

Dukhi Dei Vs. the State

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Court : Orissa

Decided On : Aug-26-1964

Reported in : AIR1965Ori33; 1965CriLJ317

Judge : S. Barman, Ag. C.J. and ;G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32(1) and 162; [Evidence Act, 1872](#) - Sections 114 and 145; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 38 of 1964

Appellant : Dukhi Dei

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : D.P. Kar, Adv.

Disposition : Appeal dismissed

Judgement :

Misra, J.

1. The appellant has been convicted under Section 302, I.P.C. and sentenced to imprisonment for life. She was also convicted under Section 392 read with Section

397, Indian Penal Code, but no separate sentence was passed.

2. The prosecution case may be stated in short. Basanti, the deceased, was married to Baruna Giri of village Mangalpur in her child-hood. After she attained puberty, her husband wanted to marry an educated girl and refused to accept her. A punchayati held over the matter produced no effect on the husband and his father. The deceased was, however, very anxious to join her husband. The accused is a resident of Keonjhar town. On 20-7-63 she went to the house of Jogeswar Baidya (P.W. 17) the brother of Daina (P.W. 6). She stayed there for two days and came to the house of P. W. 6 who is the aunt of the deceased, on 1-8-63. She falsely introduced herself as the Fulla (god-friend) of P.W, 6. Daina could not recognise her. The accused created confidence in P. W. 6 by giving out the name of her brother (P. W. 17). P. W. 6 and the parents of Basant have one common compound. During her stay with P. W. 6, the accused had secret conversation with the deceased which they stopped when others intervened. The accused created confidence in Basanti that she would give charm and medicine to attract her husband. On 3-8-63 the accused and the deceased went to the adjacent jungle and the accused gave a small piece of root of some tree to be kept inside her lock of hairs. She promised to give the final medicine on 4-8-63. That day the accused told the deceased that the final medicine could not be procured as there was disturbance in the jungle. In the morning of 5-8-63 the accused and the deceased were closeted together in the house. Sometimes after Basanti left for village well with two pitchers to fetch water. A little later the accused followed her. There was delay in Basanti's return. Her mother went out to call her. As she could not trace her out she reported the fact to her husband. Both the father and the mother started in search of their daughter. While they were proceeding towards village Kanchanpur, the father's place of Basanti's mother, expecting that the deceased might have gone there, a cowherd boy PW 16 intimated them that he saw Basanti entering into the jungle. The parents made a search and found Basanti lying unconscious in the jungle with bleeding injuries. The ornaments which she had on her body at the time she left the house had also been removed. She was removed to the hospital where she died on 6-8-1963 at about noon. Basanti's father (P.W. 1) lodged the F.I.R. (Ex. 10) at about 3 p.m. in Champua Police station. After the deceased was traced out in the jungle, Basanti's

grandmother disclosed that the deceased had told her that she had accompanied the accused to the jungle and that she was to get a filial medicine on the date of occurrence. The accused gave recovery of the ornaments.

3. In her statement under Section 342, Cr. P. C. the accused admits that she stayed in the house of P.W. 6 from 1-8-63 till the date of occurrence. She claims the ornaments as her own and states that when the police caught hold of her lock of hairs, the ornaments kept tied up in a piece of cloth fell down and that she so concealed the ornaments when she returned from Tatanagar to avoid those being noticed by others. She denies to have gone to the jungle or to have murdered Basanti and asserts that she never went outside the house of P.W.6 but was attending her ailing child inside the house. She denies to have any talk with Basanti during her stay there.

