

Budhadev Pradhan Vs. State of Orissa

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Court : Orissa

Decided On : Apr-17-2008

Reported in : 2008(II)OLR222

Judge : L. Mohapatra and; B.K. Patel, JJ.

Appellant : Budhadev Pradhan

Respondent : State of Orissa

Judgement :

L. Mohapatra, J.

1. This appeal is directed against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Deogarh in S.T. Case No. 92/18 of 99-2000 convicting the appellant for commission of offences under Sections 302, 498A and 494 of the Indian Penal Code (in short 'I.P.C.'). The appellant has been sentenced to undergo imprisonment for life for commission of offence under Section 302 I.P.C., imprisonment for five years and pay a fine of Rs. 1000/- for commission of offence under Section 494 IPC and further imprisonment for three years and pay a fine of Rs. 1000/- for commission of offence under Section 498A IPC. However, sentence have been directed to run concurrently.

2. Prosecution case as revealed from the record is that appellant is the husband of deceased Sandhya Pradhan and their marriage took place in the year 1992. After

marriage both of them were staying together and leading a happy married life but in course of time, appellant developed intimacy with Mina Sahu of village Jharposi. It is alleged by the prosecution that appellant ultimately brought the said Mina Sahu to his house, which was objected to by the deceased. Because of the above reason, there was ill-feeling between the appellant and deceased and the appellant subjected the deceased to ill-treatment and the deceased somehow earned her livelihood by plucking and selling leaves from the jungle. On 5.2.1998, deceased had been to a nearby Jharan Parbat to pluck leaves but did not return to the village. On suspicion, the relatives of the deceased searched for her and in course of such search on the next day, dead body of the deceased was found near Jharana Parbat. One sickle and some 'Silai' leaves were lying near by the dead body. There were marks of injuries on the body of the deceased and the appellant who was present along with searching party wanted to consign the dead body to the fire but the father of the deceased did not agree and lodged the F.I.R. suspecting foul play by the appellant. On the above allegations, the F.I.R. having been lodged for commission of offence under Sections 302/498A/494 IPC, investigation was taken up and charge sheet was submitted for commission of the aforesaid offences.

3. Prosecution examined eight witnesses to prove the charges but none was examined on behalf of the defence. The plea of defence is that the appellant was not present in the village on the date of occurrence and only found the dead body of the deceased in course of search. Out of eight witnesses examined on behalf of the prosecution, P.W. 1 Kapila Behera is the father of the deceased, who had lodged the information. P.W. 2 is a post occurrence witness, who turned hostile during trial. P.W. 3 is a witness to inquest over the dead body of the deceased. P.Ws. 4 and 5 are the co-villagers, who participated in searching the deceased. They also speak about the ill-feeling between the deceased and appellant. P.Ws. 6 and 7 are witnesses to the recovery of the dead body of the deceased. They have also stated about the second marriage of the appellant. P.W.8 is the Investigating Officer. On the basis of evidence of these witnesses, the trial Court found the appellant guilty of charge and convicted him thereunder.

4. It was contended on behalf of the appellant that so far as offence under Section 302 is concerned, there is absolutely no evidence on record to support the said charge. The trial Court has convicted the appellant more or less on surmises. So far as offences under Section 498A and 494 are concerned, it was contended by the learned Counsel that the evidence of the witnesses relied upon are not trustworthy. Therefore, the trial Court should not have convicted the appellant for the aforesaid offences.

