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IN THE HIGH COURT OF ORISSA AT CUTTACK
CRA No. 169 of 1999

Milu Purty

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. Arun Kumar Acharya,
Advocate

For Respondent

:

Mr. J. Katikia,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT
26.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the judgment dated 29th January, 1999 passed by the learned Sessions Judge, Keonjhar in Sessions Trial Case No.184 of 1997 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. At the outset, it must be mentioned that on 21st April 2005, the Appellant was enlarged on bail by this Court after noting that he had served nearly eight years of imprisonment.

3. The Appellant stood charged under Section 302 IPC for intentionally causing death of Jagdish Oram by causing head injuries by means of a crowbar.

4. The case of the prosecution is that on 8th June 1997, the deceased Jagdish Oram was engaged with other labourers by a private contractor (Giri Sahu) to dig manganese from TISCO Mine No.18 at Raida. It was stated that at around 4.30 pm, the Appellant appeared there and offered to work as a labourer. This was objected to by the deceased as the working hour was about to end. However, the Appellant even offered to work without wages. When even this request was refused by the deceased, the Appellant got enraged, picked up a crowbar that was lying there and assaulted the deceased on his head, as a result of which, the deceased fell down. It was stated that the co-labourers present there ran away due to fear. When they returned after some time, they found the deceased Jagdish lying with injuries on his head. With the help of scooter, Jagdish was removed to the Central Hospital at Joda by P.Ws.1 and 4. The mother of Jagdish, Smt. Sukamati Oram (P.W.5) was informed about his condition and she rushed to the hospital.

5. In the course of treatment, the treating surgeon, Dr. Prafulla Chandra Nayak (P.W.7) advised that he needed to be shifted to the Neurosurgery Department of SCB Medical College and Hospital, Cuttack (SCB). However, no steps were taken to shift

the deceased for treatment to SCB. On 14th June 1997, the 6th day after he was attacked, Jagdish Oram succumbed to the injuries while undergoing treatment at the Central Hospital, Joda.

6. The Sub-Inspector (SI), Mr. Subash Chandra Mohanty (P.W.10) was working at the Barbil Police Station (P.S.). On 9th June 1997, at around 6.15 pm, he received a telephonic information from Joda P.S. that a person-Jamadar Munda (P.W.1) of Camp Hutting Raida had admitted a person to the Central Hospital, Joda for head injury. When P.W.10 reached the hospital, he noted that Jagdish Oram had been admitted by P.W.1 on 8th June, 1997 with some head injuries. P.W.5, who was present there, informed P.W.10 that “while taking bath in river Suna, on 8.6.1997, Jagdish fell down on rocks and received injuries on his head.” P.W.10 consulted the doctor, then returned to the P.S. and intimated the fact to the Inspector in-charge (IIC) and made an entry in the Station Diary.

7. Mr. Sarat Chandra Sahoo (P.W.11) was the IIC of the Barbil P.S. On 15th June 1997, he received a report from the Officer-in-Charge (OIC) of Joda P.S. to the effect that Dr. Prafulla Chandra Nayak (P.W.7) of the Central Hospital, Joda had informed that Jagdish Oram of Camp Hutting Barbil, who had been admitted on 8th June 1997, died at 7.50 pm on 14th June, 1997. On the above report, the IIC registered Barbil P.S. Case No.89 under Section 302 IPC and took up investigation.

8. P.W. 11 examined P.W.7 and P.W.5 and held inquest over the dead body of Jagdish. He then sent the dead body for Post-Mortem (PM) Examination.

9. Dr. Benudhar Muduli (P.W.8), who conducted the PM, found the following injuries on the deceased:

“External Injury:-

1. 3 Lacerations with nylon stitch of size 2.5” each in Length over the scalp, one in left parietal scalp, two in left occipital scalp. The wounds were in advance stage of healing.

Internal Injury:-

On dissection of the above injury, I have found fracture of left parital bone.

(Illegible) over left parietal region. The brain tissue over left parietal lobe and left frontal lobe were lacerated. Hematoma was present in the brain matter over left parietal and frontal lobe. All other viscera were intact.”

