

Sobha Chandra Gouda Vs. State

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Court : Orissa

Decided On : Sep-06-1985

Reported in : 1986(I)OLR111

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

Acts : [Evidence Act, 1872](#) - Sections 3; Indian Penal Code (IPC) - Sections 302 and 379

Appeal No. : Jail Criminal Appeal No. 108 of 1982

Appellant : Sobha Chandra Gouda

Respondent : State

Advocate for Def. : Jaiaj Behera, Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Naik, Adv.

Disposition : Appeal dismissed

Judgement :

S.C. Mohapatra, J

1.In this appeal from jail, the appellant has challenged his convictions under sections 302 and 379 of the Indian Penal Code- Since the appellant was going undefended, we engaged Mr. A.K. Naik, Advocate to represent him at the State

expense.

2. Brief narration of the prosecution case is that on 21.1.1981 in the night the appellant was going with the deceased and P. W. 3 to village Kadalimunda to see cinema. On the way he caught hold of the neck of the deceased, pushed her to also short distance and made her to fall on the ground. After she fell down, the appellant dealt knife blows on her neck resulting her death at the spot. The appellant removed the ornaments from the body of the deceased. Assuring P. W. 3, who was his servant, to give share of the ornaments, the appellant threatened him not to disclose the occurrence. On 22.1.1981, P. W. 2 orally reported at Gothmunda Out Post at 11-30 p.m. that somebody had killed Palak Dei, the deceased. A Station diary entry was made which was sent to the Officer-in-charge, Koksara Police Station. On 23-1-1981 at about 10 a.m. P. W. 1, Chandradhwaja Sahu reported at the Koksara Police Station that P. W. 8, hand killed his wife. This was treated as the F. I. R. and the Officer-in-charge (P. W. 12) proceeded to the spot and took charge of investigation from the Assistant Sub-Inspector of the Out Post, P. W. 11, who after inquest sent the dead-body for post-mortem examination to Dharamgarh hospital through P. W. 7, the Police Constable. P. W. 10, the doctor conducted autopsy on 24.1.1981. After investigation, charge-sheet was submitted against the appellant.

3. The defence plea is one of complete denial and the appellant has pleaded his innocence.

4. In order to bring home the charge, prosecution has examined 13 witnesses. P. W. 3 is the only eye-witness who was engaged as the field servant of the appellant during the material period. P. W. 1 lodged F. I. R. in the Police Station on 23.1.1981. P. W. 2 is the sister of P. W. 8, the husband of the deceased who want to call the deceased from instance of her brother. P. W. 8 is the husband and P. W. 9 is the father-in-law of the deceased, P. W. 4 is a seizure witness. P. W. 5 lodged station diary entry dated 22.1.1981 and is a witness to the inquest. P. W. 6 is a witness to the seizure of the ornaments and the knife, the weapon of offence, from the house of the appellant. P. W. 7 is the Police Constable, who accompanied the dead body to Dharamgarh hospital for post-mortem examination.

P. W. 10 is the doctor who conducted the autopsy. P. W. 11 was the Assistant Sub-Inspector of Police attached to Gothamunda Out Post and he held inquest over the dead body on 23-1-1931 at noon. P. W. 12 was the Officer-in-charge of Dharmagarh Police Station, who was investigating into the case. 4 . P. W. 33 was the Special Judicial Magistrate, who conducted the T. I. Parade for identification of the ornaments of the deceased.

5. From the evidence of P. W. 10 and the post-mortem report, it is clear that the death of Palak Dei was homicidal P. W. 10 found the following injuries on the dead body :

- (1) Contusion on the middle of right fore-arm.
- (2) Incised injury on the left side of the neck 3' x 1/2' x 1/2'.
- (3) Incised wound on the right side of the neck 1' x 1/2' x 1'.

On dissection, the following injuries were found.

- (1) All the large blood vessels on the left side of the neck were cut,
- (2) The trachea had been cut.

In the opinion of the doctor (P. W. 10) all injuries were anti-mortem and were sufficient in the ordinary course of nature to cause death. Thus, there can be no doubt that the author of the injuries on the deceased causing her death committed culpable homicide amounting to death.

6. The only question to be examined is whether the appellant is the author of the injuries which caused the death of deceased Palak Devi. The learned Sessions Judge, on careful analysis of the evidence of P. W. 3 corroborated by the circumstances of the deceased going to the house of the appellant in the night of occurrence during night meal time, the injuries on the dead-body, recovery of ornaments which the deceased was wearing from the house of the appellant and the knife as stated by P. Ws. 2, 4, 6, 8, and 9, held the appellant to be the author of the crime.

