

Lakshmi Kirsani Vs. the State

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Court : Orissa

Decided On : Jun-20-2000

Reported in : 91(2001)CLT223; 2001CriLJ3648

Judge : R.K. Patra and ;P.K. Patra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Jail Criminal Appeal No. 340 of 1993

Appellant : Lakshmi Kirsani

Respondent : The State

Advocate for Def. : Mr. B.K. Dash, Addl. Govt. Adv.

Advocate for Pet/Ap. : Mr. P.K. Chand, Adv.

Disposition : Jail criminal appeal allowed

Judgement :

P.K. Patra, J.

1. The appellant has challenged the judgment dated 19-8-1993 passed by Smt. M. Patnaik, Sessions Judge, Kotaput, Jeypore in Sessions Case No. 205 of 1992 convicting him under section 302 of the Indian Penal Code (for short 'I. P. C.' and sentencing him to undergo rigorous imprisonment for life.

2. Prosecution case briefly stated runs as follows:--Appellant Lakshmi Kirasani and deceased Mangala Kirsani were two brothers and were residents of village Tulagurang under Mudulipara Police Station in the district of Koraput. They had two other brothers also. Their father GuruKirsani was the owner of a piece of land locally known as 'Handriro Beda' The four brothers had been cultivating the said land in turn for a period of one year each. The appellant being the eldest brother deviated from that and cultivated the land for two years consecutively. Therefore while his turn came, the deceased who was the second son of his father also cultivated the said land consecutively for two years, for which the appellant was quarrelling with the deceased off and on. It is alleged by the prosecution that on 21-4-1992 at 6 p. m. while the deceased was inviting the villagers to attend a function arranged by him and was near the village school, the appellant suddenly came out of the school and challenged the deceased as to why he cultivated the land in question for two years consecutively and before getting any answer the appellant shot an arrow at the neck of the deceased. The deceased in his turn dealt a blow by means of an axe on the appellant and scaled over the fence of the school and ran on village lane, but fell down and succumbed to the injury; Getting information about the occurrence, p.w. 1 (wife of the 'deceased') rushed to the spot and found an arrow having pierced the neck of the deceased. P. w. 2, the Ward Member of the village, pulled out the arrow from the neck of the deceased. The informant (p. w.1), accompanied by p. w. 2 and others went to Mudulipara Police Station at 1 a. m. on 22-4-1992 and orally reported the occurrence to the A.S.I, of that police station (p. w. 6) who was in charge of the O. I. C. of that police station and that was reduced to writing by p. w. 6, who treated the same as F. I. R. (Ext., 6). registered the case and took up investigation. During investigation p.w. 6 visited the spqt, examined ..witnesses, seized the arrow (M.O. II) on production by p. w. 2 under the seizure-list Ext. 7, seized, blood-stained earth and sample-earth from the .spot under the seizure-list Ext. 8, held inquest over the deadbody of the deceased as per the inquest report-Ext. 10, sent the, deadbody for post - mortem examination with deadbody challen ,(Ext. 11). He also seized a bow (M. O. I) produced by p. w. 2 under the seizure-list Ext. 13, P. w. 6 received information that the appellant and his daughterhad been to the P. H. C., Khoirput for their treatment and hence he proceeded to Khoirput P. H. C. and found the

appellant and his daughter there and issued requisitions for their medical examination (Exts. 3/2 and 4/2). He deputed one Constable to guard the appellant at the P. H. C. On 24-4-1992 he seized the wearing apparels of the deceased on production by the Constable after the post-mortem examination and prepared the seizure-list Ext. 14. On 25-4-1992 he issued requisition to the medical officer, Khoirput P. H. C. for collecting nail-clippings of the appellant and on the same day he seized the nail-clippings of the appellant under the seizure-list Ext: 15 on production¹ by the medical officer. On 27-4-1992 when the appellant recovered from his injury, he was arrested at 6 p. m. and his Wearing apparels were seized under the seizure-list Ext. 16 and on the next day the appellant was forwarded to court in custody. On 24-5-1992 p. w. 6 received the post-mortem examination report (Ext. 1) from the medical officer and made query from the medical officer as per Ext. 2 after producing the arrow (M. O. II) before him and the medical officer answered the query as per Ext 2/1 that the arrow appeared to have been stained with' blood and was sufficient to cause death of a person. P. w. 8 further seized an axe under the seizure-list Ext, 17 on production by the informant and sent the same to the medical officer for his examination and opinion as per his requisition Ext. 5/2 and the medical officer opined as per Ext. 5 that the injury on the head of the accused might be possible by the said weapon. On 2-7-1992 the Officer-in-charge of the Police Station took over charge of investigation from p. w. 6 and on 8-7-1992 he he sent the seized blood-stained arrow, blood-stained earth and sample earth, a loin-cloth (Lenguti), blood-stained waist thread of the deceased and nail-clippings and blood-stained Lungi of the appellant for chemical examination. After receipt of the chemical examiner's report (Ext. 18), the O. I. C. submitted charge sheet against the appellant who stood his trial.

