

Biswanath Jhadia Vs. the State

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Court : Orissa

Decided On : Feb-05-2002

Reported in : 93(2002)CLT297

Judge : P.C. Naik and ;P.K. Patra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 383; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 302

Appeal No. : Jail Criminal Appeal No. 267 of 1994

Appellant : Biswanath Jhadia

Respondent : The State

Advocate for Def. : R.N. Acharya, Addl. Govt. Adv.

Advocate for Pet/Ap. : N. Jena, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Patra, J.

1. This is an appeal against the judgment dated 7,7,1994 passed by Smt. M. Patnaik, Sessions Judge, Koraput, Jeypore, camp at Rayagada in Sessions Case No. 222 of 1993 convicting the appellant (hereinafter referred to as 'the accused')

under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentencing him to undergo rigorous imprisonment for life for alleged commission of murder of his wife on 2.4.1993 in village Podafaandha under Kasipur Police Station in the district of Rayagada. The accused and his three co-accused persons, who are his brothers, were not found guilty under Section 201/34 IPC.

2. The facts leading to the prosecution case are as follows :

The accused had married deceased Nila Jhadia, daughter of P.W. 1, eight years prior to the occurrence. She begot four children, but all of them did not survive long after their birth, for which the accused and his father suspected the deceased to a witch (DAHANI) and used to harass her. The deceased had disclosed the said fact to her father (P.W.1) several times and had requested him to request the accused to divorce her. P.W.1 requested the accused and his father to divorce the deceased, but they demanded Rs. 2,000.00 from him to send back the deceased. Though they had paid Rs. 200.00 as 'Jholamani' at the time of marriage, they demanded Rs. 2,000.00 from P.W. 1, which the latter could not pay due to poverty but wanted to take back his daughter. While P.W. 1 was proceeding towards his village from the house of the accused with the deceased, the accused accompanied by some others obstructed them on the way and assaulting the deceased dragged her to his house and P.W. 1 went to his village. Seven days thereafter, P.W. 1 got information about the death of the deceased by strangulation. He proceeded to the spot and found the dead body of the deceased hanging on a mango tree. On 4.4.1993, the accused lodged a report (Ext. 3) before, the O.I.C., Kasipur P.S. that his wife Nilamani (deceased) had slept in his house in the night on 2.4.1993 and in the morning of 3.4.1993 she left the house and did not return. After frantic search he found on 4.4.1993 that the deceased had committed suicide by hanging herself on a mango tree standing on the river bank and called the villagers to the spot. Receiving the said information as per Ext. 3, the A.S.I, of the said police station (P.W. 10) registered a U.O. case and took up enquiry. On 5.4.1993 he visited the spot and found that the dead body of the deceased was hanging on a mango tree, her neck being tied with G.I. wire. He held inquest over the dead body of the deceased and sent the dead body for post-mortem examination. The post-mortem examination report revealed that the death

of the deceased was not suicidal, but homicidal and hence he submitted a report (Ext. 8) to the O.I.C. of the P.S. (P.W. 8) who registered the case under Section 302/201 IPC and took up investigation. During investigation he visited the spot, examined witnesses, seized the wearing saree of the deceased (M.O. III), one silver ornament (M.O. I) and a piece of G.I. wire which had been tied to the neck of the deceased (M.O.II), produced by P.W. 10. He also seized similar G.I. wire measuring 8' from the house of the accused, examined the accused and sent him for medical examination. Sample of the seized G.I. wire was taken for examination to find out whether the same was similar to the wire used for hanging of the deceased. He arrested the accused on 12.4.1993 and forwarded him to court in custody on the next date and arrested the other three accused persons on 15.4.1993 and forwarded them to court in custody on the next date. He sent the M.Os. for chemical examination. After completion of investigation he submitted chargesheet against the four accused persons who stood their trial. While the present accused has been convicted under Section 302 IPC, he and his three brothers have been acquitted of the charge under Section 201/34 t PC.

3. The accused pleaded not guilty to the charge and his plea is one of complete denial.

4. Prosecution examined ten witnesses in support of its case and the defence examined only one witness in support of its plea of denial.

