

ishwar Murmu Vs. State of Bihar

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Court : Patna

Decided On : Feb-14-2000

Judge : D.P.S. Choudhary, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Appeal No. 154 of 1996

Appellant : ishwar Murmu

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Bihari Prasad, A.P.P.

Advocate for Pet/Ap. : Pramod Kumar Sinha, Rakesh Kumar Sinha and Arbind Kumar Sharma, Advs.

Disposition : Appeal allowed

Prior history : D.P.S. Choudhary, J. 1. This criminal appeal is directed against the judgment and order dated 7th June, 1996 passed by 5th Additional Sessions Judge, Dumka in Sessions Trial No. 141/83 of 1995 whereby the Court below has convicted the appellant under Section 304, Part II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years. 2. In brief, the prosecution case is that on 16-3 1995 (Tuesday), Md. Khusro Ansari (P.W 8) who is local Sardar of the village Gando,

Judgement :

D.P.S. Choudhary, J.

1. This criminal appeal is directed against the judgment and order dated 7th June, 1996 passed by 5th Additional Sessions Judge, Dumka in Sessions Trial No. 141/83 of 1995 whereby the Court below has convicted the appellant under Section 304, Part II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

2. In brief, the prosecution case is that on 16-3 1995 (Tuesday), Md. Khusro Ansari (P.W 8) who is local Sardar of the village Gando, district-Dumka, received an information that at village Mayurnacha, one Nayan Murmu had been murdered. He went to that village and found the dead body of Nayan Murmu lying in the verandah of his house. He also found some of the villagers had tied up accused Ishwar Murmu with a rope. He was informed by the villagers that accused Ishwar Murmu has murdered his father Nayan Murmu and had confessed his guilt before them. P.W. 8 the village Sardar brought the accused to the local Police Station and made written report (Ext. 2). On the basis of that report, the case was registered and the formal FIR (Ext. 3) was drawn up. After commitment the trial Court proceeded in the case. During the investigation of the case, the Investigating Officer, visited the place of occurrence, prepared the inquest report (Ext 4) on the dead body of Nayan Murcnu and sent the body for Post Mortem examination. He recorded the statements of the villagers including that of the informant and the accused.

3. The case of the defence is that accused being the only son of the deceased, had neither any motive nor any occasion to kill his father. His father was employed in the Government job and was maintaining the accused and the family members. The accused was dependent on the earning of his father. Therefore, he could not have derived any benefit with the murder of his own father. It is further case of the defence that the Gotias of the deceased had murdered Nayan Murmu and implicated his only son in the case in order to grab his properties.

4. The prosecution examined 11 witnesses out of which P.W. 2 SuniRam Murmu, P.W. 3 Sarvil Murmu, P.W. 4 Lakhu Kisku, P.W. 6 Marsila Tudu and P.W. 11 Mirza Tudu have been tendered by the prosecution for cross-examination.

5. P.W. 9, Sushil Marandi, conducted the post-mortem examination on the dead body of deceased-Nayan Murmu. His post-mortem report is Ext. 8. He found the following ante-mortem injuries on the deceased :

(i) Abrasion 1' x 1' over the fore-head (left).

(ii) Abrasion 1' x W over the Zygomatic bone and

(iii) Diffuse swelling with ecchymosis over the front of the neck.

On dissection, the doctor found fracture of 2nd to 5th rings of trachea with blood clots present in the tracheal ring, larynx, pharynx and oesophagus were also found congested. The doctor found rigor mortis present. The mouth was found closed but the tongue was clinched between both jaw & teeth. The face was slightly swollen. In the opinion of the doctor, the death of the deceased had been caused as a result of asphyxia, due to strangulation, i.e. injury No. (iii) which was possible by throttling. He further opined that injury Nos. (i) and (ii) were caused by some hard blunt substance. The time elapsed since death was within 48 hours. He conducted the post-mortem on 17-3-1995 at 10.30 a.m. The doctor negated the suggestion of the defence that injuries found on the deceased may be caused by fall in a dried well in state of drunkenness. From the evidence of the doctor, it was a case of homicide.

6. P.W. 1 Som Murmu is the brother of the deceased. He stated that he heard the cry of the wife of the accused in the night and on inquiry, she told him that her father-in-law had died. He went inside the room and saw the deceased lying dead and also found marks of violence on his neck and throat. He did not find the accused in the house. P.W. 1 informed P.W. 8, the village Sardar about the occurrence. He stated that the accused was caught hold by the villagers and was tied with a rope and before the villagers included him, he made confession stating that he has killed his father. P.W. 10 Govind Murmu has testified that the accused

had confessed before him and other villagers that he had killed his father Nayan Murmu. Similar is the evidence of P.W. 5 Surendra Kisku and P.W. 7 Munshi Murmu. They stated that the accused made confession before them that he had killed his father.

