereafter the appellant was taken to Phiringia Police station, and FIR was lodged.

3. In order to prove its case the prosecution examined eight witnesses out of whom P.W. 1. Grama Rakshi is the informant. P.W.2 is the eye- witness to the occurrence. P.Ws. 3 to 6 are seizure witnesses. P.W.7 is the doctor who conducted autopsy over the dead body and P.W. 8 is the Investigating Officer.

4. The plea of the accused is complete denial of his involvement in the alleged offence.

5. Learned trial Court convicted the appellant accepting the extra- judicial confession made before P.W. 1, evidence of the sole eye-witness P.W.2 as well as on the basis of evidence of P.W. 8 before whom the appellant produced the weapon of offence.

6. Shri O.N. Ghosh, learned counsel appearing for the appellant, has submitted that P.W.I being a Grama Rakshi any extra-judicial confession made before him is not admissible in evidence and he relied upon a decision reported in 1977 ILR Cult. P. 165 : Madan alias Undu Barik v. State : In the said decision this Court has held that the powers of a Grama Rakshi in terms of the Orissa Grama Rakshi Act and Rules made thereunder are analogous to that of a Choukidar and a Grama Rakshi is a substitute of the Choukidar who has been found to be a public officer and accordingly this Court held that Grama Rakshi being a police officer confession made before him is not admissible in evidence. Learned counsel further submitted that presence of P.W.2 cannot be believed in view of the fact that P.W.2 speaks of two blows on the head of the deceased, whereas the evidence of P.W.7 indicates four injuries out of which one was on the chest resulting in fracture of fourth rib which had pierced into her heart. P.W.2 having not said about any blow on the chest, his evidence cannot be believed.

7. We have carefully perused the evidence of P.W.2. The said witness has stated that in the month of Magha in the year 1993 while he and his wife were digging out turmeric from a field near the house of the appellant, he saw the appellant picking up quarrel with his wife in course of which he inflicted two axe blows, one on the vertex of the head and the other one near the left ear of his wife. Though this witness says that his wife was also present along with him at the time of occurrence, his wife has not been examined as a prosecution witness. This witness further speaks that the appellant dealt two blows on the head of the deceased causing her death instantaneously. He had seen the occurrence about 40 cubits apart. We find from the evidence of P.W.2 that he speaks of only two blows on the head, whereas P.W.7, the doctor who conducted autopsy, found 4 injuries out of which one was on the chest. The doctor is of the further opinion that minimum 5 blows are required to cause all the injuries found on the dead body of the deceased. P.W.2 who is said to be an eye-witness to the occurrence does not speak of 5 blows and the learned Sessions Judge has accepted his evidence on the presumption that P.W.2 might have left the place after two blows were inflicted and might not have seen the rest blows. We are unable to agree with the finding of the learned Sessions Judge as P.W.2 in his evidence has specifically said that 2 blows were inflicted for which the deceased died instantaneously. This witness has also made the statement before the Investigating Officer 1 or 2 days after the occurrence. The learned counsel appearing for the appellant has relied upon the decision reported in 57 (1984) CLT 81: Chudiamal Jain and Anr. v. State, and submitted that non-disclosure of vital facts immediately after the occurrence, and even after the police officer came to the scene and villagers gathered, without reasonable explanation for such delay would affect the evidence. In view of such statements of P.W.2 running contrary to the evidence of P.W.7. we are unable to rely on the evidence of P.W.2.

8. Now the only material available against the appellant is that he gave recovery of the weapon of offence leading the I.O.- P.W.8 and that human blood found on the weapon of offence. So far as P.W.8, I.O. is concerned, the trial Court has disbelieved the statement alleged to have been made by the appellant before the I.O. that he had concealed the weapon of offence on the ground that other witnesses who were present at the time of leading to discovery have not stated so.

Part of the evidence of P.W.8. so far as it relates to the statement of the accused leading to discovery. has been disbelieved. Only on the material that the accused led to discovery of the weapon of offence, it may not be safe to convict the appellant Under Section 302, IPC.

9. In view of such nature of evidence, we are unable to agree with the findings of the trial Court. Accordingly, the appeal is allowed and the order of conviction and sentence is set aside. The appellant be set at liberty forthwith.

**P. K. Patra, J.**

10. I agree.

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