

Ananda Tangla Vs. State

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Court : Guwahati

Decided On : Apr-04-1979

Judge : K. Lahiri, J.

Appellant : Ananda Tangla

Respondent : State

Judgement :

K. Lahiri, J.

1. Appellant Ananda Tangla was aged around 16 or 17 at the time of occurrence. He is the son of late Kangsha Tangla (since dead), a tea garden labourer. He did not do anything for living. P. W. 2 Girthani Tangla is his stepmother. The prosecution case, in short, is that on 8-5-73 around 11-30 P.M. Kangsha, father of the appellant returned home after taking wine. It was raining and a dark night. P. W. 2 Girthani heard some altercation outside their hut supposedly between the accused and the deceased. She came out from the hut and found her Husband lying on the ground. With the help of Anand, the accused, she took Kangsha inside the hut. Although Kangsha could speak, he made no allegation that he had been beaten by his son. P. W. 2 Girthani did not see the actual assault but heard altercation supposedly between the accused and the deceased. In the morning Kangsha died. Girthani raised alarm and neighbours arrived at her hut. She did not find Anand as he had allegedly slipped away. She has stated categorically 'I did

not see beating due to darkness.' In the morning Dr. Amiya Bhushan Choudhury (since dead) and P. W. 3 Go-pal Goala came on hearing about the death of Kangsha. They found some injuries on the person of the deceased and suspected it to be a case of homicide. Thereafter, the doctor and P. W. 3 Gopal went to the nearby Police Station and lodged an information on 9-5-73 at about 12-30 P.M. The said report is marked as Ext. P-3. This is the first written report about the incident by two responsible persons, Dr. Amiya Bhushan Choudhury and P. W. 3 Gopal, It does not contain an inkling that Anand was the perpetrator of the offence or a suspect. We find from the evidence of P. W. 3 Gopal that they found p. W. 2 Girthani crying. However, he has stated that Girthani did not tell them that the accused had beaten his father. It is the positive case that Dr. Amiya Bhushan Choudhury and Gopal went to the house of Girthani, had seen her, found persons around but there is nothing to show that Girthani and/or any other person could tell them about the name of the assailant of Kangsha. As such it is clear that when Dr. Amiya Bhushan Choudhury and P. W. 3 Gopal had been to the house of Girthani nobody could tell them for sure the name of the assailant. Thereafter, as it appears, after Anand's departure from the house, Girthani told some of the witnesses namely P. W. 1 Shib Narayan Lodhi, P. W. 4 Harendra Goala and P. W. 5 Jogendra Mohan Roy that Anand had assaulted Kangsha at night. It will be seen from the evidence that Anand was found present in the morning at his house by P. Ws. 1 & 4. Even P. W. 5 Jogendra Mohan Roy stated that the accused had been to him to make necessary arrangement regarding his father's cremation.

2. Admittedly P. W. 2 Girthani is the only person to implicate the accused. The accused has been examined under Section 313, Cr. P.C. and he has put forward his own case. His case is that P. W. 2 Girthani being his stepmother did not like him and there were constant quarrels, his father came home after taking liquor, fell down on the ground and was taken by him and his stepmother, Kangsha died in the morning and his stepmother falsely implicated him.

3. When a case is dependent on the testimony of a single witness proving circumstantial evidence, it is very much necessary to scan and scrutinise his testimony. Although it is not the principle of law that a conviction cannot be sustained on the testimony of a single witness yet it is the well known principle of

Criminal Jurisprudence that before convicting a person on the sole testimony of a witness the Court must have implicit faith and reliance on his testimony.

4. Let me proceed to consider the intrinsic evidence adduced by P. W. 2 Girthani. Stepmothers are not real mothers. For obvious reasons most stepmothers do not have love and affection towards their stepsons and it may be said to be a rule of universal application in India. No doubt, there are exceptions but it is more probable that stepmothers are prone to be hostile towards the stepsons. P. W. 2 has herself expressed that her relationship with Anand was strained. She has complained that Anand did not maintain her. It is true that we get the relationship of stepmother and stepson from the statement of the accused under Section 313, Cr. P.C. However, I have no manner of doubt that the statement made by the accused is the true version.

