

Rudrapatra Vs. State

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Court : Orissa

Decided On : Jun-19-2000

Reported in : 2001CriLJ220

Judge : P.K. Patra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 Part I and 307

Appeal No. : Jail Criminal Appeal No. 255 of 1996

Appellant : Rudrapatra

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

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

Disposition : Appeal allowed

Judgement :

ORDER

P.K. Patra, J.

1. The appellant has challenged the judgment dated 5-9-1996 passed by Shri G.C. Mohanty, Sessions Judge, Keonjhar in Sessions Trial No. 112 of 1993 convicting him under Section 304, Part-I of the Indian Penal Code (for short 'IPC') and

sentencing him to undergo rigorous imprisonment for seven years and acquitting him of the charge under Section 302, IPC.

2. Prosecution case runs as follows :

On 5-8-1993 at about 7 a.m. the deceased Birsingh Munda, field servant of P.W. 5, was cutting straw in front of the house of P.W. 5 in village Mankedia Sahi under Champua Police Station in the district of Keonjhar. The deceased had migrated from village Khendara to village Mankedia Sahi with his family members to serve as the field servant of P.W. 5. At that time, the appellant went there with an iron pipe and dealt a blow on the head of the deceased from his backside. Hearing hulla, P.W. 5 rushed out of his house and found the appellant running away with an iron pipe. There was profuse bleeding from the head of the deceased who fell down and became unconscious. P.W. 5 arranged a vehicle and removed the deceased to Champua Hospital for treatment and went to Remuli Outpost at 8.40 a.m. and orally reported the occurrence which was reduced to writing by the A.S.I. of the Outpost (P.W. 6) vide Station Diary Entry No. 77 dated 5-8-1993. As it revealed a cognizable case under Section 307, IPC, P.W. 6 sent a copy of the said Station Diary Entry (Ext. 4) to the Officer-in-charge of Champua Police Station (P.W. 7) for registration of the case and he (P.W. 6) took up preliminary investigation. P.W. 7 registered the case and directed P.W. 6 to take up investigation. During investigation P.W. 6 visited the spot, examined witnesses, proceeded to the Sub-divisional Hospital, Champua at 10.30 a.m. and ascertained that the injured had expired in the hospital. So the case turned to one under Section 302, IPC and he reported the same to P.W. 7, P.W. 6 held inquest over the deadbody and sent the deadbody for postmortem examination. He seized sample earth and blood-stained earth from the spot and thereafter P.W. 7 took over charge of investigation of the case from P.W. 6, P.W. 7 examined some witnesses, re-examined some witnesses examined by P.W. 6, seized the iron pipe (M.O.I.) on production by the informant under the seizure-list Ext. 10. He arrested the appellant at 7. p.m. on the same day and seized his wearing apparels (i.e. Lungi (M.O.IV) and banian (M.O.V.) under the seizure-list Ext. 11. He also seized the wearing apparels of the deceased (i.e. Sarees (M.O.II) and Lungi (M.O.III) under the seizure-list Ext. 12 after the post-mortem examination. On 6-8-1993 he

forwarded the appellant to Court in custody and on 30-8-1993 he sent the seized material objects to the S.F.S.L., Rasulgarh for chemical examination. After completion of investigation he submitted chargesheet under Section 302, IPC against the appellant who stood his trial.

3. The plea of defence is one of complete denial.

4. In order to bring home the charge against the appellant prosecution has examined seven witnesses, of whom P.W. 5 is the informant and P.W. 4 is the daughter of the informant who is an eye-witness to the occurrence. P.W. 1 is the owner of the vehicle in which the injured was shifted to Champua Hospital. P.W. 2 is the medical officer of Champua Hospital who received the deadbody of the deceased in the hospital who had expired on the way to the hospital and submitted his report (Ext. 1) to the police. P.W. 3 is another medical officer of the said hospital who conducted the postmortem examination over the deadbody of the deceased. P.W. 6 is the A.S.I. of Remuli Outpost and P.W. 7 is the O.I.C. of Champua Police Station, the investigating officer in the case. The defence has examined none.

5. Miss Dipali Mohapatra, learned counsel appearing for the appellant and the learned Additional Govt. Advocate appearing for the State were heard at length. Miss Mohapatra assailed the judgment of the learned Sessions Judge contending that he has failed to properly appreciate the evidence on record and has erroneously come to the conclusion that the appellant was the assailant of the deceased. The learned Additional Govt. Advocate supported the impugned judgment refuting the contention of the learned counsel for the appellant. The rival contentions require careful consideration.