7. Mr. A.K. Naik, the learned counsel for the appellant assailed the judgment of the trial Court on the grounds that in case the evidence of P. W. 3 is not accepted, there is no other material to conclusively bring home the guilt to the appellant. The delayed disclosure of the incident by P. W. 3, non-examination of Madan Gouda, another eye-witness as disclosed by P. W. 3, delayed post-mortem examination creating doubt if the knife (M. O. IX) was used for causing the fatal injuries on the deceased, suspicion on P. W. 8 to be the author of the crime as disclosed to the Police authorities at the earliest opportunity and the existence of, indifferent relationship of P. W. 8 with his wife the deceased were high-lighted by Mr. Nayak to get the acquittal of the appellant. The attractive submissions of Mr. Nayak led us to scrutinise the materials in detail.

8. P. W 3 was, the field servant of the appellant He has given a vivid picture in details from the stage of the appellant going out with the deceased accompanied by this witness and Madan Gouda in the night to village Kadalimunda, the assault by the appellant on the deceased on the way, removal of the ornaments on her body, cooling back home, washing the knife and the witness steeping in the tent outside, out of fear. The suggestion to P. W. 3 that he was deposing falsely against the appellant because the appellant drove him out from his house makes it clear that he was the field servant. He stated that in the evening on the date of occurrence when the deceased came to the house of the appellant after night-meal, the appellant suggested her to go to see cinema at village Kadalimunda. The witness and one Madan Gouda went with the appellant and the deceased. On the way the appellant caught hold of the neck of the deceased, pushed her away to a small distance and made her to fall on the ground near the land of Askar Harijan. When the deceased raised cry, the appellant dealt knife blows on her neck She died at the spot. There after, the appellant removed the gold ear and nose rings from the person of the deceased and tailing the witness to give a share cautioned him not to disclose the fact of murder to other threatening to kill him also They returned back home and the appellant washed the knife. He out of fear slept in a tent and not in the house. Much importance cannot be given to his non-disclosure to one Subana who was sleeping in the tent as in view of his relationship with the appellant and the threat given to him it is natural that he was afraid of the adverse consequences on him. No sooner the Police reached, ha

disclosed the fact being out of fear. The evidence of P. W. 3 is natural and convincing. His statement is also fully corroborated by other circumstances.

9. P. W. 2, the young sister of P. W. 8, who was residing together with her father P. W. 9, stated that the deceased was often going to the house of the appellant which is at a short distance from their house. P. Ws. 2, 8 and 9 all stated that during evening meal-time the deceased went to the house of the appellant P. W. 9 identified the ornaments seized from the house of the appellant in the T. I. Parade claiming that at the time of marriage of P. W. 8 with the deceased he got the same prepared and presented to the deceased. The deceased was wearing the said ornaments. P. W. 2 who identified the ornaments also stated that the deceased was wearing those ornaments. P. W. 8, the husband of the deceased, identified the ornaments to be of the deceased. P. Ws. 2, 8 and 9 are the natural witnesses to identify the same. P. W. 6 stated that those ornaments were recovered from a room of the house of the appellant. The knife (M. O. IX) which was recovered and seized from the house of the appellant was found to contain blood though on chemical test it could not be stated to be human blood. The injuries on the neck which were the cause of death are stated by P. W. 10, the doctor, to be possible by a knife like M. O. IX. The incident was in the night of later part of January which was a winter night, P. W. 10, the doctor, who stated that the dead body was in the process of decomposition, has clearly stated that the injuries were incised and are possible by a sharp cutting knife like M. O. IX. There is no reason to discard the medical opinion. Thus, the evidence of P. W. 3 is fully corroborated and leaves no room for doubt that the appellant dealt the fatal blows on the deceased with the knife and removed the ornaments from her body. In the circumstances, non-examination of Madan Gouda another companion, would have only duplicated the evidence of P. W. 3.

10. P.W.1, who lodged the First-Information-Report stated that in view of silence of P. W. 8 he suspected him and in order to save the appellant who is his intimate friend he lodged the information against P. W. 8. The information given by P. W. 5 in the Out-Post was outcome of suspicion. It is found from the evidence of Investigating Officer, P. W. 12 that he also searched the house of P. Ws. 8 and 9, but could not get any incriminating materials. Therefore, the information to the

Police connecting P. W. 8 at the first instance would not outweigh the circumstances corroborating the ocular evidence of P. W. 3.

11. P. Ws. 8 and 9 deny about any ill-treatment to the deceased No suggestion was given to that effect to P. W 2 who stated that the deceased was brought back from her mother's house where she had gone. P. W. 8 went to the house of the appellant to call the deceased in the night of incident as stated by him and P. W. 9, his father, apart from sending P. W. 2 to call her. This would show that even if there was some quarrel in the past between P. W. 8 and his wife, the deceased, as stated by P. W. 5, it would not be a motive sufficient to kill her. In any case, the clear evidence of P. W. 3 corroborated by the circumstances discussed earlier is not blurred in the slightest degree by such innocuous indifferent relationship.

12. We are satisfied that the appellant has rightly been held guilty of the offences under Sections 302 and 379, I. P. C and the sentence of imprisonment for life is also justified. In the result, the appeal is dismissed.

D. Pathak, C.J.

13. I agree.