4. The doctor (P.W. 7) held the post-mortem examination on 6-8-63 at 5 p.m. and found the following injuries :

1. One lacerated wound on the left parietal region measuring 2' X 1/2' X 1/4', 2' lateral to the mid line.
2. Swelling, inflammation and black mark about 6' in circumference around the left ear,
3. One lacerated wound on the tip of the left ear 1/4' in circumference.
4. Bruises on the right arm on the dorsal side 2' in circumference, 1' below the elbow joint.
5. Bruises on the left arm on the dorsal side 2 1/2' in circumference 2' below the elbow joint. On dissection he found that the scalp and the left parietal bones were fractured 2 1/2' long from protuberance to occipital mastoid junction. Occipital bone was fractured with the parietal junction 1 1/2' long from the left fronto-mastoid junction 1' with occipital junction. Membrane was congested with haemorrhage in the left subdural space. Left parietal, occipital lobe corresponding to injury No. 2 above was congested with blood over and inside the brain matter. All the injuries were ante-mortem. Death was due to shock and intracranial haemorrhage

resulting from the injuries on the head. The injuries on the head and the fracture were sufficient in ordinary course to cause death.

It is significant to note that in cross-examination it was elicited from him that the injured could not have received the blows in standing position and she must be either sleeping or lying. It is not disputed before us that death was due to the injuries on the head.

5. There is no eye-witness to the occurrence and the entire prosecution case rests on circumstantial evidence. The learned Sessions Judge in a well discussed judgment recorded the following findings:

(i) The accused made false representation about the friendship in childhood with Daina and stayed at her house with an ulterior motive;

(ii) The accused and the deceased were having secret conversations at times and they used to stop conversation abruptly at the approach of others:

(iii) The accused and the deceased had been to the jungle on 3-8-63 where the accused made a show of performing certain ceremonial rites in order to give a herb to the deceased which would attract her husband. On 4-8-63 the final herb could not be given as there was disturbance in the jungle and it was to be finally given on 5-8-1963;

(iv) On 5-8-63 the deceased left the house to fetch water. She was followed by the accused soon after the deceased went inside the jungle. The accused was seen going towards Champua on the road which passes by the side of the jungle, and was seen coming back on the very road about an hour.

(v) When the factum of murder was divulged in the village, the accused showed anxiety to leave for Keonjhar;

(vi) The accused had concealed in her lock of hair the ornaments which the deceased wore at the time she left the house; and

(vii) She also made a query as to what could be the punishment in case the deceased survives.

On the aforesaid findings he came to the conclusion that the chain of circumstantial evidence was complete and the reasonable inference from the proved facts and circumstances was that the accused and none else was the author of the crime.

6. The accused admits that she stayed in the house of P. W. 6 from 1-8-1963 till 5-8-1963 That she falsely represented and got herself introduced as the god-friend of P. W. 6 in early childhood is fully established by the evidence of P. W. 6 and her husband (P. W. 9). At the time of introduction P. W. 9 was absent on the field and on his return P. W. 6 told him that the accused introduced herself as her god-friend. P. Ws. 6 and 9 were not cross-examined on the prosecution case of misrepresentation by the accused. We are satisfied that the accused falsely introduced herself as the god-friend of P. W. 6 and created opportunity for her stay in the house even though she was an utter stranger.

The evidence of P. W. 1, the father and P. W. 2 the mother of the deceased and P. W. 6 establishes satisfactorily that the accused and Basanti were having secret conversations at times and when any person approached them during their conversation, they used to abruptly stop talking.

7. The next important circumstance is the evidence of P. W. 8, the grand-mother of Basanti, regarding the statement made by the deceased to her on the night of 3rd and 4th August, 1963. She is an old lady of 80 years. Naturally Basanti, a grown up married girl, used to sleep with her in the night. Her statement in this regard may be quoted:

'In the night of Saturday (3.8.63) while Basanti was lying on my bed, she told me that the accused had given to her some medicine which would attract her husband. She told me that on that day she had been to jungle in the company of the accused with some Arua rice, turmeric paste and vermilion. She told me that the accused plastered the ground with turmeric paste, put some Arua rice there and became naked. Thereafter she brought out some medicine from the jungle and put it inside the lock of hairs of Basanti saying that the medicine would attract her husband and she would get the love and affection of her husband. The accused also told her that she would, give the final medicine on the next day. In

the night of Sunday (4-8-63) Basanti told me that the accused could not give her final medicine as she could not bring it from jungle as there were many persons present in the jungle and that she had told her to give the final medicine on Monday 5-8-63. On Monday when I came to know that Basanti was lying injured in the jungle, I disclosed to Dambarudhar Majhi (P. W. 10), the ward member of our village, about what I heard from Basanti in the night of Saturday and Sunday.'