10. P.W. 8 opined that the cause of death was due to shock from intra cerebral haemorrhage. Later, when the crowbar was shown to him, he opined that the injuries were possible by the crowbar. Interestingly, in his cross-examination, he stated as under:

“The injuries found on the deceased are possible by fall of manganese ore on head in course of work in the mine.”

11. P.W.11 examined certain witnesses, seized the crowbar and visited the spot on 16th June, 1997. On 27th June 1997, he arrested the Appellant and seized his wearing apparels. On completion of

investigation, a charge-sheet was led against the Appellant for the offence under Section 302 IPC. He pleaded not guilty and claimed trial.

12. For the prosecution, 11 witnesses were examined. No witness was examined for the defence. On an analysis of the evidence, the trial Court came to the conclusion that the prosecution had proved the evidence against the Appellant beyond all reasonable doubt. The trial Court also ruled out converting the offence to one under Section 304 Part I or Part II IPC. The trial Court then proceeded to convict and sentence the Appellant in the manner indicated hereinbefore.

13. This Court has heard the submissions of Mr. Arun Kumar Acharya, learned counsel for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the State.

14. The case of the prosecution rests on the testimonies of P.Ws.1, 2 and 4. To begin with the Court would like to recapitulate the caution with which this Court, as an appellate Court, has to examine the evidence on which the trial Court has returned a conviction. In ***Padam Singh v. State of Uttar Pradesh 2000 SCC (Cri) 285***, the Supreme Court explained as under:

“2...It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond

reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court like the trial Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubts as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding conviction.”

15. This Court has carefully examined the deposition of P.Ws.1,2 and 4. P.W.1 was a labourer at the mine in question. It is important that he did not mention that the Appellant got enraged when the deceased refused to permit him to work and, therefore, started assaulting the deceased. He stated as under:

“xxx. Accused offered to work free of charge and saying so, he got into the mines where work was going on and was about 5 feet depth Jagdish was engaged in working there. Accused getting down there assaulted Jagdish with a crowbar on his head.”

16. It would therefore appear as if the Appellant attacked the deceased without any provocation whatsoever. It is a fact that this

witness never informed the police about what he had seen. The following statements in his cross-examination are significant:

“8. xxx. After this occurrence, we the workers also conceal ourself for a week for fear of police. After a week, I was examined by the police. We all the 7 remaining workers were taken to PS and detained for 3 days on the verandah of the PS.

Question:- For two days interrogation, you did not disclose about the assailant, as you were ignorant and therefore, you were detained and on the third day as you disclosed that Milu Purty was the assailant, you were released.

Ans.: No. From the very first day, I have disclosed that Milu was the assailant. But we were detained as Milu was absconding and police asked us to trace him out or to give his whereabouts.

Question:- You concealed for 7 days after the occurrence.

Answer:- No.

(The witness sweats profusely and being asked about the reason states to be feeling warm. But when he appeared was not swearing till his examination in chief was over. It is felt that the witness is feeling uneasy and nervous in the court atmosphere being a rustic tribal. His dialects are also not easily understood).

xxx

xxx

xxx

9. xxx. Q. On the fourth day of your detention at PS you were produced before Barbil Magistrate in Police vehicle?

Answer:- Yes.

Question:- The police officer was present when you were deposing before the Magistrate.

Answer:- Yes.

Question:- Through your journey from PS to court, the police was tutoring you what you were to depose.

Answer:- No.” (emphasis supplied)

17. He also added in his cross-examination as under:

“10. xxx. It is a fact that I have not reported about the occurrence to any one at Raida Market while carrying Jagdish to CHC Hospital. I have also not disclosed the doctor the name of assailant.”

18. Reading the entire evidence of P.W.1, the distinct impression that emerges is that he was not speaking voluntarily but out of fear. The fact that he kept completely silent for seven days after the occurrence raises serious doubts whether what he was saying was entirely voluntarily or truthful.

19. The same applies to the other two witnesses as well. In the cross-examination of P.W.2, he admits that he was in the Barbil PS for about a week. The answer given by him in this regard reads as under:

“4. xxx. Q. You were at Barbil Police Station for about a week.

Answer:- Yes.