5. The learned Sessions Judge has relied upon the medical evidence on record as the substantial evidence and held the accused guilty of the charge under Section 302 IPC and convicted him thereunder. Since there was no material against the accused and his three brothers so as to implicate them in the offence under Section 201/34 IPC, they were acquitted of the said charge. The learned Sessions Judge considering the following circumstances held that the chain of circumstances was complete to convict the accused of the charge :

(1) The strained relationship of the accused with the deceased;

(2) Accused last residing with the deceased in the same house;

- (3) Medical evidence showing that the death was not suicidal, but homicidal;
- (4) The G.I. wire seized from the house of the accused tallying with the G.I. wire tied to the dead body;
- (5) The injury on the body of the accused being possible by tussle; and
- (6) The conduct of the accused in going to the house of his father-in-law and asking about the deceased.

6. Mr. N. Jena, learned counsel for the accused, and Mr. R. N. Acharya, learned Addl. Govt, Advocate appearing for the State, were heard at length.

7. While Mr. Jena contended that the impugned judgment is not sustainable and is liable to be set aside for wrong appreciation of evidence on record, Mr. Acharya supported the impugned judgment contending that the same is legally sustainable and interference is not called for.

8. In support of his contention, Mr. Jena placed reliance on the case reported in 2000 (II) OLR 269 (Rajan Barge v. State of Orissa) in which this court quoted with approval the following passage of Baron Anderson in the case of R. V. Modge, reported in (1938) 2 Law CC 227:

'The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

9. Keeping the aforesaid observation in mind, the Court wanted to examine the circumstances which were held by the trial court to have been proved by the prosecution and finding that none of these circumstances had been proved beyond reasonable doubt, the convict in the case referred to above, being given the benefit of doubt was acquitted of the charge under Section 302 IPC. In the present case, it has to be considered whether the chain of circumstances is

complete to hold the accused guilty of the charge, by carefully scrutinising the evidence on record.

10. There is no dispute about the marriage of the accused with the deceased eight years prior to the death of the deceased and about the death of four children born out of their wedlock and about the deceased last residing with the accused in his house in the night of 2.4.1993. According to the accused, as per his report (Ext. 3), the deceased committed suicide by hanging herself on a mango tree, but according to the prosecution the deceased was done to death by strangulation. Therefore, the evidence of the medical officer (P.W. 7) who conducted autopsy is vital for determination of this point.

11. The medical officer (P.W. 7) has stated that on 5.4.1993 at 4.30 p.m. he conducted post-mortem examination over the dead body of deceased Nilamani and found as follows :

1. There was minimum external signs of asphyxia.
2. Blood coming out from nostrils.
3. One ante-mortem bruise on the left side of the chin.
4. Two post-mortem wounds on right side of forehead and face.
5. Bizarre type of ligature mark, knot mark on the posterior aspect of the neck not corresponding with the ligature, i.e. a tough G.I. wire and 1 1/2 size ligature mark in front of the neck not found to be in opposition with the ligature, but continuous transverse ligature mark found with echymosed base unlike the other marks of ligature.
6. All the viscera found to be congested including brain; and
7. Both the chambers of heart and large vessels found to be filled with blood.

According to him, the cause of death was shock due to strangulation and the time of death was between forty-eight to seventy-two hours from the time of the postmortem examination and that the injuries were sufficient in ordinary course of

nature to cause death and that all the injuries excepting injury No. 4 were ante-mortem in nature and that it was not a case of suicide, but a case of homicide. He submitted the post-mortem report (Ext. 5). Thus, according to P.W. 7 death of the deceased was homicidal and not suicidal. Therefore, it is to be considered whether the accused was the author of the crime or not.

12. Before entering into discussion regarding the circumstances available on record to point towards the guilt of the accused, it is to be noted that the medical officer (P.W. 7) has further stated that the I.O. produced the seized Khagala (a solid and strong ornament made of silver put round the neck by the females in rural areas) (M.O. I) and a piece of G.I. wire (M.O.II) for his examination and opinion as to whether the same could have caused the injuries on the deceased and the accused, vide his letter Ext. 7, and P.W. 7 replied, vide Ext. 7/1, that the Khagala would have been the cause of strangulation leading to death of the deceased and that some of the injuries on the body of the accused could have been caused by the G.I. wire produced before him. P.W. 7 also examined the accused on 13.4.1993 and found the following injuries on his body:

1. Elongated vertical bruise on the left cheek of the size 2' x 1/6' of superficial skin deep;
2. Four numbers of abrasions with scabs of small crescentic size on the upper part of left scapula; and
3. Two abrasions on the right shoulder joint, each of the size 1 1/4' x 9/16' of superficial skin deep.

