

Subash Swaln Vs. State of Orissa

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Court : Orissa

Decided On : Nov-17-2008

Reported in : 2009(1)OLR151

Judge : P.K. Tripathy and; S. Panda, JJ.

Appellant : Subash Swain

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. D. Das

Disposition : Appeal allowed

Judgement :

1. When this case is taken up, an associate of Mr. Bijan Ray, learned Senior Advocate appears and states that in view of appearance of Mr. D. Das and associates as learned Counsel for the appellant, they have no objection to delete their names and to hear fresh set of counsel engaged by the appellant.

2. This case is taken up for consideration of the bail application. In course of placing the judgment and the evidence on record in furtherance of the prayer for bail, learned Counsel for the appellant also requests to hear and dispose of the Criminal Appeal at this stage in view of no evidence available against the accused to sustain the order of conviction. Mr. Nanda, learned Addl. Government Advocate does not concede to the contention of the appellant about absence of evidence but

at the same time he has no objection if the appeal is heard and disposed of at this stage. Thus, on consent of both the parties, the Criminal Appeal is heard and disposed of in the following manner:

3. Accused has been found guilty of the offence of murder on the allegation that in the night of 27.02.2001, he intentionally committed murder of his wife, namely, Rupa Swain (hereinafter referred to as the 'deceased'). Learned Addl. Sessions Judge, Jharsuguda in S.T. Case No. 203/39 of 2001 recorded the order of conviction against the appellant and sentenced him to imprisonment of life.

4. The following fact is not in dispute between the parties i.e. the prosecution and the defence. Accused married the deceased in the year 1997 and they have a child out of the wedlock. The deceased was serving in Danyal Public School at Brajrajnagar and was occupying a room in the up-stair (first floor) of the said school premises and that she alongwith the accused and the child were staying there. Though the deceased was suffering from chest pain and other ailments and the accused was taking care to undertake the treatment, in the night of 27.02.2001, accused telephoned and intimated P.W.2 about the ailment of the deceased and requested her to come to the School and that P.W.2 together with the Vice-Principal, (P.W.7) reached the School when the accused narrated to them that the deceased complained of chest pain and when he wanted to fetch a doctor for treatment, the deceased asked him not to leave her and notwithstanding that when he wanted to proceed by collecting his bicycle on the ground floor, then the deceased who had come over on the Verandah of the first floor, fell down in the staircase and therefore the accused took her to the up-stair and telephoned to the Principal.

5. It is the case of the prosecution that accused had a demand of dowry of Rs. 5,000/- and because of that she was being tortured by the accused and was ultimately killed in the night of 27.02.2001.

6. To substantiate the charge, prosecution examined nine witnesses and relied on documents marked Exts.1 to 13. Defence declined to adduce any evidence.

7. Evidence of P.W.6, Dr. J.C. Parida and the post mortem report, Ext.5 speaks about homicidal death on the ground that at the time of post mortem examination two contusions were found on the fronto-temporal area and 5th, 6th and 7th ribs of both sides of the chest were fractured causing internal pressure on the lungs so as to cause traumatic asphyxia. P.W.6 opined that 'In my opinion the death could not be either suicidal or accidental. Injury Nos. (i) and (ii) on the forehead of the deceased can be possible by assault'. In course of his cross-examination, P.W.6 stated that in case of resistance in course of compression of chest, there may be injuries, if the person resisting has bodily strength and that there will be congestion and swelling of face, if the death occurred due to traumatic' asphyxia. Admittedly, he did not find all such symptoms on the dead body of the deceased. He has also no reason to deny to the defence plea that the deceased suffered the fracture of the ribs because of fall in the stair case. Notwithstanding that the trial Court relied on the evidence of P.W.7 to record that the deceased suffered homicidal death.

8. In that context, learned Counsel for the appellant invites our attention to Ext.1, the inquest report in which in presence of the Magistrate the witnesses to the inquest opined that the deceased died due to some disease and there is no doubt about that. The Magistrate recorded that there was no external bodily injury of the deceased. Under such circumstance, evidence of P.W.6 that there were contusions on the fronto temporal area that suggest of sustaining of such injuries not because of compression of chest but because of fall in the stair case. Though it cannot be definitely said that such a possibility is more stronger than the other way i.e. compression on the chest and causing injury to the temporal region, therefore, we find that prosecution has not made clear and cogent evidence to prove the homicidal death of the deceased. The aforesaid finding gains support from the evidence of P.Ws.1, 2 and 7, the Principal and teaching staff of the School. Each of them has said that the accused and the deceased had cordial relationship and for illness of the deceased accused was taking care and providing treatment. Evidence of P.W.5 about a quarrel in 1999 had lost its relevance, inasmuch as, that was a stray quarrel and there was better relationship between the accused and the deceased by the year of occurrence and the alleged quarrel had no connection with the demand of dowry. On the other hand, as stated above, evidence of P.Ws. 1,2 and 7 indicates that accused and the deceased had a

happy living with their kid and the accused was attending to the ailments of the deceased. Above all, the conduct of the accused also gives ample support to his defence plea, inasmuch as, soon after falling of the deceased from the stair case and gasping, the accused intimated the Principal of the School and sought for his assistance. He was also found weeping when P.W.2 arrived there. If all such facts and evidence are taken into consideration, that out way stray opinion of P.W.6 about homicidal death and under such circumstance accused is entitled to the benefit of doubt.

9. Taking aforesaid view into consideration, we set aside the order of conviction passed by the trial Court and direct to set the appellant at liberty forthwith, if his detention in jail custody is not required in connection with any other criminal case.

10. The Criminal Appeal is accordingly allowed.

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