Kalipada, Jandei were not with us at Barbil P.S. It is not a fact that at Barbil P.S. police officer threatened us that unless we implicate accused in the murder of Jagdish, we will be entangled in the murder. I was detained at P.S. to search out accused or to give his whereabouts. Police trace

out the accused. We were at P.S. till apprehension of Milu and then we were allowed to come.

5. Information was sent to the wife of Jagdish through Murali to report that Jagdish has been injured by fall. There is no reason why we sent such information. (answers): “amiiti-Kahi-Dei-Thilu”. The very day when we were taken to P.S. we disclosed about the incident as I have stated in my chief. I did not disclose about the incident to anyone at Camp hutting on the day of occurrence or on the subsequent days till we were taken by police. *I disclosed about the occurrence to police after one week of the occurrence. It is not a fact that we concealed for a week. We concealed for 3 to 4 days, for apprehension of police arrest.xxx*” (emphasis supplied)

20. Here again one gets the impression that these witnesses were speaking not voluntarily but out of fear of the Police. Again, when one turns to the evidence of P.W.4, his cross-examination also reads thus:

“3. I was detained at P.S. for about a week. We were kept inside the lock-up. We were being assaulted by police during our detention. *We were threatened by police to state that Milu assaulted Jagdish or else we all will be booked in this case.* It is not a fact that for that I am falsely implicating the accused in the murder of Jagdish. (before denying this suggestion, the answer to the other questions were given by the witness either by saying yes or no to the questions put and the answers so given have been written in narrative form).

4. I have given answer to the questions understanding it. It is not a fact that we were detained at the P.S. for 7 days, as we were giving out that we do not know who assaulted Jagdish. Volunteers: from the very beginning at P.S. we have said that Milu was the assailant.

5. The sides of dug manganese ore are not of sharp edge. The weight of one piece of dug manganese ore would be within two to three K.G. *I did not disclose this incident to anyone till I gave my statement before police.*” (emphasis supplied)

21. When P.W.5, the mother, was asked whether she had stated before the police about her son falling down while taking a bath in river and sustaining injuries on his head, she denied it. But at the same time, she stated that the person who informed her about Jagdish being injured told her that “Jagdish has been injured by fall”. She stated that “on arrival at Hospital, I knew that Jagdish has been murdered. I did not report that to the Police.” The trial Court has noted further as under:

“(The witness is completely rustic and unable to understand the question put to her and even after giving some answer goes on murmuring something of her accord.)”

22. P.W. 10, the SI, who went to the Hospital, is very clear about what he heard and stated as under:

“xxx.The Mother of Jagdish Oram, Sukumati Oram who was attending him told me that while taking bath in River Suna, on 8.6.97, Jagdish fell down on rocks and received injuries on his head.”

23. The above statement of P.W.10 was allowed to remain by the prosecution, without seeking any further clarification from him. Yet, there is no discussion of his evidence whatsoever in the judgment of the trial Court.

24. One factor that stands out is the delay in the eye-witnesses reporting the matter to anyone at all much less the Police. In ***Jagir Singh v. The State (Delhi)*, (1975) 3 SCC 562**, the Supreme Court of India disbelieved eye-witnesses who had not informed the police at the first available instance about the assault on the deceased by the accused. This was held to be unnatural conduct on the part of the eye-witnesses and the benefit of doubt was granted to the accused.

25. In ***Sonia Bahera v. State of Orissa*, (1983) 2 SCC 327**, the eye-witness did not disclose the incident to anybody on the day of occurrence. It was observed “their conduct in not telling anybody about the incident on the date of the incident also makes their evidence not worthy of acceptance.”

26. Again, in ***State of Karnataka v. Venkatesh*, 1992 Supp (1) SCC 539**, the failure by the so-called eye-witness to disclose what they had seen immediately to the police at the first available opportunity was held to render their testimonies untrustworthy.

27. In the present case too, the three witnesses have not spoken to anyone for about a week and even to the Police. They were all detained in the P.S. and then their statements were recorded. It is difficult to believe that they spoke voluntarily.

28. Consequently, the Court is of the view that the benefit of doubt in the case ought to be given to the Appellant. Granting him the benefit of doubt, the Court acquits him of the offence punishable under Section 302 IPC. The impugned judgment of the trial Court is accordingly set aside. The bail bonds of the Appellant are discharged.

29. The appeal is accordingly allowed.



M. Panda