

Darbari Kamar Vs. State

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Court : Orissa

Decided On : Nov-28-1968

Reported in : AIR1970Ori54; 1970CriLJ580

Judge : G.K. Misra and ;S. Acharya, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8III, 24, 114 and 133; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 164 and 367

Appeal No. : Criminal Appeal No. 227 of 1966

Appellant : Darbari Kamar

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.C. Adhikari, Adv.

Disposition : Appeal dismissed

Judgement :

G.K. Misra, J.

1. The appellant has been convicted under Section 302 I. P. C. and sentenced to imprisonment for life.

2. There was some ill-feeling between the accused and the members of the family of the deceased. In the afternoon of 1-12-63 the deceased was going to bring fuel from the forest. All of a sudden the accused came out of his house armed with a bow and arrows and told the deceased that he would kill him. He shot an arrow which pierced the left side of the chest of the deceased who died instantaneously. The accused absconded from the village and was arrested only on 26-9-65. The evidence of the prosecution witnesses was recorded under Section 512 Cr. P. C. in the absence of the accused. The defence is one of complete denial. The learned Sessions Judge held that the death was homicidal and that the accused killed the deceased.

3. The finding that the death was homicidal is fully supported by the evidence of the Doctor (P. W. 8). There was a punctured wound. The lower portion of the two ventricles of the heart were completely punctured. The injury was ante mortem. The Doctor opined that the deceased must have died within half an hour from the time of the infliction of the injury. There can hardly be any dispute that the deceased died as a result of the arrow shot.

4. The conviction is based on the evidence of the eye-witness P. W. 14 corroborated by that of P. W. 4, who appeared on the scene immediately after the occurrence. P. W. 14 is a sister-in-law of the deceased. She narrated as to how the accused came out of his house and suddenly gave an arrow shot as a result of which the deceased fell down. Thereafter the accused went away with his bow and arrow inside the jungle.

P. W. 4 has not seen the actual arrow shot, but hearing the shout of P. W. 3 she came out, found the deceased lying dead with the arrow sticking to his chest, and the accused going away to the jungle. These two witnesses are two rustic village folks and though there was some quarrel between the accused and the family members of the deceased, we find no sufficient justification as to why these two ladies would falsely implicate the accused in such a ghastly crime.

5. Soon after the occurrence the accused was untraced. He did not remain in the village. He was arrested about 2 years after on 26-9-65. P. Wa 2, 4 and 6 testify to the fact of his absence from the village. P. Ws. 12, 13 and 15 are the Investigating

Officers. They depose that they could not trace out the accused during the period of these two years. This conduct on the part of the accused in absconding from the village is admissible under Section 8 of the Evidence Act. Illustration (i) appended to the section runs thus:

'A is accused of a crime. The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.'

The fact of absconding therefore is an incriminating circumstance. In his statement under Section 342 Cr. P. C. the accused was put this question. He did not furnish any reasonable explanation, but merely denied the factum of his absence from the village.

6. The accused also made a confession before the Magistrate, First Class (P. W. 7). The learned Sessions Judge held that the confession is voluntary and true. That the confession is voluntary is not disputed before us. It is however contended that the confession is not true, To appreciate this contention the confessional statement, which is a very short one, may be quoted:

'Myself and Budu were both drunk. We started quarrelling on account of drinking. I shot an arrow. That struck on the chest of Budu. He fell down there and died. This incident happened near the outer courtyard of the house of the deceased. After this incident I left the village out of fear. I concealed myself in village Nuagad. When I appeared before the Thana, the Police arrested me.'

This confession has been retracted. Law is well settled that if the confession is retracted, a conviction cannot be based thereon unless it is corroborated. There is a distinction between the nature of corroboration required in the case of an accused and that of an accomplice. In the case of an accomplice the corroboration must be in material particulars. In the case of corroboration of a retracted confession, of an accused if the general trend of the prosecution evidence corroborates the essential part of the confessional statement, the confession can be accepted as true.

The aforesaid distinction however is academic in the peculiar facts and circumstances of this case where almost every part of the confessional statement is corroborated in material particulars by the prosecution evidence.

It has been established from the evidence of the Doctor and the eye-witness that the deceased died as a result of an arrow shot on his chest. This is exactly the confessional statement. The evidence of the eye-witness establishes that the deceased had an instantaneous death on the very spot near the house of the deceased. That is also the confessional statement. There is evidence that after the incident the accused left the village and absconded. That is proved by the evidence of P. Ws. 2, 4, 6, 12, 13 and 15. He was arrested two years after.

The confessional statement begins by saying that both the accused and the deceased were drunk and they started quarrelling between them. There is no prosecution evidence that both of them were not drunk. On this point therefore there is no contradiction. There need not be any positive evidence on the point also to accept the confessional statement as it is not essential that each and every fact and circumstance in the confessional statement must be proved by independent evidence. In such a case the confession has no value, and in every case the court has to insist upon independent evidence on each and every point.

With regard to the fact that there was a quarrel between the accused and the deceased, P. W. 14 states that there was no quarrel between the two. She however deposed that the accused challenged the deceased by saying that he would kill one of the four brothers including the deceased, and the deceased gave a reply that he was alone there and whom the accused would shoot. If this is construed to be a quarrel, then there is no contradiction. Assuming that this does not evidence any quarrel the question is whether on account of this contradiction the confessional statement would be declared to be untrue.

The identical question came up for consideration before a Bench of this Court in AIR 1965 Orissa 175 State v. Ramchandra. Their Lordships observed thus:

'As to the statement when Ramchandra hid the gun in the bush near the school and subsequently removed it to the place where it was found, there is some

discrepancy between the prosecution evidence and the confessional statement. This is not, however, very significant. The recording of the confessional statement is not conducted like deposition of witness in court. The accused goes on making statement in his own way. It is not subjected to cross-examination or clarification by re-examination and the accused cannot be directed to follow the chronology, exactly in the manner it happened. If the contradiction goes to the root of the matter on a material link of the case, it may be vital. A part of the confessional statement might, however, be rejected and other part accepted if the part to be rejected is proved to be false by other prosecution evidence. No hard and fast rule can be laid down. The ultimate conclusion will depend upon the facts and circumstances of each case. The discrepancy leading to the timings is not, however, very material.'

The question for consideration in this case is that even assuming that the prosecution evidence is at variance to the confessional statement as to whether there was a quarrel between the accused and the deceased, it does not constitute such a vital link in the prosecution story as to hold that the confessional statement is untrue. In all essential particulars the confessional statement is fully corroborated and not merely in material particulars. In the facts and circumstances of this case we do not attach much importance to this discrepancy and we hold that the confessional statement is true.

As has already been stated, the conviction can be sustained on the evidence of the eye-witness P. W. 14 corroborated by that of P. W. 4 and the fact of absconding of the accused for about 2 years from the village. It is not necessary to take in aid the confessional statement to sustain the conviction. The conviction can also be based on the confessional statement as it stands corroborated in the manner already discussed.

7. The appeal has no merit and is accordingly dismissed.

Acharya, J.

8. I agree.