The old lady was unshaken to cross-examination. The fact that she did not disclose Basanti's statement till she was found injured is quite natural as it was a confidential communication by Basanti. P. W. 10 is a Ward member of the village and is a respectable person. He accepts the position that P. W. 8 divulged Basanti's statement after Basanti was found injured. The evidence of P. W. 8 is wholly reliable and we accept it. P. W. 14, the younger brother of P. W. 10, deposed that after Basanti was discovered in the jungle, the accused complained before him that his brother had detained her and was not allowing her to go away from the village. The accused also told him that Basanti's grand-mother was throwing the blame on her. This last statement was not assailed in cross-examination. P. W. 14 had made a farther statement that he heard from Basanti's grand-mother a little before the arrival of the accused at his house the statement that Basanti had made to her (P. W. 8). He was cross-examined on this part and the answer is that he did not disclose this statement to the I. O. The non-disclosure of such a statement to the I. O. does not affect the truth of that statement. In *Tahsildar Singh v. State of U. P.*, AIR 1959 SC 1012 the majority judgment held that every omission in a statement u/s. 162 Cr. P. C. is not a contradiction. This omission comes in that category. P. W. 14's evidence is admissible and is also reliable. Nothing has been suggested as to why he would falsely implicate the accused.

The next question for consideration is as to the admissibility and evidentiary value of the statement of Basanti made to P. W. 8. Basanti was found in an injured condition in the jungle where she had gone in the company of the accused to procure the herb. The statement was made by her as to the cause of her death and as to the circumstances of the transaction which resulted in her death. The decision of the Judicial Committee in *Pakla Narayanaswami v. Emperor*, AIR 1939

PC47 fully supports this view. In that case, their Lordships held that the statement of the widow that on the 20th March the deceased had told her that he was going to Berhampur as the accused's wife had written and told him to go and receive payment of his dues was admissible under Section 32(1) of the Evidence Act. At p. 50, their Lordships examined the matter closely and were of opinion that the statement related to some of the circumstances which resulted in the death of the deceased. We are satisfied that the statement of Basanti made to P. W. 8 is admissible under Section 32(1) and it discloses the circumstances under which Basanti was seriously injured in the jungle ultimately resulting in her death.

8. P. Ws. 1 and 2 deposed that in the early morning of 5-8-1963 the accused and Basanti were closeted together. Basanti went to fetch water with two pitchers from the village well. Shortly after the accused left the house telling P. W. 6 that she was going to road side to see if the driver of a taxi, who promised to take her back, had arrived. Ahalya (PW-11) saw the accused proceeding on the village road towards the main road. Trilochan (P. W. 12) has a betel shop at the Junction where the village road meets the Champua-Keonjhar Road. He found the accused proceeding towards Champua on the Keonjhar-Champua Road. P. W. 13 found the accused coming back on the Champua-Keonjhar Road from Champua side carrying her small child. The evidence of these persons makes it absolutely clear that none saw the accused and the deceased going together. But the evidence leads to the irresistible conclusion that the accused went to the Champua side on the main road closely following the deceased. The witnesses deposing in this case are illiterate village folks and much importance cannot be attached to the exact time given by them. Some comment was made on the statement of P. W. 13 that the accused was returning with the child and that it was highly improbable that the accused would go to commit murder with the child. The child was a small one and was being carried by the accused. She could not have gone out leaving the child in the house of P.W. 6 as there was nobody to look after the child. P. Ws. 11 and 12 have not stated that the accused was carrying a child. But there is no contradiction between the evidence of P. Ws. 11 and 12 on one hand and that of P. W. 13 on the other, as it was not elicited from P. Ws. 11 and 12 that the accused was not carrying the child. In her explanation under Section 342 Cr. P. C. the accused denied the fact of her going out of the house of P. W. 6 on 5-8-63.

