

State of Orissa Vs. Wateka Mani

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Court : Orissa

Decided On : Jun-29-2009

Reported in : 2009(II)OLR403

Judge : A.S. Naidu and; S.C. Parija, JJ.

Appellant : State of Orissa

Respondent : Wateka Mani

Judgement :

A.S. Naidu, J.

1. The judgment and order of acquittal dated 09.11.1995 passed by the learned Additional Sessions Judge, Jeypore, acquitting the accused person from the charge under Section 302 IPC in Sessions Case No. 01 of 1995 is assailed by the State of Orissa in this Government Appeal.

2. Bereft of unnecessary details, the prosecution case, in short, is that on 21.03.1994, the accused-respondent alongwith his wife, who was working as an Anganwadi Worker, was returning to their village from the Block Office, Bandhugaon, after the wife received her salary. On the way both of them consumed liquor in Soriapali Hat. Near village Dasini, the accused being intoxicated dealt fist blows, kicks and slaps to his wife (deceased) mercilessly. After reaching home, the accused again assaulted. As a consequence of such

brutal act, the wife succumbed to the injuries. On 22.03.1994 late in the evening the accused went to his in-law's house and informed that his wife being seriously ill may breathe her last at any time and they should come to see her, if so like.

3. From the FIR, it appears that on the next date, i.e. 23.03.1994, the brother of the deceased, came to the house of the accused-respondent and found that his sister was lying dead in the house of the accused. He lodged an FIR before the Narayanapatna P.S. on 23.03.1994. After receipt of the FIR, G.R. Case No. 34 of 1994 was registered in the Court of the Judicial Magistrate First Class, Laxmipur. After completion of investigation, charge sheet was submitted for commission of offence under Section 302 IPC. Thereafter, the accused was committed to the Court of Session and the case was registered as Sessions Case No. 01 of 1995 and trial commenced by the learned Additional Sessions Judge, Jeypore.

4. The plea of the accused was of complete denial. According to him, after receipt of the salary from the Block Office, he along with his wife consumed some liquor and both were proceeding to their house. On the way he was detained under the influence of liquor, but his wife went ahead. At about mid-night he became free from intoxication and returned towards his house. On the way, he found that his wife having been assaulted was lying on the road and her gold ornaments and money were stolen away by the thieves. He brought her home during that night but she died in the house. The defence, however, did not adduce any evidence to substantiate the plea.

5. On behalf of the prosecution, ten witnesses were examined and several documents were exhibited. Out of the prosecution witnesses, P.W.1 is the informant, P.Ws.2, 3, 4, and 10 claimed to be the witnesses to the assault. P.W.5 is the Ward Member of the village before whom the accused made extra-judicial confession. P.W.9 is the Doctor, who conducted autopsy over the dead body of the deceased. P.W.6 is the constable. P.W.7 is the concerned OIC and P.W.8 is the Investigating Officer, who conducted the investigation.

6. From the evidence of the Doctor (P.W.9), who conducted the post-mortem, it appears that the deceased sustained intracranial haemorrhage on the left parietal lobe of brain, presence of haemorrhagic blood under the skin on the left side of the

chest, fracture of left side 5th rib and fracture of the upper lobe of left lung. It was further noticed that the dead body was decomposed and general features were obliterated with bloated appearance of the entire body, Maggots were also present and as such it was difficult to recognize the external injuries. The Doctor opined that the above injuries were ante-mortem in nature and the death was caused due to intracranial haemorrhage and injury to lungs within 48 to 72 hours preceding autopsy. According to the Doctor the above injuries were possible by fist blows, kicks and slaps. The report of P.W.9 was exhibited and marked as Ext.8.

7. P.W.7 held inquest over the dead body of the deceased and prepared the inquest report (Ext.2). From the evidence of P.W.1 and the inquest report (Ext.2), it appears that marks of assault were visible on the face and different parts of the dead body of the deceased. Relying upon the aforesaid evidence, learned Sessions Judge came to the conclusion that the death of the deceased was homicidal in nature. After going through the evidence, we find no reason to interfere with the said finding of the learned Sessions Judge, and confirm the same.

8. According to the prosecution, P.Ws.2, 3, 4, 5 and 10 were the eye witnesses to the occurrence. P.W.2 testifies that his house is adjacent to the road and on the date of occurrence in the afternoon, hearing hulla, he came out from the house and saw the accused inflicting fist blows on the neck and chest of his wife on the road near his house.

