

Dasu Paikrani Vs. the State

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Court : Orissa

Decided On : Oct-20-1965

Reported in : AIR1966Ori130; 1966CriLJ683

Judge : K. Ahmad, C.J. and ;G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 367 and 423;
[Evidence Act, 1872](#) - Sections 114

Appeal No. : Criminal Appeal No. 86 of 1964

Appellant : Dasu Paikrani

Respondent : The State

Advocate for Def. : Standing Counsel

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

Disposition : Appeal dismissed

Judgement :

Ahmad, C.J.

1. The appellant Dasu Paik-rani a young woman of twenty years of age has been convicted under Section 302 Indian Penal Code and sentenced to transportation for life for having committed the murder of one female child, Sukri by name, aged

about ten years, by assaulting her with a stone. She has also been convicted under Section 392 Indian Penal Code, for having robbed the child of the the gold and silver ornaments which she was then wearing on her person, but no separate sentence has been awarded thereunder.

2. The family of the appellant's parents are the residents of village Sastiguda. She has been since her marriage living with her husband in village Karanjiguda which is at a distance of about six miles from the village of her parents family. The present occurrence is said to have taken place on the 27th January 1963 at about 10 a.m. It is said that about a fortnight before she had gone from her husband's place to her parents village of Sastiguda and had been living with the father of P. W. 1. Nila Paikani who is his brother. The parents of the female child Sukri, namely Sambaru Patra (P. W. 3) and his wife Padma Paikani P. W. 4 are also residents of Sastiguda and are close neighbours of the family of P. W. 1.

3. The prosecution case is that on the 27th January 1963 the appellant saw the deceased Sukri and P. W. 1 Nila on the village lane. Sukri also had her baby sister with her. The appellant went to them, took away the baby from the deceased and handed her over to her mother in the house in which she was husking paddy and then came back and asked the girl Sukri and P. W. 1 Nila to accompany her to the brinjal garden of her brother Arjun Patra. They went there and plucked some brinjals, but after sometime the appellant took Sukri to a nearby hillock called Kiradnagar on the pretext of plucking leaves, and asked Nila to remain and wait near the brinjal garden at the foot of the hillock. The appellant picked up a big stone and assaulted the girl Sukri with the same on her head. The deceased girl Sukri cried aloud. Hearing the cry the other girl Nila went there and saw the appellant assaulting the deceased with a stone. Out of fear Nila ran away to her house and reported the occurrence to her step-mother Lakhmi, Paikani (P. W. 2). P. W. 2 did not believe the occurrence and asked P. W. 1 not to disclose the same before anybody.

4. It appears that the parents of Sukri could not get any clue about the occurrence for about two days. Therefore, in the meantime there was a vigorous search being made by the parents and relations of the girl. On the 29th January 1963 a search

party consisting of the local beat constable P. W. 18 and some villagers had been out on this mission. They, in the course of their search on that day sometime in the afternoon, found that the dead body of the deceased was lying in Kiradnagar in a cave like hollow covered with few stones. The case of the prosecution is that it was at this place that the deceased Sukri was murdered, and this finds support not only from the evidence on the record but also from the circumstances which, on that day, the search party found at the place. Their evidence is that at the foot of the hillock and also near the dead body they found some stones stained with blood, some bloodstained hairs, some broken glass bangles and pieces of a torn necklace (Kalamali). These circumstances no doubt clearly prove that the girl was killed at that very place. But perhaps the search party not realising the importance of that fact lifted the dead body from there and brought it to the village road and kept it there. In the meantime, the father of the deceased Sambaru Patra (P. W. 3) went to Jaipatna P. S. and reported the occurrence to the Sub-Inspector of Police (P. W. 20) on that very day at about 11 p.m. The Sub-Inspector of Police (P. W. 20) drew up an F. I. R. and the case was thereafter investigated by the Circle Inspector (P. W. 121) who on completion of the same, ultimately registered a case against the appellant under Section 302 I. P. C.

5. At the trial the appellant has been convicted on the testimony of the sole eyewitness Nila (P. W. 1), the chain of circumstantial evidence brought on the record by the other witnesses, and the judicial confession (Ext. 4) of the appellant which was recorded by the sub-divisional Magistrate (P. W. 14) on the 2nd February 1963.