3. The plea of defence is one of denial and false implication.

4. In order to bring home the charge against the appellant, prosecution has examined six witnesses, of whom p. w. 1 is the informant, p. w. 2 is the Ward Member of the village who is a post-occurrence witness and has stated about the extra-judicial confession of the appellant in a meeting of the villagers, p, w. 3 is the medical officer who conducted the post-mortem examination over the deadbody of the deceased and submitted his report Ext. 1 and has answered the query of the

investigating officer. P. w. 4 is a co-villager of the appellant who has stated about the extra-judicial confession of the appellant. P. w. 5 is another co-villager of the appellant who has stated about the extra-judicial confession of the appellant in a meeting of the villagers and was a witness to the seizure. P. w. 6 is the A. S. I. of Police who registered the case and took up investigation during the absence of the O. I. C. of the Police Station who has not been examined in the case. The defence has examined none.

5. Mr. Chand, learned counsel for the appellant and Mr. B. K. Das, learned Addl. Govt. Advocate for the State, were heard at length, Mr. Chand assailed the judgment of the learned Sessions Judge contending that she has failed to properly appreciate the evidence on record and on wrong appreciation of the evidence on record has held the appellant guilty and convicted him which cannot be sustained in law. Mr. Dash supported the impugned judgment contending that the conclusion reached by the learned Sessions Judge cannot be held to be unsustainable. The rival contentions require careful consideration.

6. The learned Sessions Judge has relied upon the statements of p. ws. 2, 4 and 5 and held that the appellant made extra-judicial confession before the villagers in a meeting and that the other circumstances proved in the case completed the chain of evidence against the appellant.

7. It is well settled in law that the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and that in such a case not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. It is also well settled in law that circumstantial evidence should be such as to connect the accused with the crime inevitably pointing out that it was the accused and the accused only who committed the crime and strong suspicion will not render the accused guilty of the crime. The learned Sessions Judge held that the extra-judicial confession made by the appellant in a meeting of the villagers was true and voluntary and had been corroborated by the statement

of p. w. 1 that the appellant disclosed in his house that he killed the deceased, the seizure of the arrow (M. O. II) and bow (M O I), the injuries sustained by the appellant and his daughter and the blood-stains on the nail-clippings of the appellant. The learned Sessions Judge has also held that the appellant has not discharged the onus to establish his plea of alibi. Before considering the correctness and legality of the conclusion arrived at by the learned Sessions Judge, it will be expedient to discuss the medical evidence and other materials on record.

8. The medical officer (p. w. 3) has stated that on 23-4-1992 at 11.30 a. m. he conducted the post-mortem examination over the deadbody of deceased Mangala Kirsani and found the following injury :--

'One punctured wound having the wound of entry with inverted margin placed at the root of the left side of the neck $1\frac{1}{2}$ ' X 1' X 2' above the middle of the clavicle, penetrating through the internal jugular vein, internal carotid artery and through back side of the wind pipe and cutting the innominate vein and common carotid artery of right side. The wound of exit of the size 1' x 1' with averted margin placed one inch above the middle of right clavicle. The length between the wound of exit and wound of entry is six inches.'

