

Ananta Mohanta

Vs

State of Orissa

Criminal Appeal No. 327 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

22.03.1979

JUDGMENT

FAZAL ALI, J. -

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the trial Court acquitted the appellant of the charges under Section 302 but the State filed an appeal to the High Court and the High Court reversed the order of acquittal of the appellant and convicted the appellant under Section 302, IPC, and sentenced him to imprisonment for life. We have gone through the judgment of the High Court and the learned Sessions Judge and we find ourselves in complete agreement with the view taken by the High Court. The approach made by the Sessions Judge was manifestly wrong and absolutely perverse. The High Court has pointed out in its judgment that the Sessions Judge came to a clear finding that the witnesses examined in the case, i.e. PWs 1, 2, 3 and 4 were reliable and nothing was elicited from their cross-examination which may go to discredit their testimony. In spite of this clear finding the learned Sessions Judge appears to have disbelieved the witnesses mainly on the basis of surmises and conjectures and for reasons which are wholly untenable in law. In the circumstances, the High Court was fully justified in reversing the finding of the trial Court.

2. The conviction of the appellant is based on the evidence of PWs 1, 2 and 4 before whom the deceased has made an oral dying declaration that he was killed by the appellants. It is true that these witnesses are close relations but after having gone through their evidence, we feel that the evidence regarding the dying declaration is reliable and believable. It has also been proved that the moment the deceased was attacked he shouted as a result of which PW 1 woke up found the appellant standing near the bed and the deceased was being attacked with an axe. It was vehemently contended by Mr. Gupta that no independent witness was examined to prove the dying declaration. In the first place, there is no clear finding to show that any independent witness from the village arrived at the time when the appellant was shouting the names of his assailants. The only persons who appear to have come at the time of the occurrence were the witnesses PWs 3 and 4. Others also came but they had not been examined. That by itself is not a sufficient ground for rejecting the prosecution case if the evidence of PWs 3 and 4 is believed. It was further alleged by Mr. Gupta that the evidence of PW 3 should not be believed because he was declared hostile. Reference to the evidence of PW 3 would show that he had supported the prosecution case in his statement before the committing court and in his statement under Section 164. The attention of the witness was drawn to this statement and he clearly admitted that he did give this statement before the committing court. The witness admitted that the accused was his own nephew and perhaps that is why he tried to resile from his earlier statement. But the important face to notice is that before the committing court he did support the prosecution case. That itself is a guarantee of the truth of the statement of this

witness before the committing court. It was further urged by Mr. Gupta that as the lantern was not seized at the spot, there was no light by which the deceased could have identified his assailants. In the first place it is not disputed that the appellant was fully known to the deceased and he was in fact his neighbour. Secondly, it is clearly mentioned in the FIR that the lantern was burning at the time of the incident. There was thus sufficient light to enable the deceased to identify the appellant. Lastly, it was argued that as the axe seized at the spot has not been proved to be that of the accused, the case was not proved. This circumstance does not belie the prosecution case. The evidence shows that the axe is the very axe that was recovered from the spot with which the deceased was injured. It is true that the prosecution omitted to send the blade portion of the axe to the serilogist for determining whether the blood was human blood, but this does not put the prosecution out of court. For the reasons given above, the contentions of appellant fail. We find no merit in the appeal which is accordingly dismissed.

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