

State Vs. Duryodhan Rout

State Vs. Duryodhan Rout

SooperKanoon Citation : sooperkanoon.com/533758

Court : Orissa

Decided On : Jan-08-2008

Reported in : 2008CriLJ2876

Judge : P.K. Tripathy and; R.N. Biswal, JJ.

Appellant : State

Respondent : Duryodhan Rout

Judgement :

R.N. Biswal, J.

1. Reference made under Section 366 of Cr.P.C. by Addl. Sessions Judge, Angul to confirm the death sentence passed in Criminal Trial (Sessions) No. 80 of 2005/8 of 2005 registered as DSREF No. 2 of 2007 and JCRLA No. 12 of 2007 preferred by the accused challenging the judgment and order of conviction and sentence, were heard together and disposed of by this common judgment.

2. Succinctly stated the prosecution case is that, on 11-9-2004 at about 3 p.m. accused Duryodhan Rout, on the pretext that the deceased, Subhasini a minor girl aged about 10 years would talk over phone with his brother, Bamodev Bhoi working at Bargarh from the house of Bijaya Bhoi of Village-Anandpur took her on a bicycle. When the evening set in, the accused alone returned to the village and on enquiry about Subhasini by P.W. 5, her father, he told that she had gone with a

woman of Ranibandha to her house. On the next day, as she did not return P.W. 5 again questioned the accused regarding the whereabouts of the deceased. The accused confessed in presence of Rabi Biswal (P.W. 3), Dasarathi Bhoi (P.W. 4) and Subashini Bhoi that he killed the deceased by pressing her neck. With the help of these three witnesses P.W. 5 took the accused to Thakurgarh P.S. got the FIR scribed by one Laxman Senapati and lodged it before P.W. 8 the O.I.C. of the said Police Station. As the allegation contained in the FIR revealed a cognizable case, P.W. 8 registered P.S. Case No. 51 dated 12-9-2004 under Section 302/201 of IPC and took up investigation. In course of investigation, he examined the witnesses, arrested the accused, recorded his statements under Section 27 of the Indian Evidence Act on the basis of which he went to the spot made recovery of the dead body of the deceased, held inquest over it, seized the Chad! of the victim lying near the spot, prepared seizure list in respect thereof and sent the dead body to Athamalik Hospital for autopsy. He also seized the wearing apparels of the accused, forwarded him to the Court on 13-12-2004 and handed over charge of investigation of the case to the C.I. of Police, Athamalik (P.W. 7), who tested the witnesses, already examined by P.W. 8, prayed the Court for sending the seized wearing apparels for chemical examination and after completion of investigation submitted charge-sheet against the accused under Sections 376/302/201 of IPC. The case having been committed to the Court of sessions Judge, Dhenkanal, was transferred to the Court of Addl. District & Sessions Judge, Angul for disposal. Accordingly, the Addl. District & Sessions Judge, Angul framed charge under Section 376(f)/302/201 of the IPC against the accused and proceeded with the trial. The plea of the accused was complete denial. It was his further plea that because of previous enmity of his family members with the informant, the case was foisted against him to take vengeance.

3. In order to establish its case, prosecution examined 8 witnesses, while the accused examined himself as D.W. 1 besides examining D.W. 2, his father to prove his stand. After assessing the evidence on record, the trial Court found the accused guilty of the offence under Sections 376(f)/302/201 of IPC convicted him thereunder and sentenced him to death for the offence punishable under Section 302 of the IPC. He also sentenced him to undergo R.I. for 10 years and to pay a fine of Rs. 5000/- for the offence punishable under Section 376(f) of IPC and R.I.

for one year and to pay a fine of Rs. 1000/- for the offence punishable under Section 201 of IPC. It was further ordered that in default of payment of fine, the convict would suffer imprisonment for one year for the offence punishable under Section 376(f) of IPC and three months for the offence punishable under Section 201 of IPC and that the substantive sentences would run concurrently. To confirm the sentence of death, the trial Court referred the case to this Court under Section 366 of Cr.P.C. and according DSREF No. 2 of 2007 was registered. Being dissatisfied with the said Judgment and order of conviction and sentence, while undergoing imprisonment, the accused preferred the aforesaid appeal as stated earlier.

4. Admittedly there was no eye-witness to the occurrence; the order of conviction was based on circumstantial evidence only. It transpires from the evidence of P.Ws. 1 and 2 that on the date of occurrence at about 4 p.m. while they were making chips by breaking holders by the side of road, they saw the accused carrying the deceased on a cycle and at about 5 p.m. they saw him re turning alone. On perusal of evidence of P.Ws. 5 and 6, the father and mother of the deceased respectively, It is found that the accused took the deceased on a cycle on the pretext that the later would talk to her brother, working at Bargarh, over phone from the house of Bijaya Bhoi of village Anandpur. While the accused was in police custody, he confessed his guilt which was recorded under Section 27 of the Evidence Act under Ext. 7. It reflects that on 11-9-2004 A.N. he took the deceased near Arakhkuda Salabani Jungle, undraped her and then committed rape on her. When she cried, he strangled her to death and left the dead body covering it with branches of trees. On the basis of that statement, the I.O. recovered the dead body and the Chadi of the deceased lying near-by, from Arakhkuda Salabani Jungle. As envisaged under Section 27 of the Evidence Act, the part of the statement of an accused made before a police officer, which distinctly relates to the facts of discovery only is admissible under law. Here in the present case, the statement of the accused that he left the dead body covering branches of trees would be admissible.

