

Ashok Kumar Barik

Vs

State of Orissa

Criminal Appeals Nos. 714 and 715 of 1991

(M. M. Punchhi, M. Srinivasan JJ)

05.11.1997

ORDER

1. A considerable part of the judgment under appeal has been written by the High Court in compassionate tones towards the appellant not for the purposes of the Court but for the State Government to step in and give some remission or reprieve to the appellant.

2. The broad facts are these :

The deceased was a young girl, aged about 17 years on the day of the occurrence. The appellant, a young bright student was engaged to be her private tutor. Parties belong to the same village, about 50 kms away from the town of Cuttack. Having been young, they fell in love with each other. Their respective parents/guardians individually sent them to Cuttack for further studies. Their affection with each other grew. When discovered, it became a sore point with the parents of the deceased because she was from a slightly higher class being goldsmith and the appellant was from an inferior class being barber. Their prospect of matrimony was thus out of the question due to the hard stand taken by the family of the deceased. It is in these circumstances that the appellant allegedly became frustrated which manifested in his wanting to kill his beloved. He took the opportunity on the fateful day when the deceased in the company of PW 3, her old maidservant and PW 5, her sister went out, to answer the call of nature, where the appellant pounced on her and inflicted on her extensive injuries with bhujali, a kind of axe, on the vital parts of her body which did not extinguish her life then. She was then taken to the hospital whereat she was attended to and referred to a larger hospital. She died 7 days after the date of the occurrence. This in a nutshell is the prosecution case.

3. At the trial, the prosecution mainly rested on the evidence of PWs 3 and 5 and the corroborative evidence of PW 8, the doctor who attended on the deceased and that of PW 13 who performed the post-mortem examination of the deceased. Relying completely on the statements of PWs 3 and 5, terming PW 3 as an independent witness, the Court of Session recorded conviction of the appellant under Section 304 Part I IPC and sentenced him to seven years' rigorous imprisonment. This verdict attracted cross-appeals before the High Court. The High Court altered the verdict establishing guilt of the appellant under Section 302 IPC and sentenced him to life imprisonment, leaving marks in the judgment that it was a case of compassion for the State Government to interfere and save the appellant from some of the rigours of law having regard to his humble background and his intelligence as a student and the achievement he had gained by successfully competing for a job.

4. Insofar as the merit of the matter is concerned, the evidence of PWs 3 and 5 stare hard at the appellant. The only comment which could be offered was that PW 5 being the sister of the deceased was interested and PW 3, an old servant of the house was a got-up witness. The latter comment, in our view, was totally misplaced because if there had been any need to bring any got-up witness then somebody else could have been put forth and not PW 3, who was an old woman with very ordinary intelligence. This is how she has been described by the High Court. The High Court has given good reasons for believing the evidence of these two witnesses and going through their testimony, we find that the High Court was right in relying on their word. On the other hand, it was contended that perhaps the parents of the girl had thought of finishing her because of the bad name she had brought to the family and that the appellant was nowhere concerned with it. This argument is that of utter despair. We see no reason why the parents of the girl should choose the cruel way of causing death of their daughter and then pass on the guilt to the appellant. Motive is established on account of frustration in love and, in our view, the appellant stands proved to be guilty. It is a miracle that the deceased survived for seven days after sustaining extensive injuries as deposed to by PWs 8 and 13. The nature and dimension of these injuries as also the manner in which they were inflicted prove beyond doubt that the intention of the appellant was to cause death of the deceased and nothing short of that. We, therefore, have no hesitation in confirming the views expressed by the High Court towards establishment of the guilt of the appellant.

5. Insofar as the recommendation made by the High Court to the State Government for showing some concession to the appellant towards remission or reprieve, we need hardly add anything thereto. It is for the State Government to consider the suggestion of the High Court in that behalf. This reaction of the High Court, in the facts and circumstances, is best appreciable at that level and we need not add a word thereto.

6. As a result, we find no merit in these appeals and the same are dismissed.