

Adi Bhumiani Vs. State

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Court : Orissa

Decided On : Feb-07-1957

Reported in : AIR1957Ori216; 23(1957)CLT180; 1957CriLJ1152

Judge : Narasimham, C.J. and ;Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 174 and 367; [Evidence Act, 1872](#) - Sections 45; [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302

Appeal No. : Cri. Appeal No. 103 of 1955

Appellant : Adi Bhumiani

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : R.S. Sahu, Adv.

Disposition : Appeal allowed

Judgement :

Rao, J.

1. The appellant Adi Bhumiani was tried on a charge of murdering one Gupta Pangi, a boy aged 4. on 15-11-54 punishable under Section 302 I. P. C. and

alternatively on a charge of causing disappearance of the dead body of Gupto Pangi with the intention of screening herself from legal punishment punishable under Section 201 I. P. C. and was sentenced to transportation for life for the offence of murder and in view of her conviction under Section 302 I. P. C., was acquitted of the charge under Section 201 I. P. C., by the learned Sessions Judge, Koraput;

2. One Gobindo Pangi (P. W. 16) of Bhurdi-put within Boipariguda Police Station had about six sons. Purusottam (P. W. 1) who was his eldest son was living separately from him in a house at a little distance from that of his father. Dalimbo (P. W. 2) was the married wife of Purusottam and had a daughter and a son Gupto Pangi, the deceased. About the year 1952, Purusottam brought the appellant Adi Bhumiani, a woman aged about 30 and who was divorced by her husband, from the neighbouring village Mundiguda as his mistress and kept her in his house. Both the appellant and Dalimbo (the married wife) continued to live together in the house of Purusottam and Gupto Pangi the deceased was being taken almost every day to Gobindo, his grand-father, in the morning. On 14-11-54, Purusottam (P. W. 1) slept in his paddy field during the night. In the next morning that is on 15-11-54, the deceased boy who was sleeping with Dalimbo wanted his mother to take him to the house of Gobindo. The appellant invited the boy with a proposal to take him and on previous occasions also the appellant was taking the boy to Gobindo's house. The appellant took the boy in her arms and left the house to take him to Gobindo's house. The prosecution case is that instead of going towards the house of Gobindo, she took the boy in a different direction to a stream which runs from south to north in the outskirts of the village Bhurdi-put. She crossed the small stream and went to the bigger stream in which a dam was constructed with twigs and earth and which was 13 cubits wide in order to arrest the flow of water, and a 'Tenda' had been fixed there to draw water in consequence of which the place was locally known as Tenda Khun-to Munda. It appears that the appellant took a knife used for cutting vegetables from the house and she suddenly stabbed the neck of the boy with the knife in three places. When the boy cried out 'Mother, Mother', she pressed her fingers on the neck of the boy and throttled him to death. The prosecution case is that afterwards she concealed the dead body at the foot of the dam and placed mud, twigs and two logs of wood (M. Os. IV and IV/a) on it. Then

she left the place and went to her mother's house in Mundinguda with the Knife (M. O. III). It is alleged that She left the knife and four silver rings used in her fingers (M. Os. II to II/c) in Mundinguda and returned to Bhurudiput after a few hours. When the members of the family of the deceased were about to search the boy, she intimated that she had not taken the boy with her. She left the village immediately afterwards.

3. The appellant denied all the prosecution allegations and stated that she slept in the house of Purusottam in the night of 14-11-54 and early next morning she went away to reap paddy; and that when she returned home, she was assaulted and so she left the village. No defence evidence was adduced by her.

4. 17 witnesses were examined by the prosecution, but there is no eye-witness to the occurrence. The learned Sessions Judge convicted the appellant holding that the testimony of these 17 witnesses disclosed the circumstances which lead to the irresistible conclusion that the accused committed the murder of the boy.

5. The learned counsel for the appellant contended that the circumstances present in the case are such that they do not exclude the possibility of the boy having died on account of some other reason than those alleged by the prosecution.