Her case was that the child was very seriously ill and she was attending upon it in the house of P. W. 6. That this statement is false is fully established by the evidence of P. Ws. 1, 2 and 6 that she was absent from the house in the morning and that of P. W. 13 that she was returning from Champua side at about 9 a.m. carrying her child, and that of P. Ws. 11 and 12 that she was on the village road. On the aforesaid evidence we are satisfied that the accused was closeted with the deceased in the morning, she followed the deceased soon after carrying her child and went on the main road towards Champua side which traverses by the side of the jungle where the deceased was found lying in an injured condition at a distance of 160 ft. from the road and that she returned about an hour after. Though opportunity was given to her to explain her movements towards Champua side, she gave a false explanation that she was throughout in the house attending upon her ailing child.

9. P. Ws. 10, 14 and 15 deposed that the Accused showed great anxiety to leave the village after Basanti was found injured but alive. At Rajia check-gate she asked P. W. 15 as to when she could get a bus of Keonjhar. P. W. 10 persuaded her to return to the village. At first she was unwilling to come back, P. W. 10 however, managed to get her to his house. She also enquired from P. W. 14 as to the nature of the punishment that would be imposed on her if Basanti survived and implicated her for the injuries. The subsequent conduct of the accused is highly incriminating.

10. The most important circumstance incriminating the accused is the recovery of the gold ornaments (M. Os. I to VII) from the possession of the accused on 6-8-63. Prosecution case is that the accused gave recovery of those ornaments by taking those out from her hair lock. P. W. 10 and the I. O. (P. W. 20) speak of the recovery given by the accused. There is no reason to discard the evidence of P. W. 10, the ward member. He categorically denied the suggestion made to him that the accused was dragged upto the checkgate and was assaulted thereby catching hold of her tuft of hairs. Even if the version of the accused that the ornaments fell down from the lock of her hairs while it was caught hold of by the sub-inspector, is accepted, no material difference is made to the prosecution case. The fact remains that the ornaments, worn by the deceased at the time she left the house, were found tied up in a piece of cloth from the possession of the accused. In her

statement under Section 342, Cri. P. C. the accused claimed the ornaments to be her own. She failed to establish it by adducing any evidence. On the contrary, P. Ws. 1, 2 and 6 identified these ornaments in Court as being worn by the deceased when she left the house with 2 pitchers to fetch water. There was a test identification parade in which these very ornaments were identified by P. Ws. 1, 2 and 6. The ornaments were mixed up with ornaments of similar descriptions and the witnesses successfully identified M.Os. I to VII. The Magistrate, (P. W. 5) testifies to the proper identification of the ornaments. The only criticism that can legitimately be advanced in this connection is that the ornaments were not sealed after their seizure under Ex. 6, To be free from criticism and suspicion the ornaments should have been sealed at the time of the seizure and the seal should have been opened in the presence of the Magistrate at the time of the T. I. Parade. Such a procedure would not have lent countenance to any criticism that the police had opportunity of showing those ornaments to the identifying witnesses. In this case, however, the identifying witnesses and the I. O. were cross-examined at length and they refuted the suggestion of the ornaments being shown to the witnesses prior to the T.I. parade. We are satisfied that the identification made by these witnesses in Court is reliable and their identification at the time of the T. I. Parade corroborates their versions in the Court. The strongest circumstance in favour of the prosecution in this regard is the fact that in the F. I. R. itself M. Os. I, II, III, IV and VI were clearly mentioned with proper and full descriptions. M. Os. V and VI were omitted from the F.I.R. and P. W. 1 who lodged the F.I.R. gives a rational explanation that on account of his disturbed mind he omitted to mention those. The clear mention of five pieces of ornaments in the F. I. R. itself corroborates identification evidence of P. W. 1. We are satisfied that the ornaments recovered from the possession of the accused were worn by the deceased immediately before she left the house for the jungle.

