

Chandrai Majhi Vs. the State

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Court : Orissa

Decided On : Jul-03-1985

Reported in : 1986CriLJ1694

Judge : B.K. Behera and ;R.C. Patnaik, JJ.

Appellant : Chandrai Majhi

Respondent : The State

Judgement :

B.K. Behera, J.

1. The appellant stood charged under Section 302 of the Penal Code (for short 'the Code') with having committed the murder of Salma Bewa (hereinafter described as 'the deceased') on July 9, 1980, at Kasijharan in the district of Mayurbhanj. The case of the prosecution was that while the dead body of the child Dulari, the sister's daughter of the appellant, was being taken to the cremation ground by the villagers including P.Ws. 2 to 4, the appellant, suspecting that Salma had killed the child by playing witchcraft, dealt blows by means of an axe (M.O.I) on her head and neck which resulted into her death. The appellant left M.O.I. on the spot and went away. On the first information report being lodged by P.W. 5, investigation was taken up and on its completion, a charge-sheet was placed and the appellant was prosecuted. The appellant's plea was one of denial and false implication.

2. Of the seven witnesses examined for the prosecution, P.Ws. 2 to 4 had figured as the witnesses to the occurrence. The trial court did not accept the evidence of P.W. 2 as he had not, in terms, stated before the Magistrate under Section 164 of the Criminal P.C. that he had seen the actual assault. The trial court has accepted the evidence of P.Ws. 3 and 4 and the other circumstances appearing in the evidence against the appellant and has convicted him under Section 302 of the Code and sentenced him to undergo imprisonment for life.

3. While Mr. Naidu has attacked the evidence of P.Ws. 3 and 4 as not acceptable, Mr. Ray, the learned Additional Government Advocate, has submitted that there was no reason to discard their evidence and it had rightly been relied upon by the learned trial Judge which had found assurance from the medical evidence and the seizure of M.O.I on the spot which, on chemical and serological test, contained human blood.

4. It is not disputed at the Bar that the deceased had died a homicidal death, The doctor (P.W. 1), who had conducted the autopsy, had noticed one lacerated and three incised wounds on the person of the deceased ante mortem in nature and sufficient in the ordinary course of nature to cause death.

5. We have been taken through the evidence of P.Ws. 3 and 4. Both of them have clearly stated that on hearing a sound, they looked back and saw the assault on the person of the deceased by the appellant by means of an axe. P.W. 3 had identified M.O.I to be the weapon of attack. P.W. 4 had deposed that after assaulting the deceased, the appellant left M.O.I. on the spot and went away. Except for an inconsequential discrepancy in the evidence of P.W. 3 as to from which exact place she saw the occurrence, there was nothing to discard her evidence. Mr. Naidu has invited our attention to a statement made by P.W. 4 in his cross-examination that two houses intervened between the place of occurrence and the place from which he witnessed it. This witness had, however, clarified in his further cross-examination that the place of occurrence was visible to the place where they turned back. On a consideration of the evidence of P.Ws. 3 and 4, the trial court has accepted their evidence and we see no reason to take a different view. The medical evidence did support the ocular testimony of P.Ws. 3 and 4. In

addition, M.O.I. had been recovered from the spot by the Investigating Officer (P.W. 7) in the course of investigation and human blood was detected in it. This was certainly a guilt pointing circumstance against the appellant and it would support the evidence of P.Ws. 3 and 4.

6. Regard being had to the nature and seats of the injuries on the head and neck of the deceased and the weapon used, it would clearly appear that the appellant, with the intention of causing the death of the deceased, had caused injuries sufficient in the ordinary course of nature to cause her death. The case is covered under clause 'Thirdly' of Section 300 of the Code.

7. Mr. Naidu has submitted that if the case against the appellant is accepted and we have accepted it, the case would be covered by the First Exception to Section 300 of the Code as the appellant had committed the murder under the impulse of grave and sudden provocation. We see no force in this contention. The appellant might have been suspecting that the deceased had killed Dulari by playing witchcraft, but of this, there was no material on the record. Such a plea had not been raised by the appellant in the trial court when his statement was recorded under Section 313 of the Cr. P.C. There was no evidence that the deceased had offered any provocation. In order to attract Exception 1 to Section 300 of the Code, the provocation must be grave and sudden. There was no evidence in support of such a contention raised on behalf of the appellant,

8. In our view, the appellant has properly been convicted under Section 302 of the Penal 'Code.

9. The appeal fails and is dismissed.

R.C. Patnaik, J.

10. I agree.