

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
PARASURAM NAIK

DATE OF JUDGMENT: 21/08/1997

BENCH:
M.M. PUNCHHI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This criminal appeal by Special Leave is filed by the State of Orissa challenging the judgment and order of acquittal dated 31.7.84 passed by the High Court of Orissa. The respondent/accused was put up for trial for an offence punishable under Section 302 IPC for committing the murder of his wife, sarita Sahu. The Sessions court accepted the evidence of dying declarations led by the prosecution being trustworthy and accordingly convicted the respondent under Section 302 IPC and sentenced him to suffer life imprisonment. the respondent preferred an appeal to the High court of Orissa which was allowed by the Learned Division Bench of the Said High Court holding that the prosecution evidence is not sufficient to hold the respondent guilty of an offence punishable under Section 302 IPC for committing the murder of his wife. It is this order of the High Court dated 31.4.84 which is the subject matter of challenge before us.

(2) It was alleged by the prosecution that on the fateful night of September 19, 1979 when Sarita Sahu (since deceased) was sleeping with her mother Balmsti Sahuani (P.W.4) in the other varandah of their house in village Bilaigarh, Distt. sundargarh, the respondent poured petrol on the body of his wife, sarita Sahu and lit the fire. Bhadra Sahu, the father of Sarita who was sleeping nearby in the same varandah woke up and when the saw the blaze of fire he called his wife. It was then noticed that Sarita Sahu was completely burnt. She was then taken to the Laing primary Health Centre where she succumbed to the burn injuries during the same night. The first Information Report came to be lodged. After completing the necessary investigation the respondent was put up for trial for an offence punishable under Section 302 IPC.

(3) The respondent denied the charge and pleaded that he is innocent and he has been falsely implicated in the present crime.

(4) At the outset it may be stated that there is no eye witness to the occurrence. The prosecution mainly relied upon the evidence of oral dying declaration which was

alleged to have been made by Sarita sahu to her mother Balamati Sahuani (P.W.4) and her elder sister, Malati Sahuani (P.W.5). It is alleged that Sarita also made a dying declaration which was recorded by Dr. Premananda Pattanaik (P.W.1).

(5) It may be stated that the factum of death of Sarita Sahu was not challenged before the courts below Sarita sahu Was not challenged before the courts below as well as in this court. Dr. Premananda Pattanaik (P.W.1) noted as many as five injuries on the dead body of Sarita Sahu and opened that she died because of extensive burn injuries. We however see no reason to interfere with the said finding .

(6) Coming to the complicity of the respondent in the present crime as stated earlier the prosecution mainly relied upon the alleged dying declarations made by her to her mother, Balmati Sahuani (P.W.4) and sister, Malati Sahuani (P.W.5) . The High Court after careful Scrutiny of the evidence did not find the same as credible one and , therefore, held that it could not be the basis of conviction of the respondent. We have also gone through the evidence of both these witnesses and are satisfied that the said evidence does not insoire confidence in us to accept it to be credible. It is the prosecution case that during the dead hours of the night the occurrence took place when Sarita Sahu, her mother and father were fast asleep the father of Sarita Sahu (now dead) when got up, he saw the blaze of fire and called his wife, Balamti Sahuani (P.W.4). It is true that P.W.4 asserted in her evidence that she saw the accused when she got up but, however her statement does not inspire confidence in us. Both these witnesses asserted that Sarita Sahu told them that accused had poured petrol and set her on fire. It is difficult to accept the evidence having regard to the extensive burn injuries sustained by Sarita Sahu who died during the same night. If the evidence of these two witnesses is left out then the story of the prosecution as regards the alleged oral dying declaration disappears . Coming to the dying declaration (Ext. 4) recorded by Dr. Premananda Pattanaik (P.W.1) we find that he has admitted in HIS evidence that when Sarita Sahu was brought to the dispensary she first was given an injection and thereafter her statement was recorded. He further stated that she was conscious at that time. He also admitted that she died within 15 minutes after recording her dying declaration . It is relevant to not trat Dr. Premananda Pattanaik (P.W.1) has not certified that she was in her full senses and was medically fit to make a statement although he had certified that she was conscious. Having regard to the fact that she had sustained extensive burn injuries and died within 15 minutes immediately after recording the statement, it appears to us that she might not be in a proper and fit condition to make a statement as regards her cause of death. The High Court did not feel it safe to rely pool the dying declaration (Ext. 4) recorded by Dr. Prumananda Pattanaik (P.W.1). Having regard to the facts and circumstances of the case we also do not think it safe to rely upon the dying declaration (Ext.4) . the view taken by the High Court cannot be said to be unreasonable one. In the result the appeal fails and the same is dismissed.