

Ratan Harijan Vs. State

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Court : Orissa

Decided On : Mar-15-2005

Reported in : 100(2005)CLT367

Judge : P.K. Tripathy and ;Pradip Mohanty, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304 and 307

Appeal No. : Jail Criminal Appeal No. 191 of 1996

Appellant : Ratan Harijan

Respondent : State

Advocate for Def. : A.K. Mishra, (SC)

Advocate for Pet/Ap. : Sidhartha Misra, Adv.

Disposition : Appeal dismissed

Judgement :

Pradip Mohanty, J.

1. This appeal is directed against the judgment and order dated 30.3.1996 passed by the Learned Addl. Sessions Judge, Jeypore in Sessions Case No. 117 of 1995 whereby the appellant has been convicted under Section 302, IPC and sentenced to undergo imprisonment for life.

2. The case of the prosecution as emerges from the FIR and the evidence on record, in brief, is that on 31.5.1994 at about 10 p.m. while the informant and her husband were quarrelling with each other on the 'Pinda' of their house, the accused-appellant came there and asked as to why they were making hullah and so saying he gave a fist blow on her chest. Such action of the appellant was protested by the deceased, husband of the informant. The accused-appellant went away and came with an axe. But Buti Bhotra (P.W. 4) and Paul Harijan (P.W. 3) snatched away the axe from him. Thereafter, the accused-appellant went away and the informant and her husband were present on the 'Pinda' of their house. Some time after, the accused-appellant again came and gave a knife blow on the abdomen of the deceased, as a result of which, he fell down on the ground by shouting that the accused-appellant stabbed him. Thereafter, the accused-appellant fled away from the spot with the knife. Hearing the cry of the informant, her neighbours (P.Ws. 3 and 4) rushed to the spot before whom the deceased disclosed that accused-appellant stabbed on his abdomen with the knife and so saying, he became unconscious. He was taken to Jeypore hospital for treatment where on 2.6.1994 at about 6.45 a.m. he succumbed to the injuries. The case was originally registered under Section 307, IPC and subsequently it was turned to one under Section 302, IPC. After closure of investigation, final form was submitted under Section 302, IPC.

3. The plea of the appellant is one of complete denial. However, no evidence, either oral or documentary, has been adduced on behalf of the appellant in support of his plea.

4. In order to substantiate its case, prosecution examined as many as thirteen witnesses. P.W. 1, wife of the deceased, is the informant and an eye witness. P.W. 2 is the minor son of the deceased and a witness to the occurrence. P.Ws. 3 and 4, neighbours of the informant, are post occurrence witnesses. P.Ws. 5, 6 and 7 are witnesses to seizure. P.W. 9 is the doctor, who initially treated the deceased at jeypore Hospital as an indoor patient. P.W. 11 is the doctor, who conducted autopsy over the dead body of the deceased. P.Ws. 10, 12 and 13 are the Investigating officers.

5. As it appears, Learned Addl. Sessions Judge convicted the appellant mainly relying on the evidence of the eye witnesses (P.Ws. 1 and 2) coupled with the dying declaration made before the doctor (P.W. 9).

6. Mr. Mishra, Learned Counsel for the appellant contended that P.W. 1 is the wife of the deceased and P.W. 2 is the son of the deceased and a child witness. They are highly interested witnesses and, therefore, their evidence is not believable.

7. After having gone through their evidence, this Court finds no cogent reason to take a view different from that of Learned Additional Sessions Judge. The aforesaid two witnesses were thoroughly cross-examined and nothing has been elicited to impeach their credibility. The relationship of the above-mentioned two witnesses with the deceased can, in opinion of this Court, not be a sufficient ground for discrediting their testimony. It is the well known natural human conduct that close relatives of a murdered person are normally reluctant to spare the real assailant and falsely involve another person in place of the assailant. There is no cogent evidence on record to show that any of the above mentioned two witnesses had any animus against the accused-appellant so as to falsely implicate him with the allegation of murder. In the case of State of U.P. v. Samman Dass, : 1972 CriLJ487 it has been propounded that in a murder trial the relationship of the prosecution witnesses to the deceased is not sufficient ground for discrediting their testimony, unless a motive is alleged and proved against them to spare the real assailant the falsely involve another person in place of the real culprit.

8. Mr. Mishra further contended that P.W. 1 in her cross-examination has categorically admitted that immediately after stabbing, her husband lost his sense and he never regained his sense till his death. He further argued that evidence of the doctor (P.W. 9) with regard to recording of dying declaration of the deceased is not believable and, therefore, dying declaration cannot be made the basis for conviction of the appellant as it suffers from infirmities and improbabilities.

9. P.W. 9, the doctor, who initially treated the deceased as an indoor patient, in his evidence has specifically stated that after admission of the deceased in the hospital, he recorded his statement, marked Ext. 2/1, as to the cause of injury. The deceased disclosed before him that Rajat Harijan (appellant) stabbed on his

abdomen by means of a knife. In his cross-examination, P.W. 9 also stated that while recording the statement of the deceased, Sub-Inspector, Sri Jena was present. The defence has also given a suggestion to the doctor (P.W. 9) that Ext. 2/1 (dying declaration) was not prepared as per the version of the deceased, which was denied by him. The Sub-Inspector, Sri Jena has been examined as P.W. 12. In his evidence, he has specifically stated that he had examined the deceased and recorded his statement as per Ext. 10. P.W. 1 has not stated in her evidence that she was by the side of the deceased while he was treated by the doctor (P.W. 9). What she knew was that her husband in a senseless condition was admitted in the hospital and immediately he died due to that injury. It is no doubt true that the dying declaration is a piece of untested evidence and must, like any other evidence, satisfy the Court that what had been stated therein is the unalloyed truth and that it is absolutely safe to act upon it. All the aforesaid circumstances show that while recording the dying declaration, the deceased was in sense. Therefore, the evidence with regard to dying declaration need not be discarded on the version of P.W. 1.

10. Learned Counsel for the appellant lastly contended that the alleged offence would not be one under Section 302, IPC, but under Part-I of Section 304, IPC, as the appellant inflicted knife blow out of sudden provocation and in the heat of passion without any premeditation and without any intention to cause such injury. Thus, the case is covered by Exception-4 to Section 300, IPC.

11. It is the consistent evidence of the eye-witnesses that at first the appellant made an attempt to assault the deceased by an axe, which was snatched away by P.Ws. 3 and 4. Thereafter, the accused went to his residence and after some hours came with a knife and assaulted the deceased. There is absolutely no evidence with regard to provocation at the time of occurrence either by the deceased or by the appellant. The offence, therefore, clearly comes under 'Thirdly' of Section 300, IPC. The appellant, therefore, has rightly been convicted under Section 302, IPC.

12. For the reasons aforesaid, this Court finds no merit in this appeal, which is accordingly dismissed. The judgment of conviction and sentence passed by the

Trial Court is upheld.

P.K. Tripathy, J.

13. I agree.

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