6. It is true that P. W. 1 is a girl aged about 10 years, that is to say a child witness of very tender age, but it seems that the learned Sessions Judge was alive to this fact and was fully satisfied that by the reason of her tender age she was not prevented from understanding the questions put to her or from giving rational answers to those questions. It has been in the judgment under appeal, observed by him that :

'She stood the cross-examination fairly well and answered the questions to the point. She is intelligent, understood the questions and answered them properly.

She appeared to me to have sufficient power of discrimination and is not a girl be easily led away by another person. It appears that she was not speaking anything without her knowledge.'

We have also gone through the entire evidence of this witness P. W. 1 and we see no reason to differ with the view taken by the learned Sessions Judge, who apart from the materials that we have before us, had the special advantage of seeing the witness and watching her demeanour while she was in the witness box. The answers given by P. W. 1 to the questions put to her clearly demonstrate that she was a competent witness and was not prevented from understanding the questions put to her or from giving rational answers to the same, for the reason of her tender age.

7. The only substantial comments that have been made against the evidence of this witness (P. W. 1) are two and they relate to certain contradictions to be found in her evidence as against the evidence given by some other witnesses. The first criticism is that this witness claimed that ' myself ' and the deceased accompanied the accused to the brinjal garden' and further added that: 'we met Mangtia Domb and Udenath Padhani (P. W. 9) on our way. Mangtia was tending cattle and Ude was selling parched rice. Kiradnagar is at a distance of about 60 yards from the brinjal garden Mangtia Domb was at a distance of 100 yards from the brinjal garden, Santia alias Chhote was sitting under a Mahul tree at a distance of about 60 cubits from the brinjal garden when we proceeded to the garden. The brinjal garden belongs to my father Arjun Patra. Chhota is my grandfather being the father of Padma Luxmi. He also resides in my house. He was guarding the brinjal gar-den.' But the evidence given by two other witnesses namely P. W. 9 Udenath Pradhani and P. VV. 11 Birabal Pujhari does not support her in all respects. Rather their statements are different to what she herself stated. It is pointed out that P. W. 9 in his statement has claimed that-

'While I was preparing pakodi in my shop I found the accused, the deceased and P. W. 1 Nila passing together on the village street near my shop towards their brinjal garden. '

According to P. W. 1 therefore this witness (P. W. 9) was at that time selling parched rice and not preparing Pakodi. Likewise P. W. 11 in his statement asserted that-

'While I was in the thrashing floor of Arjun Patra and guarding his kandul field, I saw the accused, the deceased Sukri and P. W. 1 Nila proceeding towards their brinjal garden.'

As against this what P. W. 1 stated as already quoted above is that this witness (P. W. 11) was at that time sitting under a Mahul tree at a distance of six cubits from the brinjal garden and not guarding his kandul field. In my opinion these contradictions are so minor and so insignificant that they cannot be at all taken into consideration seriously. Variations like these are inherent in the situation. It is the admitted case of the parties that P. W. 9 is a Hotel keeper and as such there is nothing improbable that he may have been doing both at the same time namely making pakodis and also selling parched rice. Much depends on what he was doing at the exact point of time when the witnesses saw him. Similarly, once it is believed (which I have no reason to doubt)--that P. W. 11 was at that time in the brinjal garden there is little importance left in the fact whether in the course of his presence there he was at that point of time really guarding the kandul field or also the brinjal garden. The kandul field may be either within the brinjal garden or just outside of it. So this small discrepancy, if any, cannot discredit either the claim of P. W. 1 or that of P. W. 9 or P. W. 11 as to what they have stated in their evidence.

8. The second comment made against the evidence of P. W. 1 relates to the question of the distance of the place from where the witness P. W. 1 is said to have seen the appellant killing the deceased. The assertion made in the evidence of P. W. 1 is that :

' I was at a distance of about 12 cubits from the deceased when I saw the occurrence. She was lying down on the ground when I saw her. While the deceased was standing the accused caught hold of the stone M. O. 1 and assaulted her with the same on her head and she fell down.'

