Malu Naik Vs. State

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Court : Orissa

Decided On : Aug-26-1985

Reported in : 1985(II)OLR412

Judge : D. Pathak, C.J. and ;S.C. Mohapatra, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 164

Appeal No. : Jail Cri. Appeal No. 94 of 1981

Appellant : Malu Naik

Respondent : State

Advocate for Def. : J. Behera, Addl. Stand. Counsel (Public Prosecutor)

Advocate for Pet/Ap. : R. Saha, Adv.

Disposition : Appeal dismissed

Judgement :

D. Pathak, C.J.

1. This appeal is from jail where the appellant has been convicted under Section 302, I.P.C., for causing patricide and sentenced to imprisonment for life.

2. As the appellant was not represented by any counsel, we engaged Miss. Rakhi Saha, Advocate, to represent the appellant at the State expense.

3. A thumb-nail narration leading to the present appeal is that on the 30th April, 1980 at about 11. 30 a. m the appellant caused the death of his father by inflicting injuries with a Mugura (M. O. I).P. W. 2 the daughter-in-law of the deceased (wife of the eldest brother of the appellant) upon hearing some beating sound in the adjoining room where her father-in-law was living peeped inside it and saw the appellant dealing blows by M. O. I. on the deceased. P. W. 2 out of fear did not intervene and started running. She also raised an alarm to save her father-in-law from the appellant. Immediately she sent her son to inform the Sarpanch (P. W. 3), who came to the place of occurrence with other villagers immediately thereafter. In the meanwhile, the appellant ran away with the wooden Mugura with which he was assaulting his father. The deceased was found dead. The villagers and the Sarpanch (P. W. 3) called the appellant and enquired from him as to the real facts to which he teplied that he caused the death of his father. From the prosecution case it turcnet transpitres that the appellant was not putting on well what his father, the deceased, on account of certain landed property which was being sold by the appellant. On the information having been lodged at the Police Station, the Police swung into action, came to the spot, held inquest on the dead body and sent the dead body for Post-mortem examination. The doctor (P. W. 1), who conducted autopsy over the dead body, found the cause of death to be homicidal. During investigation, some witnesses were examined and the appellant was arrested and forwarded to the Court. On completion of investigation, the appellant was charge sheeted under Section 302, I. P. C. and was put on trial. During trial seven witnesses including the official witnesses, namely, P. W. 1, Sashibhusan Rath, the doctor who conducted the post-mortem examination, P. W. 6, Mahendranath Patnaik, the Sub-divisional Judicial Magistrate, who recorded the confessional statement of the appellant under Section 164, Cr. P. C., and P. W. 7 Mahesh Chandra Mohanty, the Investigating Officer were examined. P. W. 4, Sahadev Singh, is the constable who accompanied the dead body to the hospital for conducting the post mortem examination. From the side of the appellant no witness had been produced at the time of trial.

4. The case of the appellant is one of complete denial.

5. There is no dispute about the fact of the death of Gantei Naik. This has been testmed by the evidence of P. Ws. 2, 3 and 5 coupled with the evidence of P. W. 1, who conducted the post mortem examination as well as the evidence of P. W, 4, the constable who accompanied the dead body to the hospital. P. W. 1 found the following injuries on the person of the deceased :

External injuries

(1) One lacerated wound of size 4' x 2' present over the tight posterior lateral side of head. Parietal and occipital bones are factured there. Brain substance is morning out brough the would.

(2) There is a lacrated wound of size' x 2' on the anterolateral side of head. There is fracture of left side frontal and parital bone.

(3) One lacerated wound of size 2' x 2' present over the left side of face. Xygoma bone is fractured in that region.

(4) There is an abrasion of size 1' x 1/2' over the front of middle of left arm.

(5) One abrasion of size 6' X 1' present over the top of right shoulder extending to chest wall and back. One arm extending, to the chest wall is 3' in length and the other arm extending to back is 2' in length.

(6) One abrasion of size 1' x 1/2' present on the right lateral side of chest wall.

(7) One contusion of size 1' 1/2' present over the back 1' below the inferior angle of left capule.

(8) One abrasion of size 1' 1/2 ' present over the top of left shoulder.

(9) One abrasion of size 2' 1/2' present over the upper half of inner side of right thigh.

(10) Fracture of left clavicle. There is a fracture of 2nd to 10th ribs on the left side and fracture of 4th to 7th ribs on right side.

Internal injuries -

(1) Pleura on the left side is pierced by fractured ribs.

