

Madhab Digai Vs. the State

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Court : Orissa

Decided On : May-06-1994

Reported in : 1995CriLJ1206

Judge : K.L. Issrani, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 327

Appeal No. : Criminal Revn. No. 266 of 1993

Appellant : Madhab Digai

Respondent : The State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S.N. Rath, ;B. Senapati, ;S.N. Mohapatra and ;S.K. Jetty, Advs.

Judgement :
ORDER

K.L. Issrani, J.

1. This is a revision petition against the judgment and order dated 4th May, 1993 passed by the District and Sessions Judge, Phulbani, in Criminal Appeal No. 53 of 1992, arising out of the judgment and order dated 24-9-1992 passed by the

learned Assistant Sessions Judge, Phulbani in Sessions Trial No. 63 of 1992 convicting the accused-applicant for the offence under Section 324, IPC, and sentencing him to undergo R.I. for one year.

2. According to the prosecution, on 15/16-1-1990 during the night Turu Mal, the wife of Bijoya Naik (P.W. 2) went outside the house to attend the call of nature. When there was delay in her coming back, P.W. 6, her mother-in-law, went in search of her and to her dismay she found Turu Mal in a compromising position with the accused-applicant. At the sight of P.W. 6, the accused-applicant fled away. Turu Mal returned home getting information of this fact from his mother, P.W. 2 got annoyed upon his wife and inflicted two slaps on her. On the next morning, P.W. 2 and P.W. 6 decided to convene a Panchayat in this respect. Hearing so, out of shame Turu mal left for her parents' house. On the same day at 11 a.m. the accused-applicant came to the house of P.W. 2 and all of a sudden caught hold of his hair and cut his throat with the knife (M.O.I). When P.W. 2, raised hulla the accused-applicant fled away. Immediately P.W. 2 was removed to Ranipadar hospital where from he was removed to Raikia hospital and then to District Headquarters Hospital, Phulbani where he was examined by Dr. Sudarsan Mishra (P.W. 8). On the same day, i.e., at about 6 p.m., P.W. 1 the brother of the injured, orally reported the incident before P.W. 9, the Officer-in-charge of Raikia Police-station.

3. The prosecution has examined as many as nine witnesses. But only P.W. 2 and P.W. 6 corroborated to each other and relying on the evidence of the doctor (P.W. 8), the learned Assistant Sessions Judge as well as the Sessions Judge has convicted the applicant as above.

4. The plea of accused-applicant is of a complete denial.

5. Submission of the learned Counsel for the accused-applicant before this Court is that it is a case of suicidal only and the applicant has been falsely implicated by P.W. 2 and P.W. 4 who are interested witnesses. The other submission is that from the statement of doctor (P.W. 5), it is clearly established that it is a case of suicidal and nothing else. The learned Counsel further submitted that the knife (M.O.I) seized by Investigating Officer was not in presence of the witnesses and

signatures of witnesses were not taken. There is no material that the said knife was used in the crime. The prosecution failed to prove the spot and the said knife. Therefore, according to the learned Counsel for the applicant, no case for conviction is made out. In the alternative, it is submitted that the applicant has already undergone the sentence of one month R.I. The above submissions are vehemently objected by the learned Counsel for the State. He submits that in a revision the evidence of the witnesses cannot be re-assessed by the Court unless it is shown by the accused-applicant that there is glaring defect in the procedure or that there is no iota of evidence against the applicant. 6. Much stress is given by the learned Counsel for the applicant that the facts mentioned in the First Information Report vary from the statement of P. W. 6. In the First Information Report, it was mentioned that the accused first threatened and went away and after bringing a knife inflicted the injuries, which fact is not corroborated by P.W...2 and P.W. 6. It is pertinent to note that the; First Information Report was not lodged either by P.W. 2 or by P.W. 6, but by P.W. 1 who has only seen the accused running away from the spot. He is not an eye-witness to the occurrence. So far as the material particulars in the First Information Report about inflicting the injuries by the accused are concerned, P.W. 1 and P.W. 3 state that they saw the accused coming out of the place and P.W. 2 (injured) is very much assertive that the injuries were caused on him by the applicant. P.W. 6 who is not only the mother of P.W. 2 but very much related to the accused-applicant, who is the sister's son of P.W. 6, also implicates the accused in the crime. She corroborates the statement of P.W. 2 that it was the accused-applicant who inflicted the injuries on the person of P.W. 2. Now the learned Counsel for the applicant has relied upon a fact stated by P.W. 6, the doctor that such type of injuries may be caused in a case of suicide. This act has been denied by P.W. 2. The doctor at best says that he used the word 'say' which means, 'may be' or 'may not be'. This cannot be relied upon for the acquittal of the applicant. The other fact agitated by the learned Counsel for the applicant is that the seizure of the knife was not proper. But as I found from the statement of the doctor, M.O. 1 was examined and was further sent to the Chemical Examiner for his report for confirmation. The fact that the report of the Chemical Examiner is not on the record, cannot also give benefit to the accused.

7. Now there are concurrent finding of facts believed by both the courts below that the accused has assaulted the injured and the injuries were caused by him on the vital part of the body by a weapon like knife (M.O. 1). The doctor (P.W. 8) in para 1 of his statement has stated that the injuries caused on the person are simple cutting the strap muscle of the right side of the neck which might have been caused by a sharp cutting weapon. In para 2, he says that the injuries are possible by M.O.I. The injuries are serious in nature. Had it been a little deeper by cutting the major vessels, death could have been caused in ordinary course of nature. In the report of the doctor (Ext. 5), he has admitted his signature. Because of the fact that the injuries were not little deeper, the applicant was not convicted for the offence under Section 307, IPC but he has been convicted for the injuries caused by him on the vital part of the body of the injured by the knife (M.O.I).

8. Looking at the statement of the prosecution witnesses and the judgments of the courts below, it cannot be said that the finding arrived at by the courts below are perverse. Therefore, the finding is confirmed.

9. So far as the alternative plea regarding the reduction of sentence is concerned, I find no justification to alter the sentence. The criminal revision is accordingly dismissed. Applicant is directed to surrender before the learned Assistant Sessions Judge, Phulbani on 20th June, 1994.