6. Learned Sessions Judge placed reliance on the statements of P.Ws. 4 and 5 and found corroboration from the medical evidence and the report of the chemical examiner to hold the appellant guilty and convicted him under Section 304, Part I, IPC instead of under Section 302, IPC.

7. The medical officer (P.W. 2) has stated to have received the deadbody of the deceased at 8.30 a.m. who died on the way to the hospital and he submitted the

report Ext. 1 to the O.I.C. of Champua P.S. The other medical Officer-P.W. 3 has stated to have conducted the post-mortem examination over the deadbody of the deceased on 5-8-1993 and submitted the post-mortem examination report, Ext. 2. He found the following injuries :-

Lacerated injury irregular in shape 2' x 1 1/2 x 1' of bone deep situated on skull over occipital area, left to the mid-line and 3' behind the left pinna of the ear with laceration surrounding the soft tissues.

On dissection there was fracture of underlying occipital bone 3' in length. Fracture line was continuous and curved. Blood was coming from the fractured bone.

On further dissection there was underlined extra-dural as well as subdural blood collection with massive blood collection in base of the brain with fracture of the base of skull.

He has stated that the cause of death was due to head injury intra-cerebral haemorrhage and the aforesaid injury was sufficient to cause death in ordinary course. To the query of the investigating officer he opined that the injury found on the deceased as stated above could be possibly with blow by the iron pipe produced before him by the investigating officer and his opinion is Ext. 3. Thus it is evident from the medical evidence on record that death of the deceased was homicidal and due to the injury sustained on his' head. The chemical examiner's report (Ext. 13) and the serologist's report attached to Ext. 13 reveal that the iron pipe seized in the case contained blood-stains of the same group found on the Lungi of the deceased and the two sarees which were used to wipe out the blood from the head of the deceased. No blood-stain was found on the Lungi seized from the appellant although small patch of human blood of the same group was found on his banian. The learned Sessions Judge found that the statements of P.Ws. 4 and 5 were corroborated by the medical evidence and other documentary evidence on record. Hence, the statements of P.Ws. 4 and 5 are to be carefully scrutinised before placing reliance on them to base a conviction of the appellant.

8. P.W. 4 is aged above eighteen years and she is the daughter of P.W. 5. She has stated that at about 7 a.m. the deceased was cutting straw for being used as

fodder and hearing some sound she looked at that direction and found the appellant running away after assaulting the deceased with an iron pipe and she caught hold of the pipe held by the appellant when the appellant dragged her to some distance. At that time her father (P.W. 5) reached there and snatched away the iron pipe (M.O.I) from the hands of the appellant.

In her statement in cross-examination P.W. 4 has stated that she was on the verandah of the kitchen room and the place where the deceased was cutting straw was not visible to her, but she immediately rushed to the spot hearing some sound. She also raised alarm and called her father. P.W. 5 has stated that P.W. 4 called him shouting 'Bagalia Taku Maridela Doudi Asa', hearing which he came out of the house and found P.W. 4 struggling to snatch the iron pipe from the appellant and he joined P.W. 4 to snatch away the iron pipe (M.O.I) from the appellant and then the appellant escaped. Both P.Ws. 4 and 5 have stated to have found the deceased lying on the ground with bleeding injury on his head. They have also stated about the removal of the injured to Champua Hospital. It appears from the statements of P.Ws. 4 and 5 that there was none else at the spot except the deceased and the appellant and therefore the learned Sessions Judge has arrived at the conclusion that it was the appellant who dealt the blow with iron pipe on the head of the deceased as a result of which the latter fell down with bleeding injury on his head. The said conclusion of the learned Sessions Judge cannot be sustained for the reasons stated hereinbelow.

9. The Station Diary Entry (Ext. 4) does not reveal that the daughter of the informant raised hulla hearing which the informant rushed to the spot and there is no mention as to snatching away of the iron pipe from the hands of the appellant by anybody, much less the daughter of the informant or the informant himself. Though P.W. 4 has stated that she caught hold of the iron pipe held by the appellant and the appellant dragged her to some distance when her father came and snatched away the pipe from the hands of the appellant, she has not stated about her raising hulla hearing which her father rushed to the spot. In her statement in cross-examination she has stated that after hearing some sound, she rushed to the spot and found that the deceased was lying in the room and the appellant was standing on the verandah of that room. She has added that she