It transpires from the evidence of the dictor, P.W. 9 that on 12-9-2004, he was attached to Sub-Divisional Hospital, Athamallk as a Specialist in O and G. On that

date at 5.00 p.m. on police requisition, he conducted autopsy over the dead body of the deceased-Subasini Bhoi aged about 10 years and found as follows:

(i) Bleeding from nostrils and mouth and both the ears with small clottings of blood.

(ii) Eyes were half opened.

(iii) Bloody froth present in the nostrils and mouth.

(iv) Stool had been discharged from anus, (v) Thumb marks were present on the front of the neck.

(vi) Two linear abrasions of size 3' x 4' on the front of the neck due to scratching by some sharp weapon like human nail.

(vii) Finger marks present on both sides of the neck and back of the neck.

(viii) Extravasation of blood in to the subcutaneous tissues under the thumb and finger marks and adjacent muscles of the neck.

(ix) Muscles of neck corresponding to the thumb and finger marks were mildly lacerated.

(x) Multiple abrasions (linear) of size varying from 2' to 3' on both sides of scapular region. Most probably caused by weapon like human nails.

(xi) Multiple abrasions on the back of both buttocks due to friction on a rough surface, like rough ground and the abrasions were associated with very mild bleeding. The size of multiple abrasions varies from ' x 1/4' to 3/4' x 1/2'.

(xii) Laceration of the vagina with bleeding with clots, most probably because of attempt to introduce the penis forcibly. The penis most probably was large in size and the vaginal orifice of the deceased girl, aged about 10 years was very narrow. The laceration appears to have been caused by several attempts to introduce the penis into the vagina.

(xiii) All the injuries were ante-mortem in nature. The throttling was also ante-mortem in nature. There was no evidence of seminal fluid in or around vagina or

on any part of the body or anywhere in the clothing of the victim.

According to P.W. 9, the cause of death of the deceased was due to throttling and probably homicidal in nature. He further states that the accused might have attempted three to four times to introduce his pennies into the vaginal orifice of the deceased. It further transpires from his evidence that on 13-9-2004, he examined the accused and found seminal fluid marks on his pant. He also found one linear abrasion of size 1/4' on the posterolateral aspect of the left elbow and another linear abrasion of the same size on the medial aspect of his right knee. According to him, those injuries might have been caused 12 hours earlier to the alleged incident. When it is the specific evidence of P.W. 9 that the injuries found on the body of the accused might have been caused 12 hours earlier to the alleged incident, it is not safe to hold that in course of rape and murder of the deceased, the accused sustained those injuries. P.W. 9 could not notice any sign of recent sexual intercourse on the private part of the accused. The alleged incident took place on 11-9-2004. The accused having been examined by the doctor on 13-9-2004, the sign of sexual intercourse on his private part might have vanished due to lapse of time.

5. It transpires from the evidence of P.W. 5 that the accused confessed before him and P.Ws. 3 and 4 that he killed the deceased, P.Ws. 3 and 4 hostile and did not support the prosecution. But P.W. 6 corroborated this part of evidence of P.W. 5. When asked by P.W. 5 regarding the whereabouts of the deceased, accused told that she went with a woman of Ranibandha, which in fact was false.

6. The chain of circumstances available against the accused are that he carried the deceased on a cycle at about 4.00 p.m. and returned alone at 5.00 p.m. he confessed to have murdered the deceased; on the basis of the statement of the accused recorded under Section 27 of the Evidence Act, the I.O. discovered the dead body; the opinion of the doctor was that the deceased was raped and murdered and that the accused gave a false statement that the deceased went with a woman of Ranibandha. As found from the evidence of P.Ws. 1 and 2, they saw the accused carried the deceased on a cycle at about 4.00 p.m. and returned alone one hour thereafter. There is nothing to indicate that within 1 hour, there was

any scope for anybody else, other than the accused to commit rape and murder of the deceased. The dead body of the deceased was found being covered with branches and leaves. The statement recorded under Section 27 of the Indian Evidence Act shows that the accused covered the dead body of the deceased with branches and leaves obviously with the reason to screen himself from legal punishment. The chain of circumstances of the case leads to the hypothesis that the accused and the accused alone was the author of the crime. So, the trial Court rightly convicted him for the offence under Sections 376(f)/302/201 of the IPC.

7. Learned Counsel appearing for the accused (here-in-after referred as appellant submitted that the appellant is a rusttt villager. At the time of the alleged occurrence, he was aged 22 years only. There is no evidence with regard to his criminal backgrounds. There is possibility that, if given a chance, he can be reformed and rehabilitated and brought to the main stream of the society. When the appellant took the deceased with the knowledge of her parents, (P.Ws. 5 and 6), it appears that he had no intention to kill the deceased. At that time, he might have intended to commit rape on her. As it appears, during the commission of rape, when the appellant could not penetrate his male organ fully into the vaginal orifice of the victim and the later cried, the beasthood within him overpowered his reasoning, for which he throttled the deceased to death. The circumstances under which the crime was committed, cannot be considered as a rarest of rare case. So, according to the learned Counsel for the appellant, the death penalty as awarded by the trial Court is disproportionate to the crime in question, particularly, when imprisonment of life for murder is the rule and capital sentence is an exception.

8. Regard being had to the submission of learned Counsel for the appellant and taking into consideration the facts and circum stances of the case, the age of the appellant, his family background and the fact that he had no criminal antecedent, in our considered opinion, the appellant deserves life imprisonment, instead of capital sentence for the offence under Section 302 of the IPC.

9. Therefore, the appeal is allowed in part and the capital sentence is converted to life imprisonment and rest of the order of sentence remains unaltered.

Accordingly the DSREF and JCRLA are disposed of.

P.K. Tripathy, J.

10. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com