6. Though the boy was last seen in the morning of 15-11-54, and died, according to the prosecution case, on that day, the F. I. R. (Ext. 3) was lodged at Boipariguda P. S. in the midnight of 21-11-54 six days after the alleged occurrence. The body was removed by the Investigating Officer (P. W. 17), after being shown the place by the appellant at about 3 A. M. on 22-11-54. The post mortem examination was held by the Medical Officer (P. W. 7) at 1 P. M. on 22-11-54, that is, a week after the alleged occurrence. He found one incised wound at the lower part of the right ear which had cut the Internal carotid artery and its neighbouring muscles. There was another incised wound at the right side of the neck lower to the first injury. The main carotid artery was found cut as a result of this injury. The Post Mortem report (Ext. 2) also discloses a sign of ecchymosis at the upper laryngeal part and the body of the hyoid bone was found to be grooved as an effect of some external violent pressure by some fingers. There were also four small simple injuries-one incised wound on the lower part of the chin, a lace

rated wound at the distal part of the left tibia, an incised wound at the right iliac region, and a patch of ecchymosis at the left side of the forehead. According to the Medical Officer (P. W. 7), death was due to shock, haemorrhage and asphyxia. The post mortem report also discloses that the body was moderately built but swollen, decomposition set in the cuticle had peeled off, rigor mortis was present, eyes were closed, the tongue was protruded, dried mud was present on hands, legs and hair, and hands and feet were wrinkled and bleached. Brain substance was decomposed. Decomposition commenced in the right and the left lungs. The heart was empty and the stomach was empty. But curiously enough Ext. 2 does not contain the opinion of the Medical Officer whether the injuries found on the body were ante-mortem or post mortem. One would naturally expect, as it is the object of the post mortem examination, that the essential thing to be noted in the post mortem report is whether the injuries are ante mortem or post mortem. After the post mortem report was received by the Police, the Medical Officer was again asked to state whether the injuries were ante mortem or post mortem and then it was stated by the Medical Officer that the injuries except one or two were ante mortem, P. W. 7 in his evidence stated that all the seven external injuries were ante mortem in nature. But in cross-examination, he admitted that he had not mentioned so in his post mortem report and when the police sent a requisition to him on 26-11-54. he opined that except injury Nos. 4 and 6. others were ante mortem in nature and that he based his conclusion on the post mortem report. Injury No. 4 is a lacerated wound at the distal part of the left tibia and injury No. 6 is a patch of ecchymosis at the left side of the forehead. He also stated that rigor mortis starts after two hours of the death and continues for over seven hours and sometimes it lasts for 2 or 3 days; and that it again starts and vanishes when body starts decomposition. He also stated that on the region of injury No. 7, a sign of ecchymosis at the upper laryngeal part, he did not find any finger impression. On this evidence of the Medical Officer and Ext. 2 (the post mortem report) as also the Inquest Report (Ext. 4), the learned Sessions Judge came to the conclusion that the injuries were ante mortem. The learned counsel for the appellant contends that the learned Sessions Judge had not given due weight to the non-mention of that fact by the Medical Officer in the post mortem report which was, in the usual course of things, his first duty to state and also that the injuries present can be

post mortem injuries as the dead body was decomposed. In support of his contention, he relies upon a passage in Modi's Medical Jurisprudence and Toxicology, 12th Edition, at page 133.

'Owing to the formation of these gases under the skin blisters containing a reddish coloured fluid form on the various parts of the body, When these burst, the cuticle being softened peels off easily. Bruises and abrasions may become unrecognizable when the cuticle is denuded. Wounds, whether caused before or after death, begin to bleed once more owing to the pressure of gas within the heart and blood vessels, wounds also became so altered in appearance that it may be difficult to form an opinion as to whether they were caused before or after death, unless the presence of the clotted blood can be distinctly made cut.'

At' page 137, it is stated,

'The rate of Putrefaction of a body in water is more reliable than that of a body exposed to the air or interred, as the temperature of the water is more uniform, and the body is protected from the air, as long as it remains submerged in water Putrefaction is accelerated, when once a body has been removed from water, as the tissues have imbibed much fluid. In such a body decomposition is so rapid, that the changes occurring in twenty-four hours exposure to the air will be more marked than those ordinarily resulting from a fortnight's further submersion'.

No doubt, in the case of death by drowning, asphyxia is a common cause in the majority of cases, as water getting into the lungs gets churned up with air and mucus, and produces a fine froth which blocks the air vesicles. It is also stated by Modi at page 170.

'Occasionally, death may occur from asphyxia caused by laryngeal spasm set up by a small amount of water entering the larynx. In such a case water does not enter the lungs and the signs of drowning will be absent.'

He also states at the same page that shock is brought about by fright or terror, or it may be caused during a fall, the water striking against the chest and pit of the stomach; and that if water is very cold, it may induce shock through the recurrent

laryngeal or trigeminal nerves, which reflexly inhibit the action of the heart and lungs and death may also be caused by syncope which may occur in persons suffering from epilepsy by falling suddenly into cold water. Modi also says at page 175.

'On the other hand, water may not be present in the stomach, if the person died from syncope or shock, or became unconscious Immediately after falling into water, so that he could not struggle and swallow water in the act of drowning. There will also be no water in the stomach, if it is present in the stomach, is forced out by the pressure of the gases of decomposition.'