9. The said evidence was disbelieved by the learned Sessions Judge only on the ground that P.W.2 was standing at about 500 cubits away from the place of occurrence and it was not practicable to identify the people or to see the assault from such a long distance particularly when the accused and the deceased were not known to him. The above observation made by the learned Sessions Judge has been criticized by the learned Standing Counsel. According to Mr. Mishra, a person standing about 500 cubits away from the place of occurrence in the afternoon can easily see a man assaulting a woman, though it may not be possible on his part to identify them.

10. P.W.3 is another witness to the occurrence, who has deposed that on the relevant day, while he was returning to his house from work he saw the accused assaulting the lady by giving fist blows on her chest, abdomen etc. He has also specifically stated that the woman was lying on the road and the accused was giving kicks to her.

11. This evidence was also disbelieved by the Sessions Judge on the ground that P.W.3 had admitted in the cross-examination that he saw the assault from a distance of about half kilometre but then as stated earlier, a person can notice a man assaulting a woman within the half kilometre in the afternoon when there is enough light.

12. P.W.4 is another witness to the occurrence, who has clearly stated that he is a neighbour of the accused and on the date of occurrence he has seen the accused mercilessly assaulting his wife in his house.

13. The evidence of P.W.4 has been discarded only because he had not disclosed about the said fact before the villagers and that his statement was recorded after a considerable length of time.

14. P.W.5, who is a Ward Member of the village, stated that the accused went to him and disclosed that he dealt two to three slaps to his wife out of annoyance and she died in the house. In the cross-examination, however, on being questioned, he has stated that the accused told him that on the date of occurrence he and his wife were returning from Bandhugaon Block Office after receiving the salary of his wife and on the way, both of them consumed liquor. On the way as his wife was proceeding ahead, she was assaulted by some unknown culprits and her money and gold ornaments were taken away by them. The said statement being hearsay cannot be accepted.

15. After going through the entire evidence on record and the conduct of the respondent, who did not disclose about the fact of death of his wife for more than twelve hours and in a camouflage manner informed the parents of the deceased on the day following the death, that his wife is seriously ill and may die at any time and if they want to see her they may come to his house though by the time such

information was given, as would be evident from the post-mortem report, his wife had already expired, is a circumstance which gives an impression with regard to involvement of the respondent with the crime. Keeping the dead body in the house for such a long time and not informing others, leads to a reasonable conclusion that the accused-respondent was guilty. The cumulative reading of the entire evidence also points out a finger against the respondent. The trial Court while discussing the evidence of P.Ws.2, 3, 4, 5 and 10 tried to discard their evidence on some plea of other, which was not justified. Out of the four eye witnesses, at least P.Ws.2, 3 and 4 have thrown sufficient light with regard to the manner of assault. A cumulative reading of the evidence of those three witnesses leads to a conclusion that the respondent had assaulted his wife, who consequently succumbed to the injuries.

16. In view of the aforesaid facts and circumstances, this Court comes to the conclusion that the respondent was the author of the crime and had assaulted his wife brutally and mercilessly, consequent whereof she succumbed to the injuries. But then the fact remains that the respondent as well as his wife belong to the Scheduled Tribe community. On the date of occurrence they had consumed some liquor. It appears that in a intoxicated condition, the accused-respondent assaulted his wife thereby causing her death. Law is well settled that mens rea is one of the basic requirements, which leads to determine the homicidal character of the offence. In this case, the prosecution has totally failed to establish the motive of the accused-respondent.

17. Considering all these aspects, this Court finds that the conviction of the accused-respondent under Section 302 IPC would not be just and proper. However, taking into consideration his mental status as well as the condition, in which he had assaulted his wife, this Court modifies the charge to one under Section 304 Part-II IPC and convicts the respondent under the said Section. It appears that the respondent was behind the bar for more than five years. Considering the facts and circumstances of the present case and the volatile temperament of the respondent, who is a Scheduled Tribe person and had consumed liquor along with his wife (deceased), this Court feels that the ends of justice would be better served if the conviction is confined to the period of

imprisonment already undergone by him and we direct accordingly.

With the aforesaid modification; the Government Appeal is allowed in part.

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