

Kora Ghasi

Vs

State of Orissa

Criminal Appeal no. 84 of 1976

(Syed M. Fazal Ali, D. Chinnappa Reddy JJ

03.02.1983

ORDER

1. The appellant was charge-sheeted under Section 302, IPC but on trial the learned sessions judge acquitted the appellant on the ground that there was no sufficient evidence against him to prove the case beyond reasonable doubt. The State of Orissa filed an appeal against the order of acquittal passed by the sessions Judge and the High Court, an appeal reversed the order of acquittal passed by the Sessions Judge and convicted the appellant under section 302, IPC and sentenced him to imprisonment for life. We have gone through the judgment of the Sessions Judge and that of the High Court and we are clearly of the opinion that the evidence against the appellant is very slender. The main evidence against the appellant consists of the retracted confession made by the accused before the Magistrate where he admitted to have assaulted the deceased with a lathi as a result of some altercation with the deceased. This confession has been held to be voluntary both by the High court and sessions Court and nevertheless as the confession was retracted corroboration was necessary. According to the prosecution the confession was clearly corroborated by the fact that the appellant pointed out the weapon. These are the two main pieces of evidence against the appellant. It was also suggested that three witnesses PWs 2, 4 and 5 had last seen the deceased and accused together. An important fact which has not been noticed by the High Court is that whereas in the FIR lodged by Hantal Podu PW 9 there is clear mention of the names of PWs 2, 4 and 5, the name of the appellant is not disclosed in the FIR as being suspected of killing the deceased. So far as the recovery is concerned we can not attach much importance to this fact as it was from an open place accessible to all. At any rate of after going through the judgment of the High Court and court below it cannot be said that the view taken by the Sessions judge was not reasonably possible in the circumstances of this case to reverse the order of acquittal even if it was possible to take a different view. The appellant has also been convicted under section 201, IPC but we do not find any evidence under Section 201, IPC and therefore, the accused is acquitted of that offence also. We therefore, allow the appeal, set aside the conviction and sentence imposed on the appellant under section 302 and 201, IPC. The appellant will be released forthwith.

2. We are very grateful to Mrs. S. Bhandare, who assisted us in deciding this appeal and she has drawn our attention to some vital circumstances which has found favour with us.

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