

Manguli Dei

Vs

State of Orissa

Criminal Appeal No. 439 of 1978

(B. C. Ray, N. D. Ozha JJ)

11.10.1988

JUDGMENT

RAY, J. –

1. This is an appeal against the judgment and order made by the High Court of Orissa convicting the appellant under Section 302 of the Indian Penal Code and sentencing her to imprisonment for life. She was also convicted under Section 201 of the Indian Penal Code but no separate sentence has been imposed on her for this offence.

2. The prosecution's case is that on February 19, 1973 at night the appellant along with Nilamoni Patra, brother of the deceased assaulted Rathia Patra, husband of the appellant as a result of which Rathia Patra succumbed to injuries. The dead body was buried in a room of the deceased's house in order to conceal the death. The FIR was lodged on March 1, 1973 by Laxman Behera, PW 1 in the was recovered on the basis of the information given by the appellant after digging out the earth from the room of the deceased house in the presence of the Tehsildar, PW 6. Thereafter, the post-mortem examination was held on the following day by PW 5, Dr. R. P. Choudhary. At the time of the post-mortem examination, the body was in a highly decomposed state. The appellant along with Nilmoni Patra was charged under Section 302 read with Section 34 of Indian Penal Code for committing the murder of Rathia Patra, husband of the appellant. They were further charged under Section 201 of the Indian Penal Code for dumping the dead body after digging out earth in a room of the house of the deceased in order to conceal the evidence of murder. Sarat Chandra Patra, brother of the appellant was also placed on trail on a charge under Section 201 of the Indian Penal Code.

3. There were only two eye-witnesses namely PW 3 and PW 4 who are the daughter and son respectively of the deceased, Rathia Patra. They, however, became hostile and did not support the prosecution case. The prosecution, however, relied on the judicial confession of the appellant, Ex. 15 recorded by First Class Magistrate in order to bring home the guilt of the accused-appellant. The learned Additional Sessions Judge acquitted all the three persons including the appellant of the said charges holding that the prosecution failed to prove that the accused Manguli or Nilmoni Patra caused the death of Rathia Patra and it was therefore, held that Manguli and Nilamoni did not commit the offence of murder under Section 302 IPC read with Section 34 IPC. The learned Additional Sessions Judge further held that though the dead body was brought out after removing the earth from the bedroom of the deceased, Rathia Patra on the information given by the appellant, there was no evidence to prove that the dead body was buried by the appellant, Manguli in order to conceal the evidence of murder. It was also held by referring to the evidence of PW 5, the doctor who conducted the post-mortem over the dead body and who stated that there was only one cut injury which was simple, that the death of the deceased was not homicidal and all the accused

persons were acquitted. Against this order of acquittal Criminal Appeal No. 57 of 1975 was filed by the State in the High Court of Orissa. On July 11, 1978 the High Court on a consideration of the circumstances especially the judicial confession (Ex. 15) made by the accused before a First Class Magistrate held that the offence of committing murder by the appellant was proved as the confession was inculpatory in nature. It was also held that in view of the confessional statement that the accused snatched the axe from the deceased while he was chasing to kill her, there was no apprehension of safety of the accused and the plea of self-defence in giving the fatal blows on the person of the accused was not available to the accused Manguli and the finding of the trial court to the effect was erroneous. The confessional statement was held to be correct inasmuch as the dead body was recovered from the bedroom of the deceased after removing the earth on the information of the appellant. The court also found that the dead body was recovered after 10 days and as it was in a highly decomposed state the marks of injury were not clearly visible. In such circumstances the post-mortem report was not relevant. The High Court, therefore, held that the crime of murder was proved against the appellant and she was convicted under Section 302 of the Indian Penal Code and was sentenced to rigorous imprisonment for life. She was also convicted under Section 201 of the Indian Penal Code but no separate sentence was imposed on this account.

4. It is against this order that instant appeal has been filed. In this appeal two contentions have been advanced on behalf of the appellant. It was strenuously contended that in the first place the evidence of doctor PW 5 who held the post-mortem on the dead body states about only one injury which was simple. This medical evidence is contrary to the judicial confession (Ex. 15) recorded by the First Class Magistrate wherein it has been stated that four strokes were given by axe on the head of the deceased by the appellant, Manguli. So the confessional statement should not be relied upon coming to a finding that the appellant committed murder of her husband, Rathia Patra, since deceased. It should be held that the death of Rathia Patra was not homicidal. It was secondly urged before us that considering this aspect of the case the appellant should not be convicted under Section 302 IPC and she should be convicted at best under Section 304 (Part II) IPC. The sentence should be modified accordingly.

5. These submissions in our considered opinion are devoid of any merit. The confessional statement recorded by the First Class Magistrate has been rightly held to be correct inasmuch as in accordance with the statement the dead body was recovered from a room of the deceased's house after removing the earth on the pointing out of place by the appellant where the corpse was buried by the appellant herself. This dead body was recovered in the presence of PW 6, who is the Tehsildar. Secondly, the dead body was in a highly decomposed state as it was recovered after 10 days from the date of dumping the dead body under earth and as such the injuries on the dead body were not clearly visible and it is not possible for the doctor, PW 5 who held the post-mortem examination to see all the injuries on the person of the deceased. The evidence of the doctor was not very relevant in this connection as has been held by the High Court. Moreover, the confession made by the appellant incriminating herself clearly proved that the crime was committed by her. In such circumstances, the finding of the High Court convicting the appellant under Section 302 IPC is unexceptionable and the sentence of imprisonment for life was properly imposed on her. We do hope and expect that in consideration of the fact that the appellant is in jail for about 10 years and she was also under custody as an undertrial prisoner for some period, the State will consider the question of her premature release under the provisions of the Jail Manual if any such application is made by the accused-appellant. The appeal is therefore, dismissed.

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