

Banamali Samal

Vs

State of Orissa

Criminal Appeal No. 136 of 1973

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

02.03.1979

JUDGMENT

FAZAL ALI, J. –

In this appeal under the provisions of Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 the appellant has been convicted under Section 302, IPC and sentenced to imprisonment for life. The occurrence took place as far back as on November 25, 1948. The accused was absconding. Some evidence was recorded under Section 512 of the Criminal Procedure Code, 1898 and that evidence was inadmissible as the witnesses could not be cross-examined. The accused was arrested some time in 1966 that is to say 18 years after the occurrence. The prosecution case was that during the course of scuffle, the accused caused stab injuries to the deceased as a result of which he died. The High Court appears to have mainly relied on the statement of the accused for having come to the conclusion that he must have caused stab injuries for the deceased which resulted in his death. We have gone through the statement of accused under Section 342 and are of the opinion that the High Court misread the statement of the accused on that point. To question No. 2, the answer of the accused was as follows :

When he fell down, I left the place out of fear. I did not see if he was stabbed.

Question No. 3 was put to accused and the accused gave the following answer :

Nor did I push PW 4, I do not know if he received any injury. we two brothers were pulling and pushing each other.

It would appear from the answers given by the appellant that he nowhere admitted that he gave stab blows to the deceased although he says that there was enmity between him and the deceased. In answer to the other questions, the accused says that when the deceased fell down he left the place. He did not see if he was stabbed. In fact in a direct question that the accused himself had stabbed the deceased and caused the fatal injury, the appellant clearly denied this. In this state of the evidence the High Court should not have convicted the appellant on the basis of a statement of the accused, which never existed. The High Court further held that the evidence is corroborated by PWs 2 and 3. But this is not so. In the circumstances it is manifest that there is no legal evidence to show that the appellant caused stab injury to the deceased. Mr. Desai appearing for the respondent was not in a position to support the judgment of the High Court. For these reasons, the appeal is allowed, the judgment of the High Court is set aside and the appellant is acquitted of the charges framed against him. Conviction under Section 172, IPC is also set aside.

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