Learned counsel for the State fairly submits that there being no eyewitness to the occurrence, the prosecution relies on only circumstantial evidence. Learned Counsel for the State further submits that there was ill-feeling between the deceased and appellant consequent upon the appellant bringing a second wife. There was a village meeting in relation to the same and the evidence of the witnesses clearly prove that appellant was not pulling on well with the deceased. The dead body of the deceased clearly showed that she had been assaulted and it is the appellant, who alone could have done it,

5. We have carefully examined the evidence adduced before the trial Court. P.W. 1 is the father of the deceased and is also informant of the case. He has stated in his deposition that deceased had married the appellant five years prior to the occurrence and they had been blessed with two daughters, the appellant kept Meena Sahu as his concubine during the life time of the deceased and after bringing the second wife, he started neglecting the deceased. His evidence also shows that the appellant was not giving food to the deceased and was torturing her physically. It also appears that the deceased used to live by working as labourer. This witness convened a meeting of his caste men and alleged about the conduct of the appellant and it was decided in the said meeting that the appellant should maintain both the deceased as well as the second wife. This witness has further stated that four days prior to the death of the deceased she had come to his house with her two daughters. The appellant sent his mother to their house to enquire as to whether the deceased was there and only from mother of the appellant he came to know that the deceased had not returned from jungle. Thereafter, he and other villagers searched for deceased in the jungle but could not find her. On the next day the dead body of the deceased was found near

Jharan Parbat. P.W. 2 turned hostile and did not support the case of the prosecution. P.W. 3 is a witness to the inquest. P.W. 4 has stated about the ill-feeling between the appellant and deceased as well as the meetings of their settlement. Similarly P.W. 5 has also stated about the ill-feeling between the deceased and appellant. P.W. 6 has only stated about the recovery of the dead body. P.W. 7 has stated that on the day following the date of occurrence, the appellant had told him that the deceased died due to biting of bear. This witness has also stated that the appellant had two wives, deceased and another. P.W.8 is the Investigating Officer. The doctor, who conducted postmortem examination, was not examined.

6. On analysis of the evidence of the witnesses examined on behalf of prosecution, we find that the appellant had married the deceased five years prior to the occurrence and they had been blessed with two daughters. The appellant developed relationship with another lady and ultimately brought her to his house. Because of such conduct of the appellant, there was an ill-feeling between the appellant and deceased. The deceased was maintaining herself by plucking leaves from the jungle. It also appears from the evidence of the P.W.1 that the deceased was being subjected to physical torture and was not being maintained by the appellant. Because of such conduct of the appellant, there was a meeting in the village and a decision was taken to the effect that the appellant should maintain both the wives. Except this circumstance, there is no other evidence either to show that the appellant was not last seen with the deceased or there has been recovery of the dead body at the instance of the appellant. We are, therefore, of the view that merely because the appellant and deceased were not pulling on well, in absence of any other evidence whatsoever the appellant cannot be convicted for commission of the offence under Section 302 IPC. The learned Counsel for the State also fairly submits that except the evidence with regard to ill-feeling between the appellant and deceased, there is no other evidence to connect the appellant with the alleged offence under Section 302 IPC

7. So far as offences under Sections 498A/404 are concerned, we find from the evidence of P.W. 1 that the appellant had brought the second wife during the life time of the deceased and was also physically torturing the deceased after taking

the second wife, His evidence is also corroborated by the evidence of other witnesses, such as P.Ws. 4 and 5. We therefore find sufficient materials so far as charge under Sections 498A/494 is concerned.

8. In view of the discussions made above, we partly allow the appeal and set aside the impugned judgment passed by the learned Additional Sessions Judge, Deogarh in S.T. Case No. 92/18 of 99-2000 convicting the appellant for commission of offence under Section 302 IPC. However, his conviction and sentence of imprisonment imposed by the trial Court for commission of offences under Sections 498A and 494 IPC are maintained. The sentence of fine imposed by the trial Court on each count is set aside looking at the status of the appellant. As stated earlier, the appellant had been sentenced to imprisonment for five years for commission of offence under Section 494 IPC and imprisonment for three years for commission of offence under Section 498A IPC. This appeal was filed in the year 2001 and in the meantime, seven years have passed. The sentences having been directed to run concurrently, it appears that the appellant has already served the sentence for more than five years. If the appellant-Budhadev Pradhan has served the sentence of imprisonment as directed by the trial Court in the meantime, he be set at liberty forthwith unless his detention is required in any other case.

B.K. Patel, J.

9. I agree.

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