5. The next aspect of the case is the first written report about the incident as contained in Ext. p-3. The document by itself is destructive of the story pictured by the sole witness of the incident, P. W. 2 Girthani. It stares in the face of the first written report that at least till 12-30 P.M. on 9-5-73 neither P. W. 2 Girthani nor did any other person implicate Anand or as a matter of fact any person as the assailant of Kangsha. What explanation did the prosecution offer for the fatal omission? Silence is sometimes more eloquent than speech. Girthani did not complain to Dr. Amiya or P. W. 3 Gopal that Ananda was the assailant. In the absence of any explanation for the fatal omission the benefit must go in favour of the accused. It leads me to believe that at or about the time of the incident P. W. 2 Girthani could not (1) narrate that she was in the know of the incident, (2) she had seen the incident in the manner alleged and (3) that the appellant was the assailant. Under these circumstances a grave doubt is created in my mind as to the complicity of the accused in the occurrence.

6. If in fact Ananda was in the house even after the incident and had he been implicated Ananda would have been caught, overpowered, tied and handed over to the police by the neighbours. Was Ananda present in the house when the witnesses arrived? P. W. 1 and p. W. 4 categorically say that the accused was in the house in the morning. If really Ananda had been the murderer of Gir-thani's

husband it was most natural to expect that in the presence of the neighbours Girthani would have implicated him and he would have been caught. Why did not she report about the incident in presence of Ananda? She claimed that Ananda had fled away before the neighbours arrived. Her story is false. If the version of P. Ws. 1 and 4 is accepted, there is a marked discrepancy between P. W. 2 and P. Ws. 1 and 4 as to the presence of the accused. Girthani says that Ananda was not there, just in order to show that he had absconded before the arrival of the witnesses. It is unbelievable that after committing the murder he would have stayed back at the house, if he was really the killer. As such Girthani tried to show that Ananda had absconded. Her story has been completely destroyed by the testimony of P. Ws. 1 and 4. Therefore, in this regard also I find a great discrepancy destructive of the superstructure of the prosecution story.

7. From the evidence adduced by P. W. 2 Girthani it is clear that she is not an eye-witness. She says that her husband returned in an intoxicated state and was outside the hut when the incident happened and she remained all the time inside the house. It was raining. She merely inferred that there was an altercation between her husband and Ananda. This is based on inference or surmises. Therefore, the crucial question is whether she was definite that there was an altercation between her husband and Ananda. On this issue depends the complicity of the accused in the offence. In order to judge this point one is to be sure whether she was definite about her claim of recognition by voice and no outside element created any obstruction. The substantive evidence adduced by her is that 'it was raining'. In fact it was rainy season. It is common knowledge that when it rains it creates 'sound effect'. Therefore, there is positive evidence that her hearing faculty was obstructed by natural phenomenon. Therefore, I have strong reason to doubt about her capacity to hear which must have been impaired by the sound of rainfall. This doubt becomes more confirmed when I find that it was the accused who came in aid of the deceased to carry him inside the hut.

8. Let me assume that the conduct of the accused is neutral and proceed to consider whether the stepmother reported about the incident at the earliest possible opportunity to others about the complicity of the accused in the offence. As alluded, it appears clear from the evidence that when the first batch of the

neighbours came including P. W. 3 Go-pal Goala and Dr. Amiya Bhushan Choudhury came she could not name Ananda, as she was not sure. Only thereafter, when the day proceeded, as alleged by the prosecution, she implicated Ananda to some amongst the persons who came to her house. Herein also we find a material discrepancy. Even on their arrival Ananda was there, a conduct destructive of his participation in the offence. Therefore, reading the evidence of P. W. 3 Gopal and the documentary evidence, Ext. P-3, the G. D. entry, the doubt as to whether she in fact could hear the altercation between Ananda and Kangsha or with someone else becomes absolutely fortified. Therefore, at night and in the morning when she could not state the name of her husband's killer it is natural to infer that she was not sure or in fact could not suspect anybody as assailant and the accused is entitled to get the benefit of doubt.

