

Madi Ganga

Vs

State of Orissa

Criminal Appeal No. 398 of 1975

(O. Chinnappa Reddy, Baharul Islam JJ)

19.02.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant was tried and acquitted by the learned Sessions Judge, Koraput, of a charge under Section 302, Indian Penal Code. On appeal by the State of Orissa, the High Court set aside the order of acquittal, convicted the appellant under Section 302, Indian Penal Code and sentenced him to imprisonment for life. The case of the prosecution was that when the deceased was sleeping in his hut in the night of November 12-13, 1969, the accused struck him with a big stone on the head and killed him. The occurrence was said to have been witnessed by the ten-year old son of the deceased, who immediately went to the house of his father's cousin and told him about the occurrence. Next day there was a Panchayat in the village and on being questioned by the elders, the accused admitted that he had killed the deceased by throwing a stone on his head. Thereafter a report was made to the police and investigation started. The accused who was arrested on 15th was produced before the learned First Class Magistrate, Malkangiri Sub-Division, Koraput District for recording a confessional statement. The accused was given time for reflection and his confessional statement was recorded by the learned Magistrate on 21st after the usual warnings were administered to him. PW 10 the investigating officer seized MOI, the stone at the scene of offence. The medical officer who conducted the autopsy found one lacerated wound surrounded by a deep red bruise on the left side of the head, with cartilage of the left ear torn off. There was another lacerated bruise just behind injury 1. On dissection the left mastoid portion of the left temporal bone was found fractured for a length of one inch. The occipital bone was found perforated on the left side. The left temporal arteries were found crushed. The left sternomastoid muscles were found crushed. The opinion of the doctor was that the death was due to profuse bleeding and haemorrhage and shock on account of the fracture of the left temporal and occipital bones.

2. The learned Sessions Judge rejected the evidence of the alleged eyewitness PW 1. He rejected the evidence of PWs 2 to 5 in regard to the extra-judicial confession on the ground that it was not voluntary but was the result of inducement and influence. He also rejected the confessional statement made to the magistrate on the ground that the magistrate had not appended a certificate that the confession was not the result of any threat or inducement. The High Court reversed the findings of the learned Sessions Judge. The eyewitness account of PW 1, the extra-judicial confession spoken to by PWs 2 to 5 and the confessional statement to the magistrate were accepted and the accused was convicted and sentenced as already stated.

3. Shri R. K. Jain, learned counsel for the appellant urged that the High Court was wrong in reversing the judgment of the learned Sessions Judge. He submitted that the evidence of PW 1

should not have been accepted. He urged that the extra-judicial confession made to the village elders should not have been accepted as it was the result of inducement. He submitted that though PWs 2 to 5 were not persons in authority in the sense that they had no official position, as village elders they certainly were persons in authority in the eyes of the accused who was an adivasi. With regard to the confessional statement, made to the magistrate his submission was that it should have been excluded from the evidence as the magistrate was not examined to prove it.

4. We agree that it is not possible to accept the evidence of PW 1. We find that in the examination-in-chief he stated that he woke up at midnight, lit afire and at that time saw the accused bringing a stone and throwing it on his father, while in cross-examination he stated that his father was sleeping with the stone MOI under his head as a sort of pillow. If his father was sleeping with MOI under his head, it would not have been possible for the accused to have struck the deceased with that stone. According to him it was the hour of midnight when the occurrence took place. If it was midnight we do not think that PW 1 who was only a child, ten years of age would have been awake; he would be fast asleep at that time. He would not have seen the accused coming with the stone and throwing it on his father. We think that the learned Sessions Judge was right in rejecting his evidence.

5. We desire to express no opinion on the question whether the extra-judicial confession made to PWs 2 to 5 is barred under Section 24 of the Evidence Act. It is unnecessary for us to say anything on this question, since we are satisfied that the learned Sessions Judge was wholly wrong in excluding and the High Court was certainly right in acting upon the confessional statement made to the magistrate. The learned magistrate has put to the accused all the necessary questions to satisfy himself that the confession was voluntary. He has also appended the necessary certificate. We do not accept Shri Jain's submission that the learned Magistrate should have been examined as a witness. Section 80 of the Evidence Act makes the examination of the magistrate unnecessary. It authorises the court to presume that the document is genuine, that any statements as to the circumstances under which it was taken are true and that such confession was truly taken in accordance with law. Shri Jain submitted that if the magistrate had been examined as a witness, the accused might have been in a position to show, by cross-examination that the confession recorded by the magistrate was not voluntary. The magistrate has appended a certificate that he was satisfied that the confession was voluntary. No circumstance has been brought out in the evidence justifying the calling of the magistrate as a witness. We do not think that the circumstances of the case justify and comment on the alleged failure of the prosecution to examine the magistrate as a witness.

6. The final submission of the learned counsel was that even if the confession to the magistrate was accepted as voluntary it had not been sufficiently corroborated to justify the conviction of the accused. It is now well settled that in order to sustain a conviction on the basis of a confessional statement it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is sufficient - vide *Subramania Goundan v. State of Madras*. In the present case the confessional statement refers to the motive for the occurrence. This part of the confession is corroborated by the evidence of PW 1. The confessional statement refers to the accused having thrown a big stone on the head of the deceased. This part of the statement is corroborated by the medical evidence. We think that there was sufficient general corroboration to justify the High Court acting upon it. The appeal is, therefore, dismissed.

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