

Sanatan Badchat Vs. the State

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Court : Orissa

Decided On : Jul-17-1952

Reported in : AIR1953Ori149

Judge : Panigrahi and ;Narasimham, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 342; [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 56 of 1951

Appellant : Sanatan Badchat

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : P.K. Bose, Adv.

Disposition : Appeal allowed

Judgement :

Narasimham, J.

1. This is an appeal from the judgment of the Additional Agency Sessions Judge, Phulbani, convicting the appellant under Section 302, I.P.C. and sentencing him to transportation for life for the murder of one Gurubari and her sister's son Bhagirathi

on or about 6-6-1950 in village Dadi in Balliguda subdivision.

2. The said Gurubari was a widow aged about 40 years residing in village Dadi and tending the cattle of the villagers. Some months before the date of occurrence, the appellant came to village Dadi and began to live with Gurubari as husband and wife. He was assisting her in looking after the cattle of the villagers and she was feeding him. It appears that there was some friction between the two due to his suspicion that she was carrying on illicit intrigue with one Bhagirathi who was none else but her elder sister's son. On the date of occurrence (6-6-1950) Gurubari and Bhagirathi went towards Badisuge hill close to village Dadi in search of some cattle which had gone astray. The appellant also followed them sometime later with an axe which he borrowed from his neighbour Bisungi Stri (P.W. 6). Neither Gurubari nor Bhagirathi returned, to the village afterwards. The appellant, however returned in the evening and handed over the axe to one Nukari, another neighbour, who returned it to P. W. 6. It was subsequently noticed that the handle of the axe was broken into two pieces and tied with a rope. The appellant disappeared from the village and remained untraced for sometime. In the meantime, Gurubari's brother Haribandhu Padhan (P.W. 1) on learning that his sister and his nephew Bhagirathi were not to be found, went out in search of them but could get no clue. He then met the appellant at G. Udayagiri Hat some days later and closely questioned him about the whereabouts of his sister and nephew. The appellant then brought him to village Dadi and there he was said to have confessed his guilt saying that he murdered Gurubari and Bhagirathi in Badisuga hill because he found them in a compromising position. He then took the villagers to a lonely place in the hill where some bones were found concealed under some leaves. Some articles which were identified to be those of Gurubari were also found near the bones. In due course an information about the crime was lodged at the police station on 14-6-50 at about 7-30 P. M. by P. W. 1 and the investigation of the case was taken up by the sub-inspector of police (P. W. 14). The bones were sent to the Assistant Surgeon of Phulbani (P. W. 13) for post-mortem examination and the police officer recovered a blood-stained tangi from the village. He also seized the wearing cloth of the appellant as it contained some blood stains. The cloth was sent to the Chemical Examiner whose report shows that it was stained with human blood.

3. From the post-mortem examination of the bones the Medical officer (P. W. 13) stated that the bones were of a human female aged about forty years and of a human male aged about twenty-five years. He could not give any opinion regarding the nature of the injury or cause of death,

4. The appellant was produced in custody before Sri Lalit Mohan Biswal (P. W. 3), a 1st Class Magistrate at G. Udaigiri, on 19-6-50 for the purpose of recording his confession. The Magistrate gave him two days time for reflection and then on 21-6-1950, recorded his confession (Ext. 9) in which the appellant admitted that he murdered Gurubari and Bhagirathi when he found them in a compromising position. He however resiled from his confession during his examination both by the committing Magistrate and also by the Sessions Judge.

5. There is no eye-witness to the commission of the crime and the entire prosecution case rests on the judicial confession (Ext. 9) made by the appellant before P. W. 3, the extra-judicial confession made by him before several villagers and some incriminating circumstances such as the presence of blood-stains on his wearing cloth and his suspicious conduct before and after the disappearance of Gurubari and Bhagirathi.

6. So far as the extra-judicial confession is concerned the prosecution witnesses have frankly admitted that it was obtained under threat. P. W. 1 admitted in his cross-examination that at first the appellant would not say anything about his sister. But when all the villagers threatened to beat him and tie him to a tree he agreed to tell them about the whereabouts of Gurubari and Bhagirathi. The Mutha head (P. W. 2) has also admitted that when the appellant was brought before him by the villagers he was kept tied. The learned Govt. Advocate urged that a Mutha head cannot be considered to be a person in authority so as to exclude a confession made before him by an accused under threat. I am however unable to accept this argument. The head of a Mutha in Balliguda subdivision holds an important position and if an accused while kept tied up was threatened with sound beating and then he confessed to have committed a crime it may be reasonably inferred that the confession was extorted by threat from a person who in the opinion of the accused had sufficient authority to put him in the imminent fear of

his life or at any rate to seriously injure him unless he confessed his crime. I would therefore rule out the extra-judicial confession altogether as inadmissible.

7. Coming to the judicial confession, the learned Magistrate, who is a first class Magistrate, appears to have overlooked one very important question. He ought to have told the appellant that he was a Magistrate and that the statement made by the appellant before him would be used as evidence against him. Though he told the appellant that any statement made by him may be used in evidence he did not specifically tell the appellant that he was a Magistrate. This is a very serious omission. The Magistrate was recording the confession in his capacity as a Magistrate under Section 164, Cr. P. C. His status ought to have been made clear to the appellant so that the latter might not have any apprehension that the police influence, if any had not been completely taken away. A confession that was recorded by an officer without disclosing his identity to the accused cannot be said to comply with the strict formalities required by Section 164, Cr. P. C., and on that ground alone it should be ruled out as inadmissible.

8. If the judicial confession is thus discarded the residuary evidence even if believed is wholly insufficient to fix the guilt on the appellant. His conduct in absconding from the village soon after the disappearance of the woman and her nephew does not conclusively show that he was the murderer. Similarly, the presence of blood-stains on his wearing cloth recovered several days after the commission of the crime cannot lead to any conclusive inference of guilt. There may be some motive for him to murder the woman because of his suspicion about her illicit intrigue with her nephew. But the motive however adequate, is wholly insufficient to sustain a criminal charge.

9. Apart from all these considerations, the trial of the case in the lower court was vitiated by non-compliance with the requirements of Section 342, Cr. P. C. It has been repeatedly pointed out that though questions of an inquisitorial nature should not be put to an accused during his examination under Section 342, Cr. P. C. he should be given an opportunity of explaining any incriminating circumstance appearing against him. For instance, he ought to have been called upon to explain the presence of human blood-stains on his cloth and his suspicious conduct in

disappearing from village Dadi after handing over the axe which he had borrowed from P. W. 6, to one Nukari of that village. He also ought to have been questioned as to whether the extra-judicial confession said to have been made by him to the villagers was true. None of these questions has been put to the appellant and the learned Sessions Judge has contented himself by asking him in a general way whether he had anything more to say. The examination under Section 342, Cr.P.C. appears to have been done in the same unsatisfactory and slipshod manner in which it is usually done during trials held in Magistrate's courts. A Sessions Judge trying an accused on a capital charge should have used more care.

10. If the only defect in the case was the failure to properly examine the appellant under Section 342, Cr. P. C. I would have been inclined to remand the case for retrial. But as already pointed out the confession recorded by the Magistrate suffers from a fatal defect which renders it inadmissible and this defect cannot be cured at this belated stage. The residuary evidence even if believed leads to inconclusive results and no useful purpose will be served by holding a fresh trial.

11. For the aforesaid reasons, I would allow the appeal, set aside the conviction and sentence and acquit the appellant. He should be released forthwith.

Panigrahi, J.

12. I agree.

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