called her father uttering 'Maridela, Maridela' and she did not hear any sound of someone running away towards the house of Murali Mahanta. She has admitted to have stated before the investigating officer that at the time of the occurrence herself and her mother were in the kitchen room weeding greens and at that time she heard her father shouting 'Sala Pana Maraidela' and then she herself, her mother and the widow of the deceased went running to the place and found her father snatching away the iron pipe from the appellant on the village lane. She has also admitted to have stated before the Magistrate that she saw her father catching hold of the appellant. P.W. 5 has stated that his daughter (P.W. 4) called him saying 'Bagalia Taku Maridela Doudi Asa', hearing which he went to the spot and found P.W. 4 and the appellant struggling over the iron pipe in front of the door and he and P.W. 4 snatched away the pipe from the appellant and thereafter the appellant escaped. But in his statement in cross-examination P.W. 5 has stated that he was in the cowshed when the deceased was cutting straw in the entrance room which had no door and that he heard some sound twice and the hulla raised by P.W. 4 and he saw P.W. 4 and the appellant in front of the door of his house and at that time the appellant had put on a 'Gumuchha' (napkin) although the investigating officer has seized one blue coloured check cotton Lungi and one white banian under the seizure-list Ex. 11 allegedly put on by the appellant at the time of the occurrence, and the white banian was found to have contained some bloodstains whereas no blood-stain was found on the Lungi. No 'Gamuchha' (napkin) has been seized from the appellant. Further, P.W. 5 has stated that one Sankaru Budha, who is since dead, rushed to the spot and that he has stated before the investigating officer that while he was trying to snatch away the iron pipe from the appellant, his daughter, Sankaru and Bhagabat arrived at the spot and all of them snatched away the pipe from the appellant. Sankaru and Bhagabat have not been examined by the prosecution. That apart, a grave suspicion arises in mind regarding snatching away of the iron pipe (M.O.I) from the hands of the appellant, while considering the statement of P.W. 5. In para-4 of his deposition he has stated that as per direction of police he brought some blood from the room of his house where the deceased was lying, to the police station and thereafter someone smeared that blood on the pipe (M.O.I), which indicates that M.O.I. had not contained blood-stains on it, but subsequently blood was

smear on it. According to P.W. 5, the iron pipe (M.O.I) was seized on his production and the seizure-list Ext. 10 reveals that the said iron pipe measuring 2' 8 1/2' x 4' stained with blood had been seized on production by P.W. 5. It is also mentioned in the seizure-list, Ext. 10 that the appellant after assaulting the deceased with the said iron pipe was running away when P.W. 5, his daughter, Sankaru Mahanta and Bhagabat Mahanta snatched away the said pipe and P.W. 5 kept the same in his house. In view of the specific statement of P.W. 5 that blood was smeared on M.O.I at the police station as per direction of police, it cannot be believed for a moment that blood-stained iron pipe (M.O.I) had been seized on production by P.W. 5, which was admittedly produced by P.W. 5 from his house. That apart, in his statement in cross-examination P.W. 5 has stated that the house of the appellant was at a distance of about two miles from his house and that the appellant had no dispute or quarrel with the deceased or with P.W. 5. In the above circumstances it is not known why the appellant would walk down the distance of two miles from his house to the house of P.W. 5 holding an iron pipe in his hand and putting on a small napkin and as to why he assaulted the deceased by means of that iron pipe. Other villagers might have seen the appellant coming to the house of P.W. 5, but none of them has been examined in support of the prosecution case. The prosecution case regarding snatching away of M.O.I. from the hands of the appellant being doubtful and the statements of P.Ws. 4 and 5 being not consistent with each other, it will be quite unsafe to place reliance on them and hazardous to base a conviction of the appellant on their statements. Therefore the conclusion arrived at by the learned Sessions Judge regarding the assault on the deceased by the appellant is found to be erroneous and the same cannot be sustained. Consequently the conviction of the appellant is found to be unsustainable and is liable to be set aside. The appellant cannot be convicted of the charge under Section 304, Part I, IPC and will be entitled to acquittal and the impugned judgment is liable to be set aside.

10. In the result, the Jail Criminal Appeal is allowed. The impugned judgment dated 5-9-1996 passed by the learned Sessions Judge, Keonjhar in Sessions Trial No. 112 of 1993 convicting the appellant under Section 304, Part I of IPC and sentencing him thereunder to undergo rigorous imprisonment for seven years is set aside. The appellant is found not guilty and is acquitted of the charge. He be

set at liberty forthwith if his detention in custody if not required in connection with any other case.

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