State Of Orissa vs Mr. Brahmananda Nanda on 31 August, 1976

Equivalent citations: AIR1976SC2488, 1976CRILJ1985, (1976)4SCC288, 1976(8)UJ754(SC), AIR 1976 SUPREME COURT 2488, 1976 UJ (SC) 401 1976 UJ (SC) 754, 1976 UJ (SC) 754

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Bench: P.N. Bhagwati, S. Murtaza Fazal Ali

JUDGMENT

P.N. Bhagwati, J.

1. This appeal by special leave is directed against a judgment of the High Court of Orissa acquitting the respondent of a horrendous crime in which six persons, close relatives of the respondent, were done to death. The respondent was convicted by the Additional Sessions Judge, Dhankenal and sentenced to death, but on appeal the conviction and sentence were set aside and the respondent was acquitted. The question in this appeal is : whether the acquittal of the respondent is justified or it must be set aside and the conviction and sentence imposed on the respondent restored.

2. The entire prosecution case against the respondent rests on the oral evidence of Chanchala (PW. 6) who claimed to be an eye-witness to the murder of Hrudananda, one of the six persons alleged to have been killed by the respondent. The learned Additional Sessions Judge believed her evidence, but the High Court found it difficult to accept her testimony. The High Court has given cogent reasons for rejecting her evidence and we find out selves completely in agreement with those reasons. We have carefully gone through the evidence of this witness, but we do not think we can place any reliance on it for the purpose of founding the conviction of the respondent. The evidence suffers from serious infirmities which have been discussed in detail by the High Court. It is not necessary to reiterate them, but it will be sufficient if we refer only to one infirmity which, in our opinion, is of the most serious character. Though according to this witness, she saw the murderous assault on Hrudananda by the respondent and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of 13th June, 1969 and yet she did not come out with the name of the respondent until the morning of 15th June, 1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than 15th June, 1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the Club House which was just opposite to the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection

with the case and had also visited her house on 14th June, 1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to A.S.I. Madan Das and should have waited till the rooming of 15th June, 1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of witness. The High Court has also given various other reasons for rejecting her testimony and most of these reasons are, in our opinion, valid and cogent. If the evidence of this witness is rejected as untrustworthy, nothing survives of the prosecution case.

3. The prosecution also relied on an extra-judicial confession alleged to have been made by the respondent, but both the learned Additional Sessions Judge and the High Court were not impressed by it. We need not, therefore, dwel on it any longer. The recovery of the tangia was also relied upon on behalf of the prosecution, but, for reasons given by the High Court in its judgment this evidence cannot avail the prosecution. It is true that the relations between the respondent and his father Nityananda were a little strained, but that could not possibly furnish an adequate motive for this terrible exhibition of violence.

4. The High Court has in an admirably clear and lucid judgment discussed the entire evidence led on behalf of the prosecution and shown its inadequacy to establish the charge against the respondent. We see no reason to interfere with the reasoning of the High Court and express our approval of it.

5. We accordingly confirm the acquittal of the respondent and dismiss the appeal.