

Satrughana Lohar Vs. State

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Court : Orissa

Decided On : Jan-16-1998

Reported in : 1998CriLJ1508

Judge : S.C. Datta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 302, 304 and 449

Appeal No. : Jail Criminal Appeal No. 398 of 1994

Appellant : Satrughana Lohar

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Bijay Kumar Panda, Adv.

Judgement :

S.C. Datta, J.

1. This is an appeal from Jail.

The accused Satrughana Lohar faced trial on charges under Sections 449 and 302 I.P.C. The Court below did not find him guilty under Section 302 I.P.C. but convicted him under Section 304 I.P.C. as well as under Section 449 I.P.C. He was sentenced to suffer R. I. for ten years under Section 304 I.P.C. but no

separate sentence for the offence under Section 449 I.P.C. was awarded.

2. The prosecution case may be summarised as under:

The deceased was a resident of a hut in a Basti in the Coal gate area at Bondamunds.

On the fateful night he was staying in his house alone. The accused is also a resident of a hut adjacent to the hut of the deceased. On the night of occurrence, his wife was also away to her father's place. In the night of 10-9-1993 at about 10 P.M. the informant (P.W.1) who was a neighbour of the deceased, heard cries of the deceased saying 'Bacho, Bacho,' Mari Douchi' coming from the hut of the deceased. On hearing it he rushed towards the hut of the deceased. Two other neighbours have also arrived there. The hut of the deceased had no door and it was dark inside. While the informant and two neighbours arrived at the spot, they noticed the accused coming out of the hut of the deceased holding a small axe in his hand. They found the accused throwing the axe on the roof of the house. He did not allow the informant and other neighbours to enter inside the hut but asked them to go back saying that the matter would be settled in the next day morning. The informant and other neighbours who had gathered there, left the spot out of fear. In the next day morning June Munda (P.W.2) went to the house of the deceased and found the dead body lying inside the hut in a pool of blood. He immediately informed the matter to P.W. 1 whereupon the informant and some other persons went inside the hut of the deceased. They noticed the dead body of the deceased lying in a pool of blood with multiple chop injuries. They searched for the accused but he could not be found. They believed that the accused had killed the deceased in the previous night with the help of an axe. Soon thereafter, the informant along with two other persons went to the Police-station and lodged the F.I.R. In course of investigation, the accused was arrested and while in custody he led the Police to the Railway locoshed at Bandamanda and gave recovery of axe in presence of the witnesses from the place of concealment. The investigation resulted in filing of charge-sheet and that is how the accused was put on trial.

3. The defence was a plea of innocence.

4. Heard learned counsel appearing for the appellant as well as learned State Counsel. In this case, as many as 11 witnesses were examined on behalf of the prosecution. None of the witnesses has seen the accused giving assault to the deceased with the axe. It is a case of circumstantial evidence. The law is far too well settled that the circumstances from which the conclusions of guilt is proved should be fully proved and those circumstances must be conclusive in nature. Moreover, the established facts should be consistent only with the hypothesis of the guilt of the accused alone and totally inconsistent with his innocence. Keeping this principle in mind, we are to analyse the circumstances, which resulted in the death of the deceased. It is not disputed that the death of the deceased was a homicidal one. P.W.5 is the Autopsy Surgeon who conducted the post-mortem examination over the dead body of the deceased. He found as many as eight chop wounds in the left upper limb, five chop wounds in the left lower limb and one lacerated wound on the left side of the back. According to her all the injuries were anti-mortem in nature and the cause of death was shock due to the injuries to the great vessels and nerves. According to the Autopsy Surgeon the deceased might have been assaulted with the axe seized by the Police during investigation. According to the prosecution, the accused was responsible for causing the death of the deceased by means of axe. It transpires from the evidence of the prosecution witnesses that the deceased was living in his hut on the fateful night alone. The accused was an occupant of a hut adjacent to his hut P.W. 1 and 2 heard the cries of the deceased coming from his hut. While they arrived near the hut they noticed the accused coming out of the hut with an axe in his hand. It is in the evidence of P.W. 1 that the accused threw the axe on the roof of the hut and asked them to leave the place saying that the matter would be settled on the next day morning. The accused as well as the witnesses for the prosecution, particularly, P.W.1 and 2 are illiterate, rustic tribal people. They bear no animosity against the accused. There is no suggestion as to why they would depose falsely against the accused. Their evidence is quite clear, cogent and reliable. They reside in the same basti where the deceased was residing. The post-mortem report reveals that there were multiple injuries on the body of the deceased which ultimately resulted in his death. It also appears that successive blows were given to the deceased which proved fatal. The accused led the Investigating Offices and

the witnesses, while in Police Custody, to the Railway loco-shed and gave recovery of the weapon of offence, viz., an axe, from a bush under a tree, when this axe was shown to the Autopsy Surgeon, the latter opined that this axe could cause injuries which she noticed on the body of the deceased during post-mortem examination. On an analysis of evidence and on consideration of circumstances, it appears that it was the accused alone who was responsible for causing the death of the deceased. The learned Trial Judge has correctly found him guilty of the charges under Sections 304/449 I.P.C.

5. Learned counsel appearing in support of the appeal refers to an inconsistent statement of P.W. 1 during cross-examination regarding lodging of F.I.R. He submits that this inconsistent statement of P.W. 1 makes the prosecution case suspect. It appears that the prosecution case throughout is that the F.I.R. was lodged at the Police-station. The endorsement in the F.I.R. as well as the evidence of the Investigating Officer discloses that the F.I.R. was lodged at the Police-station. P.W. 1 was said that on the next day morning he lodged the F.I.R. at the police-station but during cross-examination, he has made a different statement and stated that the F.I.R. was lodged by him not at the police-station but in the Basti itself. It seems that he was somehow confused. A story statement coming as it does, from the mouth of a rustic tribal is inconsequential. The trial Judge has rightly explained it saying that this may be the result of misunderstanding the question or lack of appropriate verbal communication between the witnesses and the Court. Therefore, nothing much can be said about the discrepant evidence of P.W. 1 regarding the place of lodging the F.I.R.

6. The defence counsel submits that the sentence awarded by the trial Judge is too severe and that there was a chance of survival of the deceased if he had been given proper treatment immediately after the assault. It appears the learned Sessions Judge noticed that there was no intention on the part of the accused in causing the death of the deceased and as such, he convicted the accused under Section 304 I.P.C. and sentenced him to undergo R.I. for ten years. He noticed that excepting one injury all other injuries were in the limbs and that the injuries were not on any vital part of the body like neck or chest. In view of Explanation-II, to Section 299 I.P.C. the submission of the learned counsel for the defence that

there was chance of survival of the deceased if he had been given proper medical treatment is not tenable. However, on a consideration of the circumstances and materials on record, I find that the accused had been rightly convicted under Section 304-Part-II I.P.C. It seems that it will be conducive in the interest of justice to reduce the sentence to six years R. I. for the offence under Section 304 Part-II I.P.C.

7. For the reasons aforesaid, I would, while upholding the conviction of the appellant under Section 304 Part-II and 449 I.P.C. reduce the sentence to six years R.I. under Section 304 Part-II. No separate sentence under Section 449 I.P.C. is awarded. With this modification, the appeal is dismissed.

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