

Madan Pradhan Vs. State

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Court : Orissa

Decided On : Jul-07-1986

Reported in : 1986(II)OLR345

Judge : B.K. Behera and ;G.B. Pattnaik, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Criminal Appeal No. 60 of 1982

Appellant : Madan Pradhan

Respondent : State

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : Bipin Bihari Mohanty, Adv.

Disposition : Appeal dismissed

Judgement :

B.K. Behera, J.

1. The prosecution has presented an extremely pathetic case of a father killing his two sons aged three years and one year in painful circumstances. The appellant with his wife (P. W. 1) and his two sons Ranjan and Niranjana (to be described hereinafter as the 'deceased') was staying in the house of) his mother-in-law. His

lust eyes fell on the younger sister of his wife whom he wanted to have his own. This was not accepted to, Dissensions grew and after dividing the produce of the land, the appellant left the house of his mother-in-law (P. W. 2) for his own vilage on December 29, 1980, with his wife and the deceased persons carrying some paddy, utensils and household articles in a bullock-cart. On the way, the appellant asked his wife (P. W. 1) to wash the utensils in the waters of a Jora(water stream). P. W. 1 left with the utensils. The appellant then brought out a Tangia (M. O. I) and killed his two children by dealing successive blows on their necks and other portions and left the place with the blood-stained weapon. P. W. 1 informed P. W. 3 who was passing by, in turn, informed some persons about what had happened. When P. Ws. 4 and 5 came to the scene of attack, P. W. 1 narrated the incident to them. The appellant was searched for and apprehended by the Grama Rakshi (P. W. 5) who had been accompanied by P. W. 4, near the spot with the weapon in hand stained with blood which the appellant threw on the ground on being asked by P. W. 5. The first information report was lodged by P. W. 2 and investigation was taken up in course of which the blood-stained M. O. I was seized by the Investigating Officer (P. W. 11). The appellant made a judicial confession (Ext. 6). On the completion of investigation, a charge sheet was placed and the appellant was prosecuted. The appellant's plea was one of denial and false implication.

2. To bring home the charge Under Section 302 of the Indian Penal Code for commission of the murders of the two children, the prosecution had examined eleven witnesses. The appellant had examined none in his defence. The trial Court has held the charge to be established and while convicting the appellant Under Section 302 of the Code, has sentenced him to undergo imprisonment for life.

3 Appearing on behalf of the appellant, Mr. Mohanty has challenged the order of conviction as unfounded. The learned Standing Counsel has submitted that in view of the confessional statement of the appellant which has amply been corroborated, the order of conviction is unassailable.

4. There can be no doubt from the evidence of the doctor (P. W. 8) that the two children had met with homicidal deaths. This aspect has not been challenged in

this Court.

5. On a consideration of the judicial confession (Ext. 6) and the evidence of the Subdivisional Judicial Magistrate (P.W. 7) who had recorded it, it is noticed that in accordance with and after compliance of the provisions of Section 164 of the Code of Criminal Procedure, the Judicial Magistrate has recorded the confessional statement on January 2, 1981 after giving sufficient time for reflection and remanding the appellant to judicial custody for two days when he was first produced on December 31 1980 and after keeping the appellant in charge of his peon for cool reflection for some time on the day of recording the confessional statement and after fully satisfying himself that the appellant was about to make a confessional statement voluntarily without being influenced or tutored by any agency.

6. We thus find that the confessional statement is voluntary. In order to be acted upon, a confessional statement must be found to be voluntary and true. The truth of a confessional statement can be judged in the light of other evidence.

7. In the confessional statement (Ext. 6), the appellant has, in terms, admitted to have killed his two children by means of an axe (Tangia). As Ext. 6 would indicate, after killing his two children, the appellant wanted and did make an attempt to end his life, but as the cloth with which he had tied his neck gave way, he survived

8. An order of conviction can legally be rested on a retracted judicial confession. As a rule of practice and prudence, however, a Court requires some corroboration of a retracted confessional statement. It is sufficient if a retracted confession gets general corroboration and it is not necessary to be corroborated in material particulars, as in that case, it may not be necessary to call the confession in aid.

9. The manner in which the appellant killed his two children as stated by him in Ext. 6 finds support in the evidence of the doctor (P W.8) who had conducted the autopsies of the two children and had noticed incised injuries on their persons causing internal injuries to the vital organs which were sufficient in the ordinary course of nature to cause their deaths. Exts. 7 and 8 are the post mortem reports prepared by him. He has opined that the injuries on both the children could be

caused by M. O. I.

10. Although the evidence of P. W. 1 with regard to her seeing the actual assault has not been relied on by the trial Court, the fact remains that on coming to the spot, she had seen her two children lying dead with bleeding from their persons and the appellant leaving the spot with M. O. I. stained with blood. She has specifically identified M. O. I. to be the instrument with the appellant when he left the plate and went away. According to her, M. O. I. belonged to them and was being used by the appellant. She was, therefore, in a position to properly identify it. She had asserted in her evidence that she could identify M. O. I. even if mixed with similar other instruments. P. W. 1 is no other person than the wife of the appellant who had been using M. O. I. In such circumstances P. W. 1 was competent to identify M. O. I. even if it had no social marks of identification. P. W. 1 might have not been able to formulate the reasons for identifying it, but she could identify M. O. I. by the untranslatable impressions of her mind by the user of M. O. I. by her husband which she had been seeing.

11. The learned trial judge has rightly held that the evidence did not warrant a conclusion that any statement made by the appellant had led to the discovery of M. O. I. It would, however, be noticed from the evidence of P. Ws. 4 and 5 that while they were searching for the appellant, they saw him coming from the jungle side holding M. O. I. with stains of blood and on being asked by P. W. 5, the appellant threw M. O. I. The Investigating Officer (P. W. 11) has testified that on December 30, 1980, he arrested the appellant on the spot where he was present and seized M. O. I. being produced by the appellant. His evidence is that M. O. I. had been stained with blood.

12. On chemical and serological tests, human blood was detected in M. O. I. The appellant had failed to explain this important and telling circumstance appearing in the evidence against him.

13. It would be seen from the evidence of P. Ws. 1 and 3 to 5 that after the occurrence, she had narrated to them that the appellant had cut away his two sons and left the place and had gone towards the jungle. This would lend assurance to her testimony that the appellant had left with M. O. I. when P. W. 1 had seen her

two children lying dead with bleeding injuries on their persons.

14. The aforesid facts, evidence and circumstances would show that the confessional statement made by the appellant is voluntary and true and the retracted confession has not only received general corroboration, but has been corroborated in material particulars. The appellant had done to death his two children by dealing Wows by means of a sharp cutting instrument (M. O. I) One of the two children was aged three years and the other was aged one year. Injuries had been caused on vital parts by a sharp cutting instrument. There can be no doubt from the evidence that the appellant had, with intention of causing, the deaths of his two sons, caused injuries sufficient in the ordinary course of nature to cause their deaths. He has thus committed the offence of murders of his two children and he has properly been convicted and sentenced Under Section 302 of the Indian Penal Code.

15. The appeal fails and is dismissed.

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