

ORISSA HIGH COURT

Rema Naik

Vs

State (Orissa)

Criminal Appeal No. 166 of 1963

(S. Barman and R.K. Das, JJ.)

06.05.1964

JUDGMENT

Das, J.

1. These four appellants have been convicted under Section 302/34, I.P.C., and sentenced to R.I. for life. They have further been convicted under Section 201, I.P.C.s but no separate sentence has been awarded for the same.

2. A boy named Teka died on 21-1-63. The four appellants along with some others including the deceased Dirima went to the cremation ground for burning the dead body of Teka. After cremating the dead body, according to some custom the accused persons took some Salap liquor at a short distance from the burning pyre. In course of drinking, appellant Rema blamed the deceased Dirima for his having killed the boy Teka by application of witch-craft, but the latter denied to have done so. Then accused Rema caught hold of the neck of Dirima and pushed him down, and assaulted him with a stone on his head and chest. The other three appellants also joined him in assaulting the deceased with stones as a result of which Dirims died on the spot. Thereafter the appellants burnt the dead body of Dirima also. P.W. 4 the sister of the deceased who had been to the cremation ground, witnessed the occurrence and when she raised a protest, she was assaulted by Rema, as a result of which she sustained some small injuries. P.W. 4 then lodged the F.I.R. (Ext. 3), and after investigation the accused persons were charge-sheeted and committed to the Court of Sessions, where they were convicted and sentenced as above.

3. Thirteen other accused persons were also placed under trial along with the present appellants, but the learned Sessions Judge acquitted them for want of sufficient evidence. Accused Rema Naik was further charged under Section 323, I.P.C., for having caused hurt to P.W. 4, Sambari Saurani, but was acquitted of that charge.

4. The four appellants made confession (Ext. 1 series) before a Magistrate, P.W. 2. Later on however, they resiled from the said confession and denied their guilt though they admitted to have gone to the cremation ground on the date of occurrence. Rema however admitted to have assaulted Dirima with stones as the latter threatened to assault him by a Kati held by him, and as

a result of the assault Dirima died.

5. In support of its case, the prosecution has relied upon the evidence of the two eye-witnesses. P.Ws. 4 and 5. P.W. 4 is the sister of the deceased and P.W. 5 is the brother of appellant Lau Saura, The prosecution also relied upon the retracted confessions of accused persons. There is no medical evidence as the dead body was burnt and was not available for post-mortem examination. Some half-burnt pieces of bones were however seized by the police from the place of burning and sent for medical examination, but the doctor P.W. 9 was unable to give any opinion on the same. It is significant that two pieces of stones were seized from the spot and sent to the Chemical examiner and human blood was detected on both.(After considering the evidence of eye-witness (P.W. 4), the judgment proceeded :)

6. Mrs. Patnaik, learned Counsel for the appellants, contended that this witness should not be relied upon inasmuch as she also made certain allegations against the accused Rema Naik for having assaulted her by means of a stone which was found to be untrue on medical examination as the doctor opined that the injury on P.W. 4 could not be caused by a stone as was alleged by her and the learned trial Court acquitted accused Rema Naik of the charge under Section 323 I.P.C., as the offence against him could not be made out. But the mere fact that accused Rema was acquitted for want of proof of the allegation of assault made by this witness is not enough to throw out her evidence in its entirety.