But in the sketch map prepared by the Investigating Officer (P. W. 21) the distance shown between point C where the brinjal garden is situated and point E where the deceased was first assaulted by the appellant is 115 yards (105 yards plus 20 feet). Prima facie therefore, there seems to be some discrepancy as to this distance as claimed by P. W. 1 and as shown in the sketch map. But in my opinion that too is of no significance. The Investigating Officer P. W. 21, has in his statement clearly asserted--which I see no reason to disbelieve--that ' the map has not been drawn to scale.' Secondly, as is usual in our country, uneducated people have little idea of distance and time and therefore if, under the stress of cross-examination the girl (P. W. 1) was made to say that the distance was equal to 12 cubits that cannot be a ground for holding that the distance as given by the Investigating Officer is wrong or that, for that reason the statement of the girl is not worthy of reliance. Thirdly, it has to be remembered that P. W. 1 does not seem to have seen the occurrence right from the brinjal field. The statement made by her is that ' I remained near the brinjal garden.' After a while, I found the accused assaulting the girl on her head with a stone and the deceased crying out ' A Bua, Marigali go ma. ' That suggests that perhaps after hearing the hulla and the cry she must first rushed towards the place of occurrence for some distance and then saw the occurrence. In these circumstances much cannot be made out of the little difference in the matter of distance as stated by these two witnesses.

9. Lastly our attention has also been drawn to the fact that if it is true that this P. W. 1 had seen the occurrence and if she had thereafter reported the matter to her mother, why there was any hesitation on their part in disclosing it to everybody until Police had come to them, a few days later, for their examination. The reason, in my opinion, as given by P. W. 1 as to this delay is clear and convincing. So far as P. W. 1 was concerned, she was directed by her mother not to tell it to anybody as it may not be true. This claim of the child in this respect is also supported by evidence of P. W. 4 which does not seem to be untrue. And so far as P. W. 4 is concerned she, as she claims, did not believe the information given to her by P. W. 1. Further, in this connection it has to be noted that she is, after all, related to the appellant and therefore, she 'might have thought it prudent not to involve herself, in any way, unnecessarily in this matter. So she originally kept silent over it.

10. In my opinion, therefore, the evidence of P. W. 1 has been rightly believed by the learned Sessions Judge. It is not disputed that if that evidence is believed (which I think is true) that by itself is conclusive on the point of the guilt of the appellant. P. W. 1 has given a graphic picture of the entire occurrence right from the time when she, along with the deceased was playing in the lane, to the point when she ultimately saw the deceased being killed with a stone by the appellant. Therefore, on her evidence alone the guilt of the appellant has to be held as proved beyond reasonable doubt.

11. But in the present case we find that the evidence of P. W. 1 is not all alone. There are other materials on the record as well which fully corroborate her evidence. The important of them are the chain of the circumstantial evidence on the record and the judicial confession which was, in the course of investigation, made by the appellant.

12. I have already dealt with the evidence of P. Ws. 9, 11 and 1. P. Ws. 9 and 11 have unequivocally stated that the last when the deceased, just before the occurrence, was seen alive by them was when the girl was going towards the brinjal garden of Arjun Patra in the company of the appellant and P. W. 1. This is followed by the statement of P. W. 1 that thereafter she was asked by the appellant to stay on in the garden while the appellant and the deceased proceeded all alone towards the side of Kiradnagar the place of occurrence--since when there is no evidence that the deceased was ever thereafter seen alive. In other words, the last when she was seen alive in the company of the appellant while the two together were going towards the place where immediately thereafter the crime was committed.

12a. It is not disputed by the appellant. as is evident from the statement made by her during the examination under Section 342 Cr. P. C. that, as claimed by the prosecution, she had since a fortnight back come to the village Sakliguda and had been living there with the family of P. W. 1. It is also admitted by her that on the day of occurrence she had gone to the brinjal garden, though according to her she was then alone and neither Sukri (deceased) nor Nila (P. W. 1) was with her. Further, it is also not denied that on that very day after her return to the house of

