

Narayan Parida Vs. State of Orissa

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Court : Orissa

Decided On : Aug-14-2003

Reported in : 2003(II)OLR590

Judge : Sujit Barman Roy, C.J. and ;L. Mohapatra, J.

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

Appeal No. : Criminal Appeal No. 406 of 1994

Appellant : Narayan Parida

Respondent : State of Orissa

Advocate for Def. : Additional Standing Counsel

Advocate for Pet/Ap. : D.P. Dhal, ;S.K. Nayak-3, ;D.K. Das, ;B.K. Panda, ;K.K. Das and ;N.C. Mishra

Disposition : Appeal allowed

Judgement :

L. Mohapatra, J.

1. This appeal is directed against an order of conviction and sentence passed by learned Sessions Judge, Keonjhar convicting the appellant Under Section 302 of the Penal Code and sentencing him to undergo imprisonment for life. The

appellant and three other accused persons were tried for commission of offence Under Section 302/34 of the Indian Penal Code, but on consideration of evidence, the learned Sessions Judge convicted the appellant Under Section 302 of the Penal Code and acquitted the other 3 accused persons of the charges.

2. The case of the prosecution is that on the day preceding the date of occurrence i.e. on 21.10.1992 at about 4 P.M. a quarrel ensued between the appellant Narayana on one hand and the informant-P.W.4 Baikuntha on the other. During course of such quarrel the appellant assaulted the informant. The informant reported about the incident in Ghasipura Police Station, on the basis of which G.R. Case No. 378/1992 had been registered in the Court of the learned S.D.J.M., Anandapur and the appellant was convicted and sentenced in that case. Being enraged due to such conviction, the appellant hatched up a conspiracy with the other three accused persons to set the informant (p.w.4) right and such conspiracy was witnessed by P.W.5. On the date of occurrence the informant sent his brother (since deceased) to the paddy field for removing grass and while the deceased was engaged in removal of grass, it is alleged that the accused persons including the appellant came there and in furtherance of their common intention assaulted the deceased resulting in instantaneous death. The matter was reported at the Police Camp at 8 P.M. On 22.10.1992 and a formal F.I.R. was registered at Ghasipura Police Station on the same day at 11.30 P.M. Considering the allegation made in the F.I.R. the case was registered for commission of offence Under Section 302/34 of the Indian Penal Code and after investigation, charge sheet was submitted against the appellant and three other accused persons for the offences mentioned above.

3. In course of trial the prosecution examined 11 witnesses, out of whom P.W.4 is the informant, P. Ws. 1,6,7, and 9 claimed to be eye witnesses and P.W.2 is the doctor who conducted the post mortem examination. P.W. 10 is the I.O. One witness was examined on behalf of the defence to prove that the prosecution party was the aggressor. The learned Sessions Judge on consideration of the evidence available on record, only found the appellant guilty of the charge Under Section 302 of the Penal Code and acquitted the other three accused persons of the charges.

4. Shri Dhal, learned counsel appearing for the appellant submitted that the so called eye witnesses namely, P. Ws. 1,6 and 7 were examined by the Police one month after the occurrence and in their statement Under Section 161 Cr. P.C. they had not stated to have seen the occurrence and only in Court they stated to have seen the occurrence. This being the state of affair so far as these three witnesses are concerned, it was contended by Shri Dhal that there is no reason to rely on P. Ws. 1,6 and 7. He also submitted that P.W.9 who also claimed to be an o eye witness to the occurrence has not stated before the I.O. to have seen the occurrence and accordingly he should not be also relied upon. Shri Dhal also contended that the post mortem report proved by P.W.2 belies the prosecution story altogether, and therefore, the order of conviction and sentence is to be set aside. The learned Additional Standing Counsel on the other hand, relied upon the evidence of P.W.9 and stated that there is no reason to disbelieve this witness and the Sessions Judge rightly believed the said witness and convicted the appellant for commission of offence Under Section 302 of the Penal Code.

5. P.W.2 conducted the post mortem examination and found the following external injuries : (1) Lacerated injury 1' x 1/4' X 1/4' on left knee and (2) Lacerated injury 1/2' x 1/8' x 1/8' over left zygoma. This witness in her evidence specifically stated that the death was on account of asphyxia due to suffocation and injuries found by her are simple in nature and cannot be the cause of death. In the light of this evidence, we proceed to examine the evidence of the eye witnesses. P.W. 1 has stated that on the date of occurrence he and some others had been to cut grass in their paddy field. After cutting grasses they were taking rest on the ridge of a tank. When they heard a cry, they rushed to the spot and found the accused persons assaulting the deceased. Though this witness claims to have run to the spot and seen the occurrence along with P. Ws. 6 and 7, it appears from cross-examination that he did not disclose about the fact that he had seen the occurrence- to any one till he was examined by Police. Similar is the evidence of P.Ws.6 and 7. Though P.W. 1 in his evidence stated that accused Thura was assaulting the deceased by means of a lathi, the appellant was assaulting by giving kicks and fist blows, accused Gangadhar was holding a katari and standing and accused Siba caught hold of the throat of the deceased and pressed him down, P.W. 6 in his evidence has stated that he saw the accused Gangadhar giving a blow over the left leg of

the deceased and also a blow over the left side eye brow of the deceased by means of a katari, accused Thura assaulted the deceased over his back by a lathi, appellant gave kick and fist blows to the deceased and accused Siba catching hold the neck of the deceased pressed him down in the mud. There appears to be some variation in the statement of these two witnesses so far manner of assault on the deceased is concerned. P.W.7 who claims to be an eye witness of the occurrence has clearly admitted in his cross-examination that he was examined one month and five days after the occurrence by the Police and he had not stated before the Police that the appellant was assaulting the deceased by means of kick and fist blows or that the accused Siba caught hold of the neck of the deceased and pressed him down. On the other hand, the evidence of the I.O. P. W. 11 clearly goes to show that these three witnesses had not been examined till 27th of November, 1992 whereas the occurrence took place on 22nd of October, 1992. The I.O. has also stated in his evidence that these three witnesses did not state before him during examination that they had seen the occurrence or they had seen the accused persons assaulting the deceased. In view of such evidence on record, no reliance can be placed by the evidence of these three witnesses. The only other eye witness on whom much reliance is placed by the prosecution is P.W.9. This witness in his evidence has stated that he saw the accused Siba catching hold of the neck of the deceased and pressing him down and he also saw the appellant pouncing upon the back of the deceased and pressing his chest down. Much reliance has been placed on the evidence of this witness by the learned Sessions Judge while convicting the appellant. On perusal of the evidence of P.W.10, the I.O. it appears that this witness had not stated before him during examination what he stated before the Court. The I.O. in his evidence specifically stated that P.W.9 did not state before him that he had seen the occurrence or the manner in which he described the occurrence to have taken place in Court and he had only stated before him that on 22.10.1992 at 11 A.M. he had gone to the field being directed by his father but he found none in the field and came back home. In view of such evidence of the I.O. we are also unable to accept the evidence of P.W.9 who claims to be an eye witness to the occurrence. For the sake of argument even if the evidence of this witness is accepted the death having occurred on account of asphyxia due to suffocation the same cannot be attributed

to the act alleged to have been done by the present appellant. Rather the accused Siba who is alleged to have caught hold of the neck of the deceased and pressed him down has been acquitted by the trial Court.

6. In view of the reasons stated above, we are not in a position to accept the findings of the learned Sessions Judge. Accordingly, the judgment and order of conviction and sentence passed by the Sessions Judge is set aside and the appeal is allowed.

Sujit Barman Roy, C.J.

7. I agree.

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