9. Another conduct of the accused is destructive of the prosecution case. The accused admittedly went to P. W. 5 Jogendra Mohan Roy and told him about his father's death and talked regarding his cremation. This cannot be a conduct of a killer. Under these circumstances I am constrained to hold that the evidence of P. W. 2 Girthani is infirm, full of pitfalls and doubts as stated above, it is very difficult to sustain the conviction of the accused. Even her statement as to the alleged weapon of assault is palpably a false statement. She stated that her husband was assaulted by 'a fuel wood' by Ananda. Girthani does not say that the assault was made with the branch of a tree which was seized and marked as Ext. M.O, 4. There is another conduct of P. W. 2 Girthani which appears to be very queer. When late in the morning some persons came she did not complain in the presence of Ananda that he was the perpetrator of the offence. When Ananda had gone away then only she claimed that she told the neighbours including the P. Ws. Nos. 1 and 4 about Anand's complicity. It has not been explained why she did not implicate Ananda in the presence of so many neighbours when they could have apprehended him straightway, It does not appear from the evidence of P. Ws. 1 & 4 that they made any endeavour to catch Ananda even after hearing that he was the assailant. It creates a grave doubt whether Girthani did in fact tell these witnesses about the incident and as to whether these persons placed any reliance on her testimony, assuming that she had revealed the name of Ananda as the culprit. Further, Kangsha was conscious and was in a position to speak but he did

not say that Ananda was the assailant. This is another factor which is destructive of the prosecution case.

10. Taking all factors into consideration I cannot place implicit reliance on the testimony of P. W. 2 Girthani for the reasons stated above.

11. When I cannot rely on the evidence of P. W. 2 Girthani I feel that it is needless to consider the evidence of the other witnesses, to whom Girthani reported after a long interval having had failed to mention the name of the appellant in the early part of the morning. P. W. 1 Shib Narayan Lodhi cannot be believed for the simple reason that he says that after he had arrived at Girthani's hut and heard narration of the story Dr. Amiya and P. W. 3 Gopal came to the place. It will be seen from Ext. P-3 that after attending Kangsha and finding him dead in the hut, having seen Girthani crying, staying there for some time they went to the Thana and reported about the incident but there is nothing to show that either Girthani or any other person could give the name of the assailant and/or suspect. I fail to understand why this witness and P. W. 4 Harendra did not report to Dr. Amiya and P. W. 3 Gopal about the complicity of the accused in the offence. In the result, I cannot place reliance on their testimony that Girthani had reported to them about Ananda's participation in the offence. The evidence of P. W. 5 Jogendra Mohan Roy is not strictly admissible under Section 157, Evidence Act. The statements made to the witness by Girthani was not at or about the time of the occurrence. There was a long interval. Even assuming that such a statement was made by Girthani to P. W. 5 I have grave doubt that Girthani in fact could hear the altercation. His evidence that Girthani had told him that she saw the incident is not the version of Girthani in Court. It appears that only when Ananda had left the house, she started implicating him probably acting on suspicion and surmise alone.

12. It has been strenuously urged that the accused absconded and this is a strong circumstantial evidence against the accused. I find positive statement coming from P. W. 4 as to the reason for abscondence. The accused was a young boy and when his stepmother started implicating him he must have thought it fit to run away out of the reach of police. This cannot be said to be a factor on the basis of

which a conviction can be maintained in the instant case. When the accused found that his stepmother had started implicating him and the people suspected him, a tea garden boy took it into his head that it would be wise to go away out of police torture. The statement made by the accused that he had absconded as he had suspected that he would be beaten due to false implication made by his stepmother which appears in between the lines of the statements of the accused made under Section 313 of the Cr. P.C. is the true version.

13. As a result of the foregoing discussions I arrive at the conclusion that it is not safe to rely on the evidence of a single witness who is interested, hostile, unreliable, not firm and discrepant on all material particulars. I hold that in the instant case the prosecution has not been able to prove the case beyond reasonable doubt and the appellant is entitled to get the benefit of doubt.

14. In the result, the conviction and sentence of the accused are set aside. He shall be set at liberty forthwith unless wanted in connection with any other case.

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