P. W. 1 she left for her husband's village, Kanjiguda. The only difference, therefore, that is to be found in the two versions of the case is with regard to the fact as to whether when she went to the side of the brinjal garden that day she was all alone or had along with her also the deceased and P. W. 1. The defence case in this respect, as is obvious from the facts, and circumstances stated above, is obviously untrue. The facts and circumstances as stated by the prosecution witnesses leave no room for doubt that on that day she had gone to the brinjal garden along with Sukri and Nila and thereafter to the hillock (the place of occurrence) along with the deceased alone. Then there is also the evidence of P. W. 10 to the effect that he 'found the accused hurriedly proceeding towards the river with a burden on her head.' Perhaps this refers to the time when the appellant returned from the place of occurrence and from there she first went straight to the river before going back to the house of P. W. 1. On these facts, therefore, the principle of law as stated in *Nisa Stree v. State of Orissa*, AIR 1954 SC 279 : *Wasim Khan v. State of U. P.*, AIR 1956 SC 400: and *Babu v. State of U. P.*, AIR 1965 SC 1467, is attracted on all fours.

13. Thus apart from the direct evidence of P. W. 1 (Nila) these circumstantial facts are by themselves enough to prove the guilt of the appellant as alleged by the prosecution.

14. The second circumstance which supports the evidence of P. W. 1 is the nature of the injuries which were found on the body of the deceased at the time of the post-mortem examination. The evidence of the doctor (P. W. 17) who did the post-mortem examination shows that he found two lacerated injuries on the head, one lacerated injury on the left eye-brow, one bruise on the chest, one bruise on the left side of the abdomen, and one abrasion on the left thigh. On dissection, he further found that there was compressed fracture of the frontal bone and that the spleen was enlarged and ruptured. In the opinion of the doctor, all these injuries were ante-mortem and could be caused by the stones. The stones had been sent to him by the Investigating Officer for his examination. According to the doctor the death of the deceased was due to shock and excessive haemorrhage resulting from these injuries. In his opinion the injuries on the head as also the rupture of the spleen was each sufficient in the ordinary course of nature to cause death and

the deceased must have died instantaneously on the infliction of these injuries.

15. Thirdly, there is overwhelming evidence on the record to prove that it was mainly the greed for ornaments which the deceased had on her person at that time, that led the appellant to commit this crime. P. Ws. 1, 3, 4 and 8 have firmly stated in their evidence that at the time when the girl was on that day in the company of the appellant she had on her person some gold and silver ornaments including a pair of gold nose rings and a gold dandi and a silver Khagla. But the ornaments, when the dead body was found at the place of occurrence or when inquest was made by the Investigating Officer, were not to be seen on her person as deposed to by P. Ws. 3, 6, 8 and 18. P. W. 3 is the father of the deceased girl and his evidence is all along consistent and cogent and it is fully supported by the evidence of other aforesaid witnesses on this point. Therefore there is no doubt that immediately after the occurrence those ornaments were removed by somebody from her person. According to the prosecution they were removed by the appellant herself. This is evident from the fact that the silver Khagla was found by the prosecution to have been pledged by the appellant with P. W. 13 for the consideration of Rs. 2 and the pair of gold nose rings along with the gold dandi were found to have been got converted by her (appellant) into a gold earring with the help of P. W. 16. The Investigating Officer (P. W. 21) in his evidence has stated that he arrested the appellant at Karanjiguda on 30th January 1963 at about 5 p.m. In the course of her examination by the Investigating Officer she is said to have pointed out a small dibba (M. O. VI/2) in the thatch of her house. This when recovered was found to have contained a new gold earring (M. O. V) also with a few other things. He has also stated that when further questioned the appellant led the Investigating Officer to the house of one Krishna Bindhani (P. W. 16) in village Mangalpur. There he learnt from P. W. 16 that he had converted the pair of gold nose rings and the gold dandi given to him by the appellant into that earring (M.O.V). This according to this witness, was done on the very day when the offence was said to have been committed, namely on 27-1-1963. Village Mangalpur is on the way from Saktiguda to Karanjiguda and is at a distance of about a mile from the latter. I see no reason to disbelieve him. Then again at her instance the Investigating Officer also seized the two silver Khaglas, (M. O. II and M. O. VIII) from P.W. 13. These Khaglas, according to P.W. 13 had been pledged

with him by the appellant for Rs. 2. This sum of Rs. 2 was claimed to have been borrowed from him by her about a fortnight back, when she left for Saktiguda. Accordingly, on her return the demand was made by P. W. 13 for the return of the same but as the appellant had no money she pledged these two Khaglas with her. On these two Khaglas, M. O. II was identified both in court and at T. I. parade by P. Ws. 1, 2, 3, 4 and 8 as the one which the deceased had on her person just before the occurrence. Therefore the recovery of these ornaments gives further support to the evidence of P. W. 1.