(2) Left lung is pierced by fractured ribs. There was clots over it. There was tearing of membranes and tearing of brain substance in the occipital and right parietal lobe underneath the injury stated earlier.'

In the opinion of the doctor all the injuries were ante mortem in nature. He has further opined that the injuries were caused by hard and blunt weapon such as M. O. I. He has also stated that the injuries were sufficient in the ordinary course of nature to cause death which would have been instantaneous in this case.

6. Miss. Sana, the learned counsel appearing on behalf of the appellant has given sufficient emphasis to contend that the prosecution has failed to prove the case beyond all reasonable doubts. The learned counsel has also submitted that there is no direct evidence to the occurrence. It has further been submitted by the learned counsel for the appellant that the prosecution case is mainly based on the evidence of solitary witness, viz., P. W. 2, who, according to the learned counsel, did not see the infliction of the injuries on the deceased. As regards the confessional statement recorded by P. W. 6, Miss Saha, the learned counsel for the appellant, has submitted that the confession of the appellant was not true and voluntary. The last submission of the learned counsel is that the trial Court was not justified in placing any reliance on the evidence of P. W. 3 on the purported extra judicial confession made by the appellant.

7. In view of the emphatic submission made by the learned counsel for the appellant that there is infrmity in the order passed by she trial Court, we have given our anxious consideration to the submission made by the learned counsel and have scanned the evidence in its entirety brought before the trial Court. We have found that P. W. 2 has given a graphic description as to the occurrence of assaults on the deceased Gantei Naik by the appellant Milu Naik while she was peeping inside the room hearing some beating sound. From her evidence it is also clear that at the time of occurrence she was cooking when she heard the beating sound. She has further stated that her father-in-law, the deceased, was living in

the adjoining room in her house. The learned counsel for the appellant submitted that particularly which P. W. 2 stated in the First Information Report has not been reflected in her evidence in the trial Court. We have carefully gone through the evidence of P. W. 2. The witness has been cross-examined at great length. Nothing has been suggested to this witness to disbelieve her sworn testimony. Therefore, the submission of the learned counsel that there is variance in her evidence in the Court and the statement in the First Information Report is not acceptable.

P. W. 3 Balasan Nanda, has stated in his evidence that after getting the information that the appellant had killed his father, he went to the place of occurrence and at that time some other people gathered. He saw that the appellant was going towards the tank with M. O. I in his hand. He called the appellant who came with M. O. I. but being afraid he asked him to go for bath. Thereafter, P. W. 3 along with others sat under a mango tree when the appellant returned with empty hand. The appellant was called and asked about his father to which he said that he killed the old man. While the appellant was in custody be made a statement which led to the discovery of M. Q. I from inside the Amari fence. The discovery of the weapon of offence on the statement made by the appellant has also been considered by the trial Court.

The learned counsel for the appellant has submitted that the weapon of offence, i.e., M. O. I was brought out from a place which was accessible to all. P. W. 7 has categorically stated that he got the M. O. I which was lying inside Amari fence. Therefore M. O. I was not kept in an open place accessible to everybody.

P. W. 6, the Subdivisional Judicial Magistrate, Rairangpur, recorded the confessional statement under Section 164, Cr. P. C. From his evidence it is found that on 2. 5. 1980 the appellant was produced before him with a requisition from the Investigate g Officer to record his confessional statement. On that day the witness disclosed his identity to the appellant that he was a Magistrate. 1st Class, and not an officer of Police. The appellant was further warned that he was not bound to make any confession and that if he makes the confession that may be utilised against him in evidence. Thereafter, the appellant was given time for

reflection and was remanded to jail custody till next day. On the next day when the appellant was produced from jail custody he was given further warning as he was given on 2. 5.1980. On that day the appellant was also warned that he was at liberty to say what he desired to say and he should not say what others might have asked him to say or tutored him to say. In spite of the warnings of P. W. 6, the appellant wanted to confess the statement as has been recorded by P. W. 6. We have seen the record of the confessional statement. While the appellant has given the genesis of the incident, he has categorically stated that he inflicted the injuries by M.O.I. on the head of his father. Thus, the statement of the appellant made under Section 164, Cr. P. C. gets corroboration from the evidence of P. W. 1, who held the autopsy.

8. On consideration of the evidence discussed above, we do not find any infirmity in the verdict of guilty as returned by the trial Court. The number of injuries on the deceased indicated above and the vital part of the body of the deceased on which the injuries were inflicted clearly demonstrate the intention of the appellant that he killed his father intentionally.

9. In the result, we do not find any merit in this appeal and the same is accordingly dismissed.

S.C. Mohapatra, J.

10. I agree.