

**HIGH COURT OF ORISSA,
CUTTACK**

JAIL CRIMINAL APPEAL No.17 of 2001

From the judgment dated 12.09.2000 passed by Shri S.K. Nayak, Additional Sessions Judge, Angul in S.T. No. 38-A of 1995/10 of 1998.

Sarat Chandra Sahoo Appellant

Versus

State of Orissa Respondent

For Appellant - Mr. Sangram Das

For Respondent - Mr. J.P. Pattnaik
Addl. Govt. Advocate.

PRESENT

**THE HON'BLE SHRI JUSTICE PRADIP MOHANTY
A N D
THE HON'BLE SHRI JUSTICE B.P.RAY**

Date of hearing & judgment : 22.01.2010

PRADIP MOHANTY, J. This Jail Criminal Appeal is directed against the judgment and order dated 12.09.2000 passed by the learned Additional Sessions Judge, Angul in S.T. No.38-A of 1995/10 of 1998 convicting the appellant under Section 302, IPC and sentencing him to undergo imprisonment for life.

2. Case of the prosecution is that on 03.01.1995 at about 1.45 P.M. the deceased was going with her brother to the school. On the way, the accused-appellant chased them and while running away the deceased fell down. The accused-appellant caught hold of her, assaulted her, made her naked and ultimately threw her into the well. Getting information, the father of the deceased reached at the well, but he failed to

save her daughter. Then fire brigade came and brought out the dead body of the deceased from the well. The police on being reported registered a case, took up investigation and after its closure filed charge sheet against the accused-appellant under section 302, IPC.

3. Plea of the accused is of complete denial of the allegation levelled against him.

4. In order to prove its case, prosecution examined as many as twelve witnesses including the doctor and the I.O., and exhibited nine documents. The defence examined none.

5. The trial court on conclusion of trial convicted the appellant under section 302, IPC and sentenced him to undergo imprisonment for life with the finding that the prosecution has proved that appellant has committed the murder.

6. Mr. Das, learned counsel for the appellant assails the judgment of the trial court on the following grounds

- (i) There are major contradictions in the evidence of P.Ws.1, 2, 3 and 8 and they are not only interested but also partisan witnesses.
- (ii) In absence of any motive and the fact that the appellant had not tried to run away from the scene of occurrence shows that the appellant was an insane, but the trial court illegally and arbitrarily did not extend the benefit of Section 84 of the Indian Penal Code to him.

7. Mr. Pattnaik, learned Additional Government Advocate vehemently contends that there is no illegality or infirmity committed by the learned Additional Sessions Judge in convicting the appellant under section 302, IPC. The evidence of P.Ws.1, 2, 3 and 8 is very clear, cogent and consistent. There is no material on record to disbelieve their evidence. From the evidence of P.Ws.2, 4 and 5, it is clear that at the time of occurrence the appellant was not an insane but was capable of knowing the nature of the act. Therefore, the trial court has rightly not extended the benefits of section 84 of the IPC to the appellant.

8. Perused the LCR. P.W.1 stated that when he was passing by the side of Langijoda U.P. School, on the road some children of

the said school came running from the line and when he enquired from them as to why they were running away, they gave out that they were chased by Sarat (accused) and he also found that one girl Nandini had fallen down on the road being chased by the accused and the accused was assaulting her by means of a stick. He also stated that the appellant was dragging away the deceased towards his house. Seeing that he went to the school and when he was in the school he heard that accused Sarat had killed the deceased and threw her into a well. Nothing has been elicited through cross examination to disbelieve his testimony. However, this P.W.1 in cross-examination has admitted that in that area people called the accused as "Sarat Baya". P.W.2 is the aunt of the accused. She stated that she saw the accused dragging one girl holding her hands towards his bari side and thereafter she came to know that the girl died in the well of the accused. In cross-examination, she specifically stated that children at times irritated the accused calling him as 'Baya'. But she never knew that this accused was an insane and had ever chased anybody to assault as because they irritated him calling 'Baya'. Except this, nothing has been elicited through cross-examination to discredit her testimony. P.W.3 is the brother of the deceased and a witness to occurrence. He has been examined as a child witness. He stated in his examination-in-chief that on the date of occurrence after taking food he himself, his sister (deceased) and younger brother Nabaghana returned to the school. On the way to the school, accused chased them. They started running away and his sister (deceased) fell down while trying to run away. The accused caught hold of her and assaulted her by a stick. Thereafter, the accused dragged her forcibly to the well, made her naked and catching hold of her both legs dashed her against the wall and at last threw her into the well. In cross-examination although at first he admitted that people called accused as "Sarat Baya" in the locality, subsequently he denied to have knowledge if accused is insane or mad and that he had ever assaulted or chased anybody earlier. Evidence of P.W.3 is corroborated by P.Ws.1 and 2 with regard to accused's chasing and dragging the deceased towards his bari side. P.W.4 is the father of the deceased as well as the informant. He is a post occurrence witness. He has stated in his evidence that when he heard the incident from P.W.3, he and his wife went to the spot,