16. In AIR 1956 SC 400, their Lordships of the Supreme Court in answer to the question as to

'How far recent possession of property of a deceased in circumstances already indicating that he had been murdered and robbed, would suggest not only that the possessor of the property was the thief or guilty receiver of that property, but that it also indicated that he was guilty of a more aggravated crime which had connection with the theft '

observed :

' In the case of Emperor v. Neamatulla, (1913) 17 Cal WN 1077 Sir Lawrence Jenkins had the occasion to examine this question. After referring to Section 114 of the Evidence Act he quoted the following passage from Wills Circumstantial Evidence :

'the possession of stolen property 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 the theft. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised. '

In the case of Queen Empress v. Sami, (1890) ILR 13 Mad 426 (432) the learned Judges of the High Court observed :

'Under these circumstances, and in the absence of any explanation the presumption arises that any one who took part in the robbery also took part in the murder. In cases in which murder and robbery have been shown to form parts of one transaction, it has been held that recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. All the facts which tell against the appellant, especially his conduct indicating a consciousness of guilt, point equally to the conclusion that he was guilty as well of the murder as of robbery.'

In the case of Emperor v. Chintamoni Sahu AIR 1930 Cal 379 (2) the opinion was expressed that :

'the 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 the theft; this particular fact of presumption forms also a material element of evidence in the case of murder. '

17. Judged therefore from the point of view of these principles also, it is clear that the recent possession in this case of the property of the deceased is not only indicative of the fact that the appellant was either the thief or the receiver of the stolen property but also that she was a participator in the murder of the deceased.

18. Lastly, there is the judicial confession made by the appellant on 2-2-1963 and recorded by P. W. 14 the S. D. M. It is true that at the trial the confession was retracted but that at best can only mean that it should not be acted upon unless it is found corroborated in material particulars by other independent materials on the record. In the present case the confession as made by the appellant has been corroborated not in one but in many particulars. It appears that on the day preceding the occurrence the deceased had seen the appellant persuading one Gangadhar Paik (P. W. 5) to commit sexual intercourse with her; and that this was seen and objected to by the appellant whereupon the latter threatened her that if she disclosed this matter to anybody she would kill her. In the confession there is a reference made by the appellant to this part of the story. Normally it may appear

a bit unusual that such an incident would have happened but in the face of the admission made by the appellant in her confession and in the face of the corroboration that the story gets from P. W. 5 there is no reason why it should not be believed. The second important fact, as stated in the confession, is that the appellant had used stones for the purpose of killing the deceased. This part of the confession is also fully corroborated not only by the evidence of P. W. 1 and the evidence of the doctor (P. W. 17) but also by the report of the Serologist who gave his opinion that the pieces of stone sent to him for examination were stained with human blood. Besides these there are other circumstances also which have been elaborately discussed by the learned Sessions Judge in proof of the truth of the confession. Therefore, in view of the ample corroboration of the confession in most of the material particulars by independent evidence on record the confession cannot be held to have been extorted from her either by threat or inducement as now claimed by her in her statement under Section 342 Cr. P. C. Therefore there is no reason why it should not be believed to have been made by her| voluntarily and that it is true.

19. In these circumstances therefore, I have no doubt that the guilt of the appellant has been proved beyond reasonable doubt and the appellant has been rightly convicted both under Section 302 and under Section 392 of the Indian Penal Code. The crime committed by the appellant in this case is undesirably brutal, cold-blooded and was the result of sheer greed. Therefore the learned Sessions Judge has also rightly observed that the sentence of death is the only fit punishment in this case, but in view of the fact that the accused is a young woman of very tender age and she has been already in jail custody for more than a year as observed by him, the learned Sessions Judge thinks that the lesser penalty will meet the ends of justice. I must confess that I do not feel sure whether the ground given by the learned Sessions Judge for imposing the lesser penalty is justified. But at this stage we do not propose to enhance the sentence already awarded by the learned Sessions Judge for the reasons as stated by him.

20. Accordingly, the conviction and sentence are maintained and the appeal is dismissed.

Misra, J.

21. I agree.

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