7. After considering these evidences, the Court has come to the finding that the extra-judicial confession made by the accused before the villagers, is reliable and cogent and on this basis and also considering other circumstances, convicted the appellant under Section 304, Part II of the Indian Penal Code. The accused was charged under Section 302 of the Indian Penal Code but the trial Court has come to the finding that the prosecution has not succeeded in establishing that accused had caused the death of his father with an intention of causing death or in such manner as contemplated under Section 300 of the Indian Penal Code so as to make him liable for the offence of murder. The Court has come to the finding that due to physical assault (mara-mari) at the hands of the accused, he has caused injuries to his father though he had no intention to cause death.

8. It was submitted on behalf of the appellant that admittedly there is no eyewitness of the occurrence and the entire case is based on circumstantial evidence and the alleged extra-judicial confession made by the accused before some of the P.Ws. who are villagers. The learned lawyer submitted that the facts and circumstances of the case do not conclusively lead to conclusion pointing the guilt of the accused beyond all reasonable doubt. Nowhere in the prosecution case, the motive of murder has been either alleged or proved. The prosecution has remained silent on this important and vital ingredient to prove the guilt against the accused. On the other hand, the circumstances are such which create a doubt that the accused had committed the murder of his own father. It is admitted fact that he is the only son of the deceased. The deceased was employed in a Government job. He was maintaining his family members including the accused. The accused was not employed anywhere. As such, he was dependent of his father for his livelihood. His father had some landed property as stated by P.W. 1. He was the only heir of his father. With the death of his father, the accused was neither to get any monetary benefit nor any advantage. On the other hand, he was to lose his means of livelihood leading to his starvation. Therefore, apparently,

there was no motive on the part of the accused to commit the murder. On the other hand, the Gotias of the deceased including P.W. 1 would derive benefit from the properties of the deceased, if his only heir, that is, the accused, is sent to jail custody and with this motive, with the connivance of P.W. 1, the accused has been implicated.

9. Learned appellant's lawyer submitted that P.Ws. 1, 6, 7, 8 and 10 have stated that accused made extra-judicial confession before them but careful scrutiny of their evidences show that they are not reliable witnesses as (i) they have not reproduced the exact words, if any uttered or spoken before them by the accused, (ii) it does not contain the details of the manner of the death of the deceased and (iii) they have not stated that accused disclosed any motive or reason before them for killing his own father.

10. These three factors were important because if the deceased had made extra-judicial confession before these witnesses, he must have disclosed the manner of and motive of the murder of his father. The learned lawyer further submitted that P.W. 1 stated that at the time of making extra-judicial confession other witnesses, namely, Lakhu Kisku, Mangal Hansda and Nibha Murmu and others were present. But surprisingly, Lakhu Kisku (P.W. 4) has not stated that such confession was made by the accused in his presence. The other two witnesses have not been examined by the prosecution nor there is any explanation for the same. Thus, the evidence of P.W. 1 on this point, has not been corroborated by any evidence, much the-less, by P.W. 4. P.W. 8 who is village Sardar stated that when the villagers brought the accused before him after tying with a rope, he had confessed that he has killed his father in the night of 15-3-1995 but this confession before him is not admissible as being village Sardar, he is a public servant. The learned lawyer further submitted that P.W. 7 admitted that his evidence was not recorded by the police during the course of investigation and for the first time, deposed in the Court. In this view of the matter, the evidence of P.W. 7 should not be considered. P.W. 6 stated that . when this accused was brought before him and made confessional statement, he himself was drunken and he could not say who others were present there. As such, it is not safe to rely on the evidence of P.W. 6. This part of the evidence that all these witnesses were drunken on that day, as it

was Holi festival, finds support from the evidence of P.Ws. 7 and 10 also. P.W. 10 further admitted that he was not examined by the Investigating Officer during the course of investigation of the case and he deposed in the Court for the first time. Therefore, prudence demands that evidence of P.Ws. 6, 7 and 10 should not be relied upon. If the evidence of these witnesses are excluded then evidence of P.W. 1 remains to be considered. Admittedly, he is. uncle of the accused. If the accused is sent behind the bar, the immediate beneficiary of the deceased will be P.W. 1. Hence, he has motive to depose falsely against the accused.

