

Beti Padia vs State Of Orissa on 20 February, 1981

Equivalent citations: AIR1981SC1163, 1981CRILJ626, 1981(SUPP)SCC9, 1981(13)UJ319(SC), AIR 1981 SUPREME COURT 1163, 1981 CRIAPPR(SC) 245, 1981 SCC(CRI) 607, 1981 UJ (SC) 319, (1981) 52 CUT LT 174

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Bench: Baharul Islam, O. Chinnappa Reddy

JUDGMENT

Baharul Islam, J.

1. This appeal by special leave is directed against the judgment of the Orissa High Court convicting the appellant under Section 302 and sentencing her to undergo imprisonment for life. The co accused Kunja Ulla was acquitted. The acquittal of Kunja Ulla was maintained by the High Court.

2. The material facts are that on 28-9-1970 at about 7.00 p.m., the appellant and the co-accused Kunja Ulla came to the residence of Beti Adama (deceased; and committed assault on him with a Pirah. Besi Adama died instantaneously. Her brother P.W. 4 lodged the First Information Report on 30-9-1970 at about 6 00 pm at Motu Police Station at a distance of about 45 kilometers from the place of occurrence. Police registered a case and after investigation submitted charge-sheet against the appellant and Kunj a Ulla.

3. In support of the case, the prosecution examined nine witnesses including the Medical Officer who held post-mortem examination, P.W 8, a constable and P.W. 9 the Investigating Officer. Amongst them P.Ws. 1 & 2 were said to be the eye witnesses. In addition to their evidence, the prosecution relied on the extra judicial confessions alleged to have been made by the appellant before P.Ws 1, 4, 6 and 7 and the circumstantial evidence afforded by the seizure of blood stained material objects I to IV. P.W. 3 who held the post-mortem examination on the dead body of Beti Adama found the following injuries :

1. One punctured wound almost circular in nature measuring 21/2"x 11/2" on the right side of the face touching the right angle of the eye with everted irregular and lacerated edges exposing the fractured right zygomatic bone.

(II) A round green swelling (bruise) over the back of the head almost in the middle of occipital region, measuring 2"x11/2".

(III) Five abrasions dark brown in colour the right side of the abdomen.

He further deposed :

On dissection of injury No. (1) bleeding of the underlying tissues and fracture of the right maxillary bone and dislocation of the right upper two premolar and canine teeth were noticed. The doctor also found that there was crushing off of the parotid gland with its embedded right external carotid maxillary and temporal arteries were torn and mouth was seen jammed up with blood clots and broken pieces of bones. On further dissection, a transverse crack of 11/2" length was noticed over the squalors part of the right temporal bone. Internal examination of injury No. (ii) revealed severed effusion of blood into the underlying tissues. On opening of the vault the brain substance along with its membranes were found liquified. In the doctor's opinion the injuries were *antimortem* in nature and the death was due to shock and profuse haemorrhage resulting from external injury No. (i) with the corresponding internal injuries.

In his opinion injury No. 1 was fatal and death was instantaneous. He also opined that injury No. 1 might have been caused by a wooden seat like material object III and injuries No. 2 & 3 might have been caused by hard wooden substance like material objects I & II.

4. The learned Sessions Judge acquitted the appellant on a benefit of doubt and acquitted Kunj a Ulla as, according to him, there was no evidence against him. The State of Orissa preferred an appeal before the High Court which set aside the judgment and order of acquittal as against the appellant, and convicted and sentenced him as aforesaid.

The High Court has carefully considered the direct evidence on P.W. 1 P.W. 2. In addition it has also considered the extra judicial confession made by the appellant before P.Ws. 1, 4, 6 and 7 and the circumstantial evidence afforded by the material object seized by the Investigation Officer. The High Court has not accepted the evidence of P.W. 2 as it found that P.W. 2 was called to the place of occurrence by her mother (P.W. 1) after the assault. It has accepted, in our opinion for valid reasons, the evidence of P.W. 1. The material object III was found lying near the dead body where from it was seized by the police. On chemical examination blood was detected on it although the amount of blood was not considered sufficient for stereological test. The material object IV which was a blood stained napkin was seized from the house of respondent No. 1. On chemical examination and serological test human blood was detected on it. The appellant did not furnish any explanation as to how his napkin was found with human blood. He did not deny the seizure of material object IV from his house. Material object IV has also been proved by P.Ws. 5 and 9 to have been seized from the house of the appellant. It was stained with blood at the time of seizure. There was no explanation from the appellant about incriminating circumstances appearing against him.

5. Learned Counsel appearing for the appellant has pointed some discrepancies in the evidence of P.W. 1. In our opinion the discrepancies pointed out are minor and nominal. It may be remembered that P.W. 1 was an unsophisticated Adivasi woman. The High Court was justified in accepting her evidence. We do not find any valid reason to differ with the High Court.

6. This appeal has no force and is dismissed.