

Debu Alias Degu Bag Alias Goud Vs. State

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Court : Orissa

Decided On : Feb-13-1996

Reported in : 81(1996)CLT891; 1996CriLJ1903

Judge : D.M. Patnaik and ;P.K. Mishra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 200, 300, 302 and 304

Appeal No. : Jail Criminal Appeal No. 231 of 1992

Appellant : Debu Alias Degu Bag Alias Goud

Respondent : State

Advocate for Def. : R.P. Mohapatra, Additional S.C.

Advocate for Pet/Ap. : Depali Mohapatra, Adv.

Disposition : Appeal allowed

Judgement :

D.M. Patnaik, J.

1. In this appeal, the appellant assails his conviction under Section 302, Indian Penal Code, and sentence of imprisonment for life.

2. Prosecution case, shortly stated, is that on 16-8-1989, around 2 p.m. while deceased Gomati was husking paddy in her house, the appellant came from village side and there was a quarrel. Thereafter the appellant entered inside the house, brought out a spade and hit the deceased on the head causing fatal injury. Gomati died at the spot.

3. The defence plea is one of denial.

4. We have heard Miss. D. Mohapatra, learned counsel for the appellant, and Mr. R. P. Mohapatra, the learned counsel for the state.

It is strenuously argued before us by Miss. Mohapatra that the evidence on record is not sufficient to sustain a conviction and further in the worst case even if the evidence is accepted, the very fact that a quarrel between the husband and wife took place as is disclosed from the FIR itself, the case is not covered under Section 302, Indian Penal Code.

Mr. Mohapatra, the learned counsel for the State, however, supported the judgment of conviction.

5. P. W. 6, is the doctor who conducted the postmortem examination. Externally the doctor found; one irregular lacerated injury about 5 inches length and half inch breadth on the right side of the scalp extending from the centre of the head to a point, 3 inches behind the right ear, On dissection he found the underlined parietal and temporal bones to have been fractured irregularly and also few places of bone had pierced the brain. The length of the fracture was six inches. The brain matters were completely lacerated. The doctor opined that the injury was ante mortem in nature and was sufficient in the ordinary course of nature to cause death.

Considering the evidence of the doctor and the post-mortem examination report (Ext. 6), we have no hesitation to affirm the finding of the trial Court that the death of Gomati was homicidal one.

6. The next question for examination is whether P. Ws. 1 and 3 who are the eye witnesses to the occurrence have been rightly believed by the trial Court to maintain the conviction.

We have carefully gone through the evidence of P. Ws. 1 and 3. A point was raised with regard to their evidence that it was not possible on their part to have witnessed the occurrence from a distance because of the obstruction in between.

We are unable to accept this contention since in the FIR, itself P. W.1 stated, which has been further corroborated in his evidence, that he himself and P. W. 3, were talking near his house and the house of Gomati, where the occurrence took place, was visible from that place. Nothing has been elicited in cross-examination to disbelieve this part of the evidence that the witnesses were at a place from where they could see the occurrence.

7. P. Ws. 1 and 3 both corroborated each other with regard to the assault by the appellant. It was stated by them that when Gomati on the date of occurrence was husking paddy in her house, the appellant came to his house from the village side and forcibly dragged his wife Gomati from the verandah and dealt a spade blow on the back side of, head of Gomati as a result of which she fell down on the ground and the appellant fled away thereafter. Nothing has been brought out in the evidence to discredit the evidence of these two P. Ws. the eye witnesses. So, we accept the evidence of these two witnesses as true.

8. So far as the submission to bring out the case under Exception 4 of Section 300, Indian Penal Code, is concerned, it has been rightly pointed out by Miss Mohapatra that in the FIR P.W. 1 stated that he and P. W. 3 heard a quarrel between the husband and wife and thereafter the appellant assaulted deceased Gomati on her head. This part of the statement in the FIR has been admitted by P W 1 in the cross-examination. Therefore, the occurrence, in fact, took place pursuant to a sudden quarrel between the husband and wife.

9. We are satisfied that materials justify attracting the ingredients of Section 300, Exception 4, since it is established that the appellant while coming back to the house was not armed with the spade. There is no material of any pre-meditation on the part of the accused to assault Gomati. The medical opinion is that Gomati sustained only one injury on the head. On a query to the doctor (P. W. 6) by the Investigating Officer, the doctor clarified that no doubt to the naked eye the injury seemed to be more than one injury, but it was only one injury on the head.

Therefore, on the basis of the medical opinion of the doctor (P. W. 6), that there was only one injury, we hold that the appellant, in fact, inflicted only one blow on the head. Further, he did not take any undue advantage of the situation. Since the case squarely comes under the ingredients of Section 200, Exception -4, we set aside the order of conviction under Section 302, Indian Penal Code, and find it to be a case punishable under Section 304, Part-I

10. In the result, the appeal is allowed in parti the conviction and sentence under Section 302, I.P C. are set aside and the appellant is convicted under Section 304, Part-I, and sentenced to undergo rigorous imprisonment for eight years.

P.K. Mishra, J.

11. I agree.

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