11. The learned appellant's lawyer further argued that the facts and evidences on record show that the alleged extra-judicial confession made by the accused in presence of P.W. 1 and other villagers, was not natural and voluntary. P.W. 1 and the village Sardar P.W. 8 have stated that the villagers caught hold the accused and tied him with a rope and was also threatened. Under such circumstances even if, he made confession, that cannot be termed as voluntary confession. In his statement recorded under Section 313, Cr.P.C., the trial Court has asked several questions from the accused and in his reply, he stated that he had no motive to kill his father rather his Gotias were interested in sending him to jail custody in order to grab the properties of his father. He further stated that on the day of occurrence, there had been some quarrel in between his father on the one hand and Som Murmu (P.W. 1) and Munshi Murmu (P.W. 7) on the other hand. P.W. 7 is another uncle of the accused. He further stated that after this quarrel, he brought his father to his own house and he along with his wife, sent to his neighbour's house where they were invited on a feast. When he returned back, he found his father sleeping in his room. In the morning, he learnt that his father has been killed. He further stated that the villagers tied him with a rope and assaulted him and asked him to make confession against, his will. This statement of the accused read with other evidences discussed above and considering the circumstances adduced on behalf of the prosecution, the case of the prosecution that the accused made extra-judicial confession before the villagers, is not proved beyond all reasonable doubt and even if he made confession, that was not reliable and should not be believed upon because it was not voluntary.

12. In reply to the above submissions, the learned A.P.P. submitted that the defence has not adduced any evidence in support of its case that P.Ws. 1 and 7 had greedy eye over the properties of the deceased and on the date of occurrence, they had quarrelled with the deceased. Only suggestion has been given to this effect to the P.Ws. who have denied. Hence, there is no satisfactory explanation or any evidence on the record to show that P.Ws. 1 and 7 have deposed falsely in order to implicate the accused in this case. There is no reason to disbelieve the extra-judicial confession of the accused made before P.Ws. 1, 6, 7 and 10. There can be a conviction of an accused only on the basis of extra-judicial confession made by the accused before his close relatives, if otherwise, it is found to be reliable and it can be believed. P.Ws. 1 and 7 are relatives of the accused before whom he had made extra-judicial confession and the evidences of P.Ws. 1 and 7 appear to be reliable and there is no reason to disbelieve them. In support of this contention, the learned A.P.P. placed reliance on the decision reported in 1999 (2) PLJR 8 : 1999 Cri LJ 1450 (Ram Khilari v. State of Rajasthan). The learned appellant's lawyer submitted that P.Ws. 7 and 10 have stated that they were not examined by the Investigating Officer during the investigation of the case. The Investigating Officer has not been examined as a witness. As such, the evidence of P.Ws. 7 and 10 may be excluded because for the first time, they have deposed in the Court.

13. From the contentions made on behalf of the parties and after considering the evidences on the record, it transpires that the prosecution has failed to prove the charges levelled against the accused beyond all reasonable doubt. The circumstances in the case on which the trial Court has relied, do not lead to the conclusion nor they are pointer to the fact that it was the accused alone responsible for the murder of his father. On the other hand, the circumstances arising out of the facts and evidences of the case, lead to the conclusion that the accused had no motive to kill his own father who was employed in a Government service and was maintaining his family including the accused. The accused was dependent on his father and he has no source of livelihood of his own. There is nothing on the record to suggest that the accused has any grudge or ill-motive against his father to this extent which compelled him to commit this heinous offence of murder of his father. For such offences, there must be strong motive,

but no such motive has been brought on record on behalf of the prosecution which compelled the accused to commit the murder of his father. P.W. 1 stated that he heard hulla in the night of some quarrel in between the accused and his father. This evidence has not been corroborated by any witness. The wife of the accused who was residing in the same house on that night, has not been examined by the prosecution. She was the competent witness to depose on this point. On the other hand, it has come in the evidence that it was P.Ws. 1 and 7 who had quarrelled with the deceased in the night under the state of drunkenness. The prosecution has failed to prove that extra-judicial confession, made by the accused before the villagers, was voluntary. On the other hand, P.Ws. 1, 6 and 8 have admitted that the accused was tied with a rope by the villagers and he was threatened before, he made confession. In his statement under Section 313, Cr.P.C., the accused stated that he was also beaten by the villagers including P.Ws. 1 and 7 after he was tied up. These evidences show that even if the accused made confession before them, that was not voluntary and as such, not reliable. To base a conviction on the basis of extra-judicial confession, the prosecution must show that such confession was made before the villagers or near relatives voluntary and it is reliable. Both these ingredients are lacking in this case, as such, it is not safe to rely on the extra-judicial confession of the accused. I accordingly come to the conclusion that there is no any reliable evidence including the extra-judicial confession of the accused to base his conviction for the offence as alleged against him.

14. In view of the aforesaid appreciation of the evidences and considering the submissions made on behalf of the parties, I find that the prosecution has not succeeded in establishing the charge levelled against the accused beyond all reasonable doubt.

15. In the result, the appeal is allowed, and the conviction and sentence of the accused-appellant is set aside. The jail authority is directed to release the accused-appellant forthwith. Send the release order.