Under Section 114 of the Evidence Act, the Court may presume the existence of facts which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in relation to the facts of a particular case. Illustration (a) under the Section says that a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing those to be stolen unless he can account for

his possession. It has been authoritatively pronounced that this presumption does not rest there and can be extended to more aggravated offence. The following passage in Wills on Circumstantial Evidence is instructive:

'Possession of stolen goods, recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. This particular fact of presumption only forms also a material piece of evidence in cases of murder, which special application of it has often been emphatically recognised.'

This dictum was approved in a Bench decision of the Calcutta High Court presided over by Jenkins, C.J. in *Emperor v. Sheikh Neamatulla*, 17 Cal WN 1077. It was followed in *Emperor v. Chintamoni Shahu*, AIR 1930 Cal 379 (2), *Ramprashad Makundram v. The Crown*, AIR 1949 Nag 277 and *State v. Motia*, AIR 1955 Raj 82. No decision dissenting from this view has been brought to our notice. Such presumption is invoked if the Court is satisfied that the possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. The presumption would be particularly applicable when there is a satisfactory proof that the ornaments were actually worn by the deceased immediately before the murder. The recovery of the ornaments worn by Basanti at the time she left her home was made from the possession of the accused and those ornaments could not have passed to the accused without the accused having murdered Basanti. The fact of concealment of the ornaments in the lock of hair is itself a highly incriminating circumstance. Moreover the accused was kept under strict surveillance from the time of her return from Champua side till the time of recovery of the ornaments. The accused does not furnish any explanation that the ornaments were passed on to her by any other person. There is no escape from the conclusion that the accused herself was the murderer.

11. To sum up, the following circumstances have been proved by the prosecution:

(i) On a false representation that she was the god-friend of P. W. 6, the accused, an utter stranger, got entry into and resided in the house of P. W. 6 which has a common courtyard with the house of Basanti's parents;

(ii) Coming to know the secret that Basanti had anxiety to join her husband, who was unwilling to take her, and finding ornaments on her body, the accused created a confidence in Basanti's mind that she would give some charm which would attract Basanti's husband towards her;

(iii) She created a confidence in the mind of Basanti by taking her to the jungle on 3-8-1963 by performing some rituals in her presence and by procuring a herb which would act as a charm;

(iv) On the 5th she appeared to have persuaded Basanti to go to the jungle on the plea of going out to fetch water and she followed her soon after but not in her company to disarm suspicion.

(v) She went towards Champua on the Keonjhar-Champua Road which lies by the side of the jungle where Basanti was injured and came back about one hour after;

(vi) The moment Basanti was discovered alive in an injured condition, she showed extreme anxiety to leave the village for Keonjhar, and went so far as to make enquiry as to what punishment would be inflicted on her if Basanti implicated her in the crime; and

(vii) The ornaments worn by Basanti at the time she left for the jungle were recovered concealed inside the lock of hairs of the accused. Not only she offered no rational explanation explaining the possession but gave a false explanation that the ornaments belonged to her.

All these circumstances are not consistent with any rational hypothesis of innocence and are consistent only with the guilt of the accused. The circumstantial chain is complete and the reasonable inference from the proved facts is that it is the accused only who murdered the deceased.

12. We cannot part with this case without making some observations about the sentence. The learned Sessions Judge did not inflict the extreme penalty of death on the ground that the straitened circumstances of the accused must have impelled her to commit the crime for the sake of ornaments. We are unable to accept such a view. The crime was dastardly and heinous. It was committed after

belying the confidence reposed in her by Basanti and the members of the family. The crime was committed on an innocent girl taking advantage of her credulousness that the husband would be attracted towards her by the charm supplied by the accused.

The penalty of death is the only reasonable punishment that could be inflicted in the circumstances of this case. We would only draw the attention of the learned Sessions Judge to *Sunderlal v. State of Madhya Pradesh*, AIR 1954 SC 28 and *Nisa Stree v. State of Orissa*, AIR 1954 SC 279.

13. In the result, the appeal fails and is dismissed.

Barman, Ag. C.J.

14. I agree.

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