

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.26 of 2003

Saroj Khuntia & others

....

Appellants

Mr. B.K. Ragada, Advocate

-Versus-

State of Odisha

....

Respondent

Smt. S. Pattanaik, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

12.05.2022

Order No.

08. 1. The present appeal is by three Appellants and is directed against the judgment dated 24th January, 2003 passed by the learned Additional District & Sessions Judge, Bhadrak in S.T. No.23/12 of 2002/1999 convicting each of the Appellants for the offence punishable under Section 302 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs.10,000/- in default to undergo rigorous imprisonment (RI) for one year each. By an order dated 10th February, 2003, the Appellants were directed to be enlarged on bail.

2. The deceased Sunari Barik was the brother of Kailash Chandra Barik (P.W.1) and Madan Mohan Barik (P.W.2). The case of the prosecution is that on 19th July, 1996 in the evening, Sunari Barik was murdered. On the next day, at around 8 A.M. the Investigating Officer (IO) (P.W.7) visited the spot and made a Station Diary Entry. Thereafter, on the basis of information received, an FIR was registered for the offence punishable under

Section 302 IPC. According to the prosecution, there was previous enmity between the three accused on the one hand and the deceased on the other arising out of a theft of a cycle by the deceased and setting of the house of one of the accused on fire. It was claimed that the deceased was absconding in the case involving the setting of the house on fire.

3. The prosecution examined as many as seven witnesses including the I.O. (P.W.7), excepting whom all the other PWs turned hostile. Both the brothers of the deceased i.e. P.Ws.1 and 2, P.W.3 and P.W.6 the co-villager turned hostile. The witnesses to the seizure i.e. P.Ws 4 and 5 also turned hostile. Strangely, even the doctor who conducted the postmortem was not examined by the prosecution.

4. Notwithstanding that the statements of P.Ws.1 and 2 were recorded under Section 164 Cr PC, both turned hostile in the trial and were cross-examined by the Public Prosecutor (PP). They simply denied any knowledge of the occurrence and claimed that their statements under Section 164 Cr PC were recorded under coercion and that they were tutored by the police. None of the other witnesses supported of the case of the prosecution except P.W.7 who was the I.O.

5. The trial court nevertheless proceeded to convict the Appellants by relying on the statements made under Section 161 Cr PC, the statements under Section 164 Cr PC and the evidence of the I.O.

6. Having heard learned counsel for the parties, the Court is of the view that the approach of the trial court was entirely erroneous. In the first place, reliance could not have been placed on statements under Section 161 Cr PC as such statements at best can be used for confronting a witness. They can never constitute substantive pieces of evidence.

7. Secondly, the case was projected as a homicidal death and yet no attempt was made by the prosecution to have the doctor who conducted the post-mortem examined as a witness. This glaring omission has not been explained by the prosecution.

8. Even, if the eye witnesses turned hostile this was not a case where any statement made by them in the examination-in-chief could be relied upon by the prosecution as supporting its case. On the other hand, even if the cross-examination of the hostile witnesses what emerged was only that their statements were as a result of tutoring by the police.

9. The trial court relying extensively on the evidence of the I.O. Unless there was independent credible evidence to support the case of the prosecution, it would be unsafe to base the conviction for an offence punishable under Section 302 IPC only on the testimony of the police officer who happened to be the I.O.

10. For all of the aforementioned reasons, the Court is unable to sustain the impugned judgment of the trial and it is accordingly

set aside. The Appellants are acquitted of the offence punishable under Section 302 IPC. Their bail bonds stand discharged.

11. The appeal is allowed in the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge



TUDU