

Suryamani Dei and Laxman Mahakude

Vs

State of Orissa

Criminal Appeal No. 248 of 1972, Etc.

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

04.04.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellant Suryamani Dei has been convicted under Section 302/34 and sentenced to imprisonment for life and has also been convicted under Section 201/34, but no separate sentence was passed thereunder. The appellant Laxman Mahakude has been convicted under Section 201, IPC and is sentenced to seven years' RI. The Sessions Judge acquitted the appellants and other accused, who were charge-sheeted before the Court, and on appeal by the State, the High Court reversed the order of acquittal passed by the Sessions Judge and convicted the appellants as indicated above.

2. A detailed narrative of the prosecution case is to be found in the judgment of High Court and it is not necessary for us to repeat the same all over again. The occurrence appears to have taken place sometime on the morning of November 4, 1965. The case against the accused rests purely on circumstantial evidence which has been accepted by the High Court as a result of which the appellant were convicted.

3. Mr. Quammaruddin, who is appearing as amicus curiae for the appellants and who has been of great assistance to us, has, submitted that even assuming that all the circumstances are held to be proved, there is nothing to show that the appellant Suryamani Dei has taken any active part in the assault on the deceased. Nor is there anything to show that she had a common intention to murder the deceased along with the other accused. We have gone through the judgment of the High Court and have also perused the record and we are of the opinion that the contention of the learned Counsel for the appellant is sound and must prevail. The High Court catalogued the circumstances in the judgment thus :

Thus, the circumstances proved against her are : (1) She had a motive; (2) There was scope and opportunity to murder; (3) She had guilty knowledge of the place and time of murder which she suppressed; (4) She had washed the floor with cowdung to obliterate bloodmarks; (5) She knew the route by which the dead body was carried out of the house for disposal; (6) Her own Bala, M.O. II had been used in murdering the deceased, and that was stained with human blood; (7) She had kept it concealed in her kitchen; (8) Her conduct of silence and in refraining from informing the police about the missing of the deceased; and (9) Her giving deliberately false explanation about the incriminating circumstances, and at times giving to explanation.

Even taking these circumstances ex facie, there is nothing to indicate that the appellants shared the common intention to murder the deceased or took any active part in the murder of Yudhishter Behera. The High Court relied on the confession of the appellant which on being perused by us does not appear to be a confession at all because the appellant has not inculpated herself in any way. All that can be said is that she had knowledge of the murder but has categorically stated that she informed the Chowkidar about the occurrence having taken place. The prosecution has examined PW 1 to prove that he met the appellant Suryamani Dei and he was told by her that the accused had left the house the previous night. In spite of the positive statement made by the appellant in the confession that the Chowkidar was the first person to be informed the prosecution has not made attempt to examine the Chowkidar in order to falsify the statement of Suryamani Dei. The investigation officer has also found that the place where the deceased was killed contained lot of bloodstains, namely on the floor, wall and the stool. That by itself does not implicate the appellant, Suryamani Dei. In these circumstances, there fore, we are not able to find any reliable evidence to connect the appellant directly with the crime of actual murder of the deceased.

4. There can, however, be no doubt that there is sufficient evidence to show that the appellant knew that the dead body was carried for being disposed. Therefore, she can be convicted under Section 201/34. For these reasons, we allow the appeal of Suryamani Dei to this extent only that her conviction under Section 302/34 is set aside and her conviction under Section 201/34 is maintained and she is sentenced to seven years RI thereunder. As regards the other appellant Laxman Mahakude, there is overwhelming evidence to show that he took active part in disposing of the dead body and hence there is no merit in his appeal. The result is that the appeal of the appellant Suryamani Dei is allowed partly as indicated above and that of Laxman Mahakude is dismissed.

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