7. It was next contended that she being a witness who was declared hostile, her evidence should be rejected as a whole as the prosecution which called in the witness discredited her version. But it is well-settled by the authorities that the evidence of a hostile witness is not necessarily to be rejected either in part or in whole. A Full Bench of the Calcutta High Court in a case reported in *Profulla Kumar Sarkar v. Emperor*¹, held that the evidence of such a witness is not to be rejected either in whole or in part. It is also not to be rejected so far as it is in favor of the party which called in the witness, nor is it to be rejected so far as it is in favor of the opposite party. This was also the view expressed in a decision of the Patna High Court reported in *Sorai Sao v. Emperor*², P.W. 5 also was declared hostile. We have not the advantage of his evidence in the committing court as he was not examined there. At the trial. P.W. 5 sufficiently involved Rema Naik. According to him. he also went to the cremation ground to burn the dead-body of Teka. He also stated that the appellants and the others who had been to the cremation ground, after the cremation was over, took liquor at a place nearby and in course of that drink accused Rema charged the deceased for having killed Teka by means of witchcraft to which the deceased protested and there after he was assaulted with stones. At the trial he did not involve the other three accused persons, though he had done so in his statement before the I.O., which however cannot be used as a substantive evidence. A departure from that statement may at best discredit the witness. But one thing is clear from his evidence that these four appellants had been to the cremation ground, took liquor there and there was some altercation between Rema and Dirima in course of which the occurrence took place. Though he has not involved the other three accused persons except accused Rema, his evidence lends assurance to the truth of the basic facts of the prosecution story.

8. (After considering the evidence, the judgment proceeded) : P.W. 2 is the Magistrate who recorded the confession. From his evidence as also from the confessional statements (Ext. 2 series) it is pretty clear that the accused persons were given due warning and time for reflection and the Magistrate was satisfied that the confessions were made voluntarily. No doubt, the

confessions have been retracted. But it is clear from the confession that the accused persons categorically admitted therein to have participated in the assault on Dirima which resulted in his death. Thus, the confessions are self-inculpatory. There is no dispute about the position that the confession of one of the accused persons may be taken into consideration against the other accused persons if it fulfils the conditions laid down in Section 30 of the Evidence Act, one of the conditions being that the confession must substantially implicate the maker himself, to the same extent as the other accused persons against whom it is sought to be taken into consideration. The position, however, would be different where while making the alleged confession, an attempt is made by the maker of it to throw the blame on the other accused persons, making himself a mere unwilling spectator. (See *Balbir Singh v. The State of Punjab*³, In this case, it is clear from the confession of each one of these appellants that they have sufficiently involved themselves as well as the other co-accused in the crime. No doubt the confessions have been retracted and the learned counsel for the appellants argued that these being retracted confessions, each and every other circumstance mentioned in the confessional statements must be separately and independently corroborated. But this does not appear to be the correct position of the law. In a case reported in *Hemraj v. State of Ajmer*⁴, their Lordships held that it is necessary to emphasise that the rule of prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused persons in the crime must be separately and independently corroborated. It is well settled by authorities that a general corroboration of retracted confession so as to lend assurance to the Court of the truth of the facts stated therein is sufficient. In the present case, the presence of the accused persons at the spot of occurrence is not disputed, nor is the death of Dirima or the subsequent burning of his dead-body. The confessions are fully corroborated by the evidence of P.W. 4, and partly by the evidence of P.Ws. 5, 6 and 7. Thus it cannot be doubted that the prosecution has fully made out its case against the appellants that it were they who stoned the deceased to death in the manner alleged by it. It can not also be doubted that the appellants intended to cause the death of the deceased by dealing severe stone blows and have thus made themselves liable under Section 302/34 I.P.C. The conviction and sentence, passed upon the appellants under the above section must accordingly be maintained.

9. After killing the deceased the appellants burnt his dead body at the spot. Though some of them have pleaded that they had not the intention to conceal thy offence yet the only inference that can be drawn from the circumstances is that they did so with a view to screen the offenders from legal punishment. They have accordingly been rightly convicted under Section 201 I.P.C. though no separate sentence has been passed under this section. This decision of the learned trial Court does not call for any interference.

10. In the result, the order of conviction and sentence passed upon the appellants by the learned Sessions Judge is affirmed and the appeal dismissed.

Barman, J.

11. I agree.

Appeal dismissed.

Cases Referred.

¹ AIR 1931 Cal 401

² AIR 1930 Pat 247

³ AIR 1957 SC 216

⁴ AIR 1954 SC 462