i.e., the well of this accused. By that time many people had gathered there. His nephew and others tried to bring his daughter from the well but could not succeed. On being intimated fire brigade came and brought out his daughter from the well but by that time she was dead. Thereafter, he reported the matter to Talcher Police Station. In cross-examination he admitted that he had no enmity with the accused. Nothing has been elicited through cross examination to discredit his evidence. P.W.5 is the seizure witness. P.W.6 is the I.O. who investigated into the matter, issued the dead body challan, prepared the inquest report and submitted charge sheet against the appellant. In cross-examination he admitted that he had not got any sign of insanity in the accused during the course of investigation. P.W.7 is a post-occurrence witness. He stated that he heard the incident from Nabaghana (P.W.8), another brother of the deceased. P.W.8 stated that when he, his elder brother and deceased sister were returning to the school after taking their meal through the path leading to their school, which run through the bari of the accused, they saw the accused chasing two boys. Seeing that, they also started running with apprehension that the accused might assault them. On account of obstruction by the wearing shirt of his sister, she fell down on the ground. In the meantime, accused caught hold of her, assaulted her, dragged her and threw her into his well. Immediately he reported this incident to his mother and also raised hullah near the spot. There is no material before this Court to disbelieve the evidence of P.W.8, rather he corroborated the testimony of P.W.3 in all material particulars. P.W.9 is a co-villager and a witness to the inquest. P.W.10 is the aunt of the deceased and a post occurrence witness. P.W.11 is the doctor who examined the accused. P.W.12 is the police officer who received the F.I.R. and registered the case. Evidence of P.Ws.1, 2, 3 and 8 shows that the appellant caught hold of the deceased, dragged her and threw her into the well, as a result of which she died. There is no material before this Court to discredit the evidence of the above witnesses. It is true that there are some contradictions in the evidence of the above witnesses, but those are minor and immaterial.

9. It is to be next seen if the appellant is entitled to get the benefit of section 84 IPC. In order to get the benefit of section 84 IPC, the onus is on the appellant to prove that the act was done by him while he was

insane or unsound of mind. The appellant has not adduced any evidence to prove that he was insane at the time of occurrence. On the other hand, it was brought out from P.W.2 in the cross-examination that accused was not insane. P.W.4 also admitted in cross-examination that appellant was in perfect mental condition and was doing the household work as well as working as a labourer. The evidence of these witnesses shows that the accused was not an insane. Therefore, the benefit of section 84, IPC cannot be extended to the appellant.

10. Let us now examine whether by the act committed the appellant is liable for the offence under section 302, IPC or section 304 Part-I, IPC. In cross-examination P.W.2 has specifically stated that the children at times irritated the accused calling him as 'Baya'. P.W.3 in cross-examination has also admitted that people called the accused as Sarat Baya in the locality. In view of this evidence, it can be safely concluded that the appellant caught hold of the deceased, assaulted her and threw her into the well as the children irritated him. Taking an overall view of the fact situation, this Court is satisfied that the appellant is guilty of committing an offence under Section 304 Part-I, IPC. Accordingly, conviction of the appellant under Section 302, IPC is converted to one under Section 304 (Part-I) IPC and he is sentenced to undergo rigorous imprisonment for ten years.

It is stated by Mr. Das that the appellant has remained in custody for more than fifteen years. If that be so, the appellant Sarat Chandra Sahoo be set at liberty forthwith, unless his detention is required otherwise.

11. The Jail Criminal Appeal is allowed in part.

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Pradip Mohanty, J.

B.P.RAY, J. I agree.

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B.P.RAY, J.

*Orissa High Court, Cuttack
Dated the 22nd. Jan., 2010/Routray*