Sonia Bahera vs State Of Orissa on 4 January, 1983

Equivalent citations: AIR1983SC491, 1983CRILJ829, 1983(1)SCALE712, (1983)2SCC327, AIR 1983 SUPREME COURT 491, 1983 (2) SCC 327, 1983 CRILR(SC MAH GUJ) 262, 1983 UJ (SC) 536, 1983 UP CRIR 536, 1983 MADLJ(CRI) 503, 1983 CRIAPPR(SC) 205, 1983 SCC(CRI) 444, 1983 SC CRIR 279, (1983) 1 CRILC 565, (1983) 1 SCJ 346, (1983) CHANDCRIC 58, (1983) 56 CUT LT 311

Bench: E.S. Venkataramiah, R.B. Misra

JUDGMENT

Venkataramiah, J.

1. This appeal is filed against the judgment of the High Court of Orissa convicting the appellant of an offence under section 302 I.P.C. and imposing the sentence of imprisonment for life after reversing the judgment of acquittal passed by the learned Sessions Judge who tried the case. The prosecution alleged that the appellant had committed the murder of one Tanguru Behere at about 8.00 A.M. on January 31,1969 by attacking him with an axe. The prosecution principally relied upon two pieces of evidence in support of its case, namely the evidence of two eye witnessesBhagabat (P.W. 1) and Rosani (P.W. 2) and the extra judicial confession said to have been made by the appellant before Maikanda (P.W. 3) and Jatia (P.W. 5). They also relied upon two other circumstances, namely the recovery of an axe (M.O. 1) on the basis of the statement made by the appellant and the blood stains which were found on the clothes of the appellant. The learned Trial Judge disbelieved the evidence of P.Ws. 1 and 2 and found that it was not possible to record a conviction on the basis of the material relied on by the prosecution. Accordingly he acquitted the appellant. Aggrieved by the judgment of the learned Sessions Judge, the State Government took up the matter in appeal. The High Court, as stated earlier, reversed the judgment of acquittal passed by the Trial Court and convicted the appellant of an offence punishable under Section 302 I.P.C. and imposed the sentence of imprisonment for life. We have been taken through the record by Shri Raghunath Singh who has appeared as an Amicus Curiae. We thank him for the assistance given by him in this case.

2. The incident in question, according to the prosecution, took place at about 8.00 A.M. on January 31, 1969 at a place which was near the village Talpada, PWs. 1, 2, 3 and 5 belong to the village Talpada. They all knew the deceased. The first information was given by P.W. 3 Markanda at about 4.00 P.M. on February 1, 1969. According to the first information, P.W. 3 came to know of the fact that the body of the deceased was lying at Jodi Daber, a little away from his village from his son on the morning of February 1, 1969 and then after going to the place where the dead body was lying, he went to the police station and lodged the information at about 4.00 P.M. P.W. 3 stated before the

police that he suspected the appellant as the person who was responsible for the unnatural death of the deceased as the appellant, who was a washerman had stated twice before that he was suffering because the deceased who was also a washerman was washing the clothes of the villagers of Kanji Pani village which was his village. Curiously even though he had no idea of the weapon that was used for killing the deceased, he stated in the first information that an axe which belonged to him was missing from his house for about 4 days. It may be stated here that the case of the prosecution is that the axe (M.O. 1) which was used in the commission of the offence belonged to P.W. 3. After the receipt of the first information the police went to the place of occurrence and examined some persons in the course of investigation. P.Ws. 1 and 2 were no doubt amongst the persons who were examined by the police. P.W. 1 who stated before the Court that he had seen the appellant attacking the deceased with an axe in the morning of January 3), 1969 did not disclose that such an incident had taken place to anybody on that day. He further stated that he disclosed the facts relating to the occurrence to Baneswar Pradhan and Kandunia Pradhan in the morning of February 1,1969. Baneswar Pradhan and Kandunia Pradhan have not been examined in this case. P.W. 2 Rosani is the wife of P.W. 3 Markanda who gave information to the police. She no doubt stated before the Court that she was present at the time of occurrence and saw the appellant attacking the deceased. She too did not disclose that such an incident had taken place to anybody in the village. Her husband, according to her, returned to the village on the next day from a place called Gonasika to which he had gone earlier. She did not tell him that such an incident had taken place after his return on the next day, and according to her she did not mention the fact to him out of fear. She further stated that about 4 days prior to the occurrence of. the incident the appellant had taken the axe (M.O. 1) from her house and had not returned it. P.W. 3 Markanda, as mentioned earlier, came to know about the death of the appellant from his son. He admitted that the axe (M.O. 1) belonged to him and that it was missing from his house for about 4 days prior to the date of occurrence. He also says that he asked both Jatia (P.W. 5) who had accompanied him to the police-station when he gave the information about the incident and also the appellant and that both of them had denied having taken the axe from his house. The reference to an axe belonging to P.W. 3 in the first information assumes importance in this case in assessing the evidence of the P.Ws and in particular of P.Ws 2 and 3 because that was a weapon belonging to them. Ordinarily one would expect that the person who is the owner of the weapon that is used in committing a crime would be suspected or would be associated with the crime. P.W. 3 as mentioned earlier even in the statement which he made before the police when he gave the first information specifically referred to the missing of M.O. 1 from his house even though he had no idea of the particular weapon that had been used for killing the deceased. If P.W. 3:Markanda was really upset on account of the missing of the M.O. I he would normally first enquire the members of his house-hold including his wife P.W. 2 as to what had happened to it. While. P.W. 2 stated that the appellant had taken it from her house and had not returned it, P.W. 3, stated that he had no idea about the Whereabouts of the axe. Introduction of the story about the missing axe into the first information creates a good deal of suspicion about the truth of the prosecution case. The prosecution further relied upon the extra judicial confession stated to have been made by the accused to P.W. 3 Markanda and P.W. 5 Jatia. The extra judicial confession is stated to have been made by the appellant after their return from the police station. The police do not appear to have examined P.W. 5 after the alleged extra judicial confession was made. This appears to be so, although the High Court has taken a contrary view on this question, from the deposition of P.W. 5 in which he stated in answer to a question put by the Court that he

was not examined by the police in the village after he returned from the police station. We are, of the opinion that the extra judicial confession stated to have been made by the appellant in the circumstances of this case, was rightly rejected by the Trial Judge and the High Court was not right in relying upon it as a circumstance against the appellant. In view of what has been stated earlier, the recovery of M.O. 1 pursuant to a statement made by the appellant loses all importance in this case when it is admitted that M.O. 1 belonged to P.Ws. 2 and 3 and not to the appellant. The evidence of the so called eye witnesses P.W. 1 and P.W. 2 is discrepant as pointed out by the Sessions Judge. Their conduct in not telling anybody about the incident on the dale of the incident also makes their evidence not worthy of. acceptance. The other material before the Court is not sufficient to hold the appellant guilty. This was not a case in which it could be said that the appreciation of evidence by the Sessions Judge was either perverse or that only one opinion, namely, that the appellant was guilty of the offence was possible. In these circumstances, the High Court was in error in reversing the judgment of acquittal recorded by the Trial Court. We, therefore, set aside the judgment, conviction and sentence passed by the High Court and restore the judgment of acquittal passed by the Trial Court.