

Ramanath Naik and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/535253

Court : Orissa

Decided On : Aug-17-1992

Reported in : 75(1993)CLT711; 1995CriLJ2255

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal No. 148 of 1986

Appellant : Ramanath Naik and ors.

Respondent : State

Advocate for Def. : G.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Nanda, Adv.

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. In this appeal the conviction under Section 302, of the Indian Penal Code, 1860 (in short, the 'I.P.C.') and sentence of imprisonment for life as awarded by the learned Second Additional Sessions Judge, Berhampur has been questioned. The three appellants (hereinafter described as the 'accused') faced trial being charged

for commission of offence punishable under Section 302/34 I.P.C.

2. The background facts as depicted by the prosecution are to the following effect:

On 14-1-1985 at about 8.00 A. M. Basu Naik (hereinafter described as the 'deceased') had been to a place called Dandamari Salapa Bosa near village Koihuru along with the accused persons to take 'Salapa,' a locally manufactured intoxicant. At that place, accused Ramanath demanded his dues from the deceased in respect of certain arrears. The deceased told him that since he had no money then, he would pay later. There was exchange, of some hot words between the deceased and accused Ramanath and the latter asked the other accused persons to assault the deceased. Accused Rangeta caught hold of the hair of the deceased and dealt a slap to his cheek and fist blows to his left eye and accused Ramanath dealt a blow to the head of the deceased by means of a lathi, as a result of which, the deceased fell down on the ground. All the three accused persons assaulted the deceased on several parts of his body as a result of which the deceased sustained severe injuries and struggled for life, the accused persons left the place after the assaults. Though water was given, it did not enter inside mouth of the deceased and he died at the spot. Accused Ramanath thereafter came to village Dengasarangi and stated before the daughter of the deceased and others that the deceased has lost his life due to an accident, when he stumbled down on a stone. The daughter of the deceased Kumari, his son Shymon, the informant Bhaskar Naik, John Naik and others went to the spot and found the deceased lying with several injuries on his person. They suspected a foul play. While the daughter and son remained there to watch the dead body, others went to the village Koihuru and they found in the village none except an old man namely Drena Mallik (PW. 1). They could ascertain from him that accused Rangeta and others had assaulted the deceased. Thereafter they came to the spot again and could locate three lathis lying nearby. Under suspicion that they were the weapons of offence because of blood stains thereon, the lathis were retained. The informant and others went to the Mohana police station and lodged a written report. Investigation was undertaken and after completion thereof, charge sheet was submitted against the accused persons.

3. To further its case, prosecution examined eleven witnesses including the medical officer and the Investigating Officer. P.W. 1 is Drena Mallik who is the father of accused Kali Mallik, He deposed in Court that the deceased lost his life when he fell down on a stone by dashing against a tree stump. The prosecution mainly relied on the evidence of P.W. 9 who is stated to be an occurrence witness. This witness stated that he had seen the accused persons assaulting the deceased with lathis causing bleeding injuries. The learned trial Judge held that the prosecution has linked the accused persons with the guilt, with reference to the evidence of Niju Mallik (P.W. 9) and that of Drena Mallik (P.W. 1), Absence of the accused persons from the village after the occurrence was also considered to be material. Accordingly the accused persons were held guilty, convicted and sentenced as aforesaid.

4. Mr. A. K. Nanda, learned counsel appearing for the accused submitted that the evidence of P.W. 9 suffers from many infirmities and no credence can be put on it. the learned counsel for the State, however, submitted that the analysis made by the learned trial Judge does not suffer from any infirmity to warrant interference by this Court.

5. Certain significant aspects in the evidence of P.W. 9 require to be highlighted. This witness identified the accused person for the first time in the Court. His evidence was to the effect that he did not know either the accused persons or their names prior to the date of occurrence. He stated that 2 to 3 days after the occurrence, the S. I. of police, A.S.I, of police and Constables came to his house and called him to the police station. There one police officer showed him the accused persons and told their names. He also stated that he was not examined by the police. We do not consider such statement to be correct in view of the evidence of the Investigating Officer (P.W. 11). However, his statement to the effect that after witnessing the occurrence, he did not report the matter to the police though he had passed by the police station shows how incredible his evidence is. Identification for the first time during trial is inherently of a very weak character which looses much of its value without prior test identification parade. The learned trial Judge has believed this witness by holding that probably due to confusion this witness has stated on cross-examination that prior to this incident

he did not know either the accused persons or their names. With reference to the statement on examination-in-chief, to the effect that he knew the accused persons and their names, it was observed that the statement on cross-examination was due to confusion. We do not agree with the conclusion arrived at by the learned trial Judge in this regard.

6. Further P.W. 9 was examined on 16-1-1985. A suspicion arises when a material witness who claims to have seen the occurrence is not examined immediately after the occurrence. the witness has stated that because he was frightened, he left the village. It was not stated as to what he was afraid of, or from which source he apprehended danger. A further significant statement of this witness was that he did not disclose the incident before any body till he deposed in Court. All these corrode the credibility of the evidence of this witness.

7. The evidence of P.W. 1 was relied upon by the learned trial Judge so far as the presence of the accused persons near the spot of occurrence is concerned. The same does not further the case of the prosecution.

8. The prosecution has failed to establish the guilt of the accused persons and accordingly we set aside the order of conviction and sentence and direct their acquittal. They be set at liberty forthwith unless they are required to be in custody in connection with any other case.

D.M. Patnaik, J.

9. I agree.