He has stated that the injury was ante-mortem in nature and the death was due to shock and haemorrhage sustained by the penetrating wound resulted by arrow shot and the injury was sufficient in ordinary course of nature to cause death. Ext. 1 is the postmortem report submitted by him. Thus according to the medical evidence, death of the deceased was homicidal. P. w. 3 also examined the arrow (M. O. II) and to the query of the investigating officer (Ext. 2) opined that the injury found on the deceased could have been caused by the said arrow which appeared to have been stained with dried blood (Ext. 2/1). P. w. 3 has stated that one Dr. Khageswar Rout who has not been examined in this case, with whose handwriting and signature he was acquainted, submitted the injury reports--Exts. 3 and 4, which relate to Sambari Toki (daughter of the appellant) and the appellant respectively. Dr. Rout submitted his reply-Ext. 5 to the query of the investigating officer--Ext. 5/2 after examining the axe produced before him. He opined that the

injury on the head of the appellant might be possible by the axe sent to him for examination and the injury on the daughter of the appellant might also be possible by the said weapon. It appears from the injury report (Ext. 4) that the appellant was medically examined on 23-4-1992 at 6 p. m. and was found to have sustained laceration of the size 3/4' X 1/4' X skin deep over the right side of the parietal bone and one swelling. The injuries were simple in nature. Ext. 3 reveals that Sambari was medically examined on 23-4-1992 at 5.30 p. m. and she was found to have sustained one cut injury with irregular margin 1 1/2' X 1/2' x skin deep on her right lower arm, above the elbow joint. This injury was also simple in nature. But the seized axe which was produced by the informant (p. w. 1) on 25-4-1992 and seized by the investigating officer under the seizure-list Ext. 17 was not sent for chemical examination and has not been produced in court and the witnesses to the seizure have not been examined. The chemical examination report (Ext. 18) shows that the arrow was not stained with blood, sample earth was not stained with blood, the Lenguti was stained with blood whereas the waist thread had no blood-stains, the nail-clippings of the appellant were stained with blood but the quantity was insufficient for examination and remarks, and the Lungi of the appellant had no blood-stain.

9. Admittedly there is no eye-witness to the occurrence in this case. In the F.I.R. (Ext. 6) the informant (p. w. 1) has not stated from whom she learnt that the appellant shot the arrow at the deceased and that the deceased dealt a blow by means of an axe on the appellant and that thereafter the deceased scaled over the fence of the school and ran away on village lane, but fell down and succumbed to the injury. The F.I.R. (Ext. 6) is silent regarding the persons who were present at or near the school at the time of the occurrence. The learned Sessions Judge has given much weight to the statement of the informant (p. w. 1) that the appellant disclosed in his house that he killed his brother, hearing which p. w. 1 rushed to the spot and found the deceased lying on the village lane with arrow piercing his neck. But this has not been stated in the F.I.R., (Ext. 6). Therefore, this part of the statement of p. w. 1 should not have been relied upon by the learned Sessions Judge. The informant (p. w. 1) has resiled from her earlier statement made before the investigating officer and turned hostile and stated that the appellant did not come to the Panchayati convened by the villagers and thereby she excluded the

possibility of the appellant making any extra-judicial confession. So also p. w. 4, the only eye-witness to the occurrence in this case, has turned hostile and has resiled from his earlier statement made before the investigating officer, but in his statement in cross-examination by the prosecution he has stated that there was a meeting of the villagers on the same day of occurrence in which he was present and p. w. 2 asked the appellant who confessed his guilt saying that he killed his brother. P. w. 4 has clearly stated that he did not witness the occurrence, but heard about the occurrence in the village. P. w. 2, the Ward Member of the village has stated that the appellant came to the meeting convened by him and told that he had killed deceased Mangala. He has further stated that he went to the house of the appellant and brought the bow (M. O. I) and produced the same before the police in the next morning; whereas he had taken the arrow (M. O. II) to the police station when he had accompanied p.w. 1. He has not stated that to his query the appellant made any extra-judicial confession in the meeting. P. w. 5 has stated that he was present in the meeting in which p. w. 2 asked the appellant and the appellant confessed that he had killed his brother. In his statement in cross-examination p. w. 5 has stated that p. w. 2 questioned the appellant as to whether he had killed and the appellant replied that he killed his brother. He has further stated that he (p.w. 5) also questioned the appellant as to why he killed his brother and the appellant told that he got angry with the deceased who uttered something to his annoyance and therefore he killed. Thus, it is found that p. ws, 4 and 5 have stated that the appellant made extra-judicial confession when p. w. 2 asked him, but p. w, 2 himself has not stated to have asked anything to the appellant. While p. w. 2 has stated that the appellant told that he killed Mangala, p. ws. 4 and 5 have stated that the appellant told that he killed his brother without naming him. In the facts and circumstances of the case, these contradictions in the statements of p. ws. 2, 4 and 5 cannot be said to be of minor character. They have failed to state the exact words used by the appellant while confessing his guilt and there is no writing to that effect. Hence it will be quite unsafe to convict the appellant only on such evidence of p. ws. 2, 4 and 5 without corroboration. As a rule of caution, in such cases extra-judicial confession being a weak piece of evidence material corroboration should be required.

