

Mayachar Sha Vs. State

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Court : Orissa

Decided On : Mar-04-1986

Reported in : 1987CriLJ1948

Judge : B.K. Behera and; G.B. Patnaik, JJ.

Appellant : Mayachar Sha

Respondent : State

Judgement :

B.K. Behera, J.

1. Challenge in this appeal is to the judgment and order of conviction recorded by Mr. S. N. Das, Sessions Judge, Keonjhar, holding the appellant guilty of the charge of murder under Section 302 of the Penal Code and sentencing him to undergo imprisonment for life. The appellant, it was alleged, owing to strained relationship with the deceased with whom he had litigation for years, attacked and assaulted him to death by means of a lathi (M.O.I.) while the deceased was returning from the court at Anandapur and was on his way back to his village on Feb. 24, 1981.

2. We have heard the learned Counsel for both the sides. No one had seen the actual occurrence. The case rests on circumstance evidence. It is not disputed at the Bar that the deceased had died a homicidal death. The medical evidence

would show that the injuries on the person of the deceased could be caused by M.O.I. The question is as to whether the appellant was the author of the crime. The evidence would show and it had been admitted by the appellant when his statement was recorded under Section 313 of the Code of Criminal Procedure that he had been on litigating terms with the deceased for some time past, but motive, however adequate, cannot, by itself, sustain a criminal charge and conversely, if the evidence against an accused is clear and clinching, failure on the part of the prosecution to establish any motive on the part of an accused to commit the crime is of no consequence.

3. Apart from the evidence with regard to the litigation between the parties, evidence has been led that both the appellant and the deceased had attended the court in connection with their litigation at Anandapur on the day of occurrence and had been returning back in a bus and on the way, the appellant got down at Basantia crossing and some time later, the deceased got down at Orali crossing. P.W. 8 has testified that after night-fall, he had seen the appellant moving on the fields holding a lathi. In the course of investigation, M.O.I, had been recovered on production by the appellant from an open field. The case of the prosecution is that M.O.I, was the weapon of attack. Although P.W. 8 has not stated that M.Q.I, was the lathi which the appellant held and he has not identified any lathi in the court, the learned trial Judge has committed a serious error of record by mentioning in the judgment that P.W. 8 has testified that the appellant had M.O.I, with him.

4. The only other material placed at the trial by the prosecution is the recovery of M.O.I, from an accessible place on production by the appellant and the evidence of P.W. 9 and the Investigating Officer (P.W. 13) is that the appellant had led them to that place. No statement of the appellant has led to the discovery of M.O.I. There is no evidence that M.O.I, had been used in the commission of the crime. M.O.I, had not been sent for chemical examination. In the absence of evidence indicating that the appellant was the author of concealment of M.O.I, the seizure of M.O.I, on production by the appellant may be relevant under Section 8 of the Evidence Act, but in the absence of other evidence pointing to his guilt, this cannot be taken as a guilt-pointing circumstance against him.

5. When a case depends on circumstantial evidence, the circumstances from which the conclusion of guilt is sought to be drawn must be fully established and the circumstances must be incompatible with the innocence of the accused and should be such as would lead to but one conclusion, viz. the guilt of the accused. In the instant case, the evidence on which the prosecution has sought to build its case is far short of the mark.

6. For the reasons aforesaid, we would allow the appeal and set aside the order of Conviction and sentence passed against the appellant who shall be set at liberty forthwith.

G.B. Patnaik, J.

7. I agree.

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