According to him, the injuries were all simple in nature. The bruise could have been caused by a long smooth hard weapon like a wire and the abrasions (injury No. 2) could have been caused by finger nails. The other two abrasions (injury No. 3) could have been caused by blunt weapon. The age of the Injuries was within fourteen days. He submitted the Injury report, Ext. 6. Vide Ext. 7/1 P.W. 7 has opined that the injuries found on the body of the accused could have been caused by the seized G.I. wire (M.O.II). P.W. 7 has stated that M.O.I was pressed around the neck of the deceased when he removed the same to find out the ligature

marks. P.W. 7 has further stated that the injuries on the accused as per Ext. 6 could not have been self-inflicted and were possible if at the time of strangulation the victim tried to escape to save her life and in that process there was tussle between the victim and the assailant. Thus the possibility of the deceased inflicting injuries on the body of the accused while trying to escape from strangulation cannot be overruled.

13. Regarding discord between the accused and the deceased due to death of their four children, the statement of P.W. 1, father of the deceased, having not been shattered in cross-examination, reliance can be safely placed on the same. P.W. 2, the elder brother of P.W. 1, has fully corroborated the statement of P.W. 1 on this score.

14. P.W. 5 who is an agnatic relation of the accused has also supported P.W. 1 stating that there was dispute between the accused and the deceased. Defence has failed to elicit anything from the mouth of these three P.Ws. to discredit them and to disbelieve their statements regarding dispute between the accused and the deceased.

15. Secondly, as per the written report of the accused himself (Ext. 3) lodged at the police station, the deceased had slept in his house with him in the night of 2.4.1993 and was missing since the morning of 3.4.1993. There is no evidence on record that the deceased was seen anywhere thereafter. Hence, a reasonable inference can be drawn that this light of life of the deceased was extinguished in the night of 2.4.1993.

16. Thirdly, the accused wanted to show his anxiety to search for the deceased by going to the house of P.Ws. 1 and 2 only for the purpose of excluding his implication in commission of the crime which is apparent from the facts and circumstances of the case.

17. Fourthly, the recovery of the dead body of the deceased in the condition as stated by the I.O. and other witnesses excludes the possibility of suicide and clearly establishes that after the deceased was done to death by strangulation, her neck was tied with G.I. wire and the other end of the wire was tied to the trunk of

the mango tree pressing the dead body in the ditch below the trunk.

18. Fifthly, as per the medical evidence on record, the strangulation might have been due to pulling of the Khagala put on by the deceased around her neck with force, which might have been result of the quarrel between the accused and the deceased and in the process the deceased might have struggled and inflicted the injuries on the body of the accused by means of her nails as per the injury report (Ext. 6) of the medical officer (P.W.7).

19. Sixthly, one 8' G.I. wire was seized from the house of the accused by the I.O. under the seizure-list (Ext. 10), the sample of which tallied with the sample of G.I. wire used to tie the neck of the deceased as per the report of the Scientific Officer of R.F.S.L. Berhampur, vide Ext. 12.

20. P.Ws. 6 and 9 are the two co-villagers of the accused before whom the accused had confessed his guilt, but both of them turned hostile and did not support the prosecution and were cross-examined by the prosecution. The statement of P.W. 9 had also been recorded by a Magistrate under Section 164 Cr.P.C. which has been marked as Ext. 13, which cannot be relied upon as a material piece of evidence against the accused. Excluding the statements of P.Ws. 6 and 9, the other materials on record, as discussed earlier, have established the chain of circumstances to point at the guilt of the accused.

21. It is well settled principle of law that where a charge of murder is based purely on circumstantial evidence, that evidence must point conclusively to the guilt of the accused and must practically exclude the possibility of murder having been committed by other persons. It must be such as to show that within all probabilities the act must have been done by the accused. If there be any reasonable doubt of guilt of the accused, he is entitled as of right to be acquitted.

22. On an analysis of evidence on record, there is no escape from the irresistible conclusion that the accused and the accused alone was the author of the crime and none else. Accordingly, the conclusion of guilt arrived at by the learned Sessions Judge cannot be held to be erroneous, calling for any interference. The impuned judgment convicting the accused of the charge under Section 302 I PC

and sentencing him to undergo imprisonment for life calls for no interference and is bound to be upheld. Thus the appeal being devoid of merit must fail.

23. In the result, the Jail Criminal Appeal is dismissed. The impugned judgment dated 7.7.1994 passed by the Sessions Judge, Koraput, Jeypore, camp at Rayagada in Sessions Case No. 222 of 1993 convicting the accused under Section 302 IPC and sentencing him to undergo imprisonment for life is confirmed.

P.C. Naik, J.

24. I agree.

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