10. As stated earlier, the informant (p. w. 1) who is the widow of the deceased, has denied the presence of the appellant in the meeting held by the villagers and thus ruled out any extra-judicial confession by the appellant. P. w. 4, the only eyewitness to the occurrence, has turned hostile and has not supported the prosecution case. As per the seizure-list Ext. 14, the blood-stained Lungi of the appellant was seized and that had been sent for chemical examination. But the chemical examiner's report (Ext. 18) shows that no blood-stain was found on the same. The F. I. R. story that the deceased dealt a blow by means of an axe to the appellant after the appellant shot arrow on his neck, and that the deceased jumped over the fence of the school and ran on the village lane when he fell down and succumbed to the injury appears to be doubtful. The presence of the daughter of the appellant and the injuries sustained by the appellant and his daughter, though simple in nature, would lead to the conclusion that prosecution has not disclosed the complete story and has not come with clean hands. It is also not understood as to why p. w. 2 went to the house of the appellant and brought the bow (M. O. I) which he produced before the investigating officer on the next morning instead of the investigating officer searching the house of the appellant for recovery of the bow. The axe alleged to have been wielded by the deceased against the appellant was produced by the informant (p. w. 1) from her house and though seized under the seizure-list Ext. 17, was not stained with blood and was not sent for chemical examination. From the above mentioned unsatisfactory features in the case and the contradictory statements of p. ws. 2, 4 and 5, it cannot be conclusively held that it was the appellant and the appellant only who shot the arrow at the neck of the deceased. In the case of *Madan Nayak v. State*, 1983 C. L. R. 189, it has been held by this Court that in order to base a conviction on the testimony of a solitary witness, his evidence must be clear, cogent and consistent and should be of unimpeachable character. It has been further held that the doctrine 'falsus in uno, falsus in omnibus' is not followed by the courts in India and if a part of the evidence of a witness is found to be false, the court may accept the residue of the evidence if it is found to be true and reliable. In that case it was found that a witness made deliberately false statements to rope in a person and to make the evidence of identification acceptable and such conduct was held to affect the entire evidence and hence it was not safe and prudent to accept any

part of his testimony. In the case at hand, the statements of p. ws. 2, 4 and 5 are not consistent with each other and the widow of the deceased having ruled out the possibility of the appellant making any extra-judicial confession, it would be quite unsafe to place reliance on the statements of p. ws. 2, 4 and 5 to base a conviction of the appellant.

11. Keeping in view the principles enunciated in the aforesaid decision and for the reasons discussed above, the conviction of the appellant basing on the extra-judicial confession purported to have been corroborated by the other materials on record cannot be sustained. The conclusion arrived at by the learned Sessions Judge holding the appellant guilty is found to be erroneous and cannot be sustained. Hence the impugned judgment convicting the appellant is unsustainable and is liable to be set aside.

12. In the result, the Jail Criminal Appeal is allowed. The conviction of the appellant under section 302, I. P. C. and the sentence passed thereunder by the impugned judgment dated 19-8-1993 of the Sessions Judge, Koraput, Jeypore in Sessions Case No. 205 of 1992 are set aside. The appellant is found not guilty of the charge and is acquitted. He be set at liberty forthwith if his detention is not required in connection with any other case.

R.K. Patra, J.

13. I agree.

14. Jail Crl. appeal allowed.