Taylor in his Principles and Practice of Medical Jurisprudence, Volume I, 10th Edition, at page 554, under the heading 'Was drowning the result of accident, 'suicide or homicide?' says,

'A person may be suffocated, or may die from epilepsy, apoplexy, or from a sudden attack of any other fatal disease which may or may not be Indicated by well marked appearances after death; tile body is thrown into or falls into water, and remains there a few days. When taken out, water may be found in the lungs, but there may be none in the stomach; there may be no mucusfroth in the windpipe and the lungs may be more or less congested. In the case of a suffocated body without marks of external violence, it would be impossible to determine whether death has actually taken place within the water or not, since persons may die in water or at the moment of immersion, in circumstances in which the appearances of drowning would be either obscure or entirely wanting.' 'There is no reason why an adult should not be standing close to the water and fall in when taken with a fatal attack of disease'.

Thus from the evidence of the Medical Officer and the Post Mortem report, it cannot be said beyond the possibility of all reasonable doubt that the body of the deceased was thrown into the stream after he was killed. The learned Sessions Judge held that the injuries found on the deceased wtre ante mortem. He relied upon the medical evidence as also the recovery of the knife (M. O. III) from the house of the appellant's father at Mundi-guda to arrive at this conclusion. M. O. III is the knife used for cutting vegetable and identified by P. Ws. 1 and 2 as theirs. It

is quite likely that the accused might have had the knife with her at the time of taking the boy to his grand-father's house. He also relied upon the Inquest Report (Ext. 4) showing that the persons present there noticed three big stabbing wounds respectively at the lower part of the right ear, at the right side of the neck and the lower part of the chin. According to that report, nine persons who attested it were of opinion that death was caused by some sharp instrument and the evidence of P. Ws. 9, 11 and 12 was also relied upon to the effect that the dead body disclosed marks of stabbing wounds. The learned Sessions Judge, in my opinion, erred in relying on the statements of nine persons who attested the Inquest Report that death was caused by some sharp instrument. He also erred in relying upon the Inquest Report (Ext. 4) incoming to the conclusion that the body disclosed marks of stabbing wounds. The evidence of P. W. 9 no doubt discloses that he noticed four stab marks, but it should be remembered that he admitted having searched for the body in Tenda Khunto Munda prior to this day. P. W. 11 is the separated younger brother of Purusottam (P. W. 1) and he did not state in his evidence before the learned Sessions Judge that the dead body which was recovered from underneath the water, bore any stab marks, though he categorically admitted in his evidence that he was present when the dead body was re-covered. The learned Sessions Judge evidently committed an error of record in relying upon the evidence of P. W. 11 that the dead body bore the injuries at the time of its being recovered. P. W. 12 was not examined by the prosecution but was only tendered for cross-examination. He stated that he was present when the dead body was recovered but did not say anything about the existence of the injuries, on the dead body at the time when it was recovered. In relying upon his evidence also the learned Sessions Judge evidently committed an error of record, practically the learned Sessions Judge seems to have relied upon the statements contained in the Inquest Report to arrive at this conclusion. They are not substantive evidence and ought not to have been relied upon by the learned Sessions Judge. On a consideration of the Post Mortem Report and the evidence of the Medical Officer especially in view of the fact that it was not noted in the first instance in the Post Mortem Report that the injuries found on the body are ante mortem coupled with the statement of Modi in his book on Medical Jurisprudence that after putrefaction sets in it is difficult to say from the injuries

whether they are ante mortem or post mortem, I am of opinion that it cannot be definitely established in this case that the injuries are ante mortem.

7. One other circumstance relied upon by the learned Sessions Judge which may conveniently be noticed here is that during the night of Sunday 21-11-54 the appellant admitted in presence of P. W. 9 in the house of P. W. 10 that she had concealed the dead body of Gupto Pangi at Tenda Khunto Munda which was the basis for the first information report (Ext. 3). The statement made by her at that time is to the effect that she took the deceased on that Monday morning and got him seated near the Munda water and went to ease; that by the time she came, the boy had slipped into water; and that when she picked him up, he was dead and thinking that her husband would kill her due to the death of the boy, she concealed the dead body underneath a Boi in the Munda and placed two logs of wood on it, and it is after making the statement that the P. I. R. was lodged and the police A. S. I. took her to the Munda wherefrom she recovered the dead body of the boy. On the evidence present in this case, it is quite likely that the deceased might have died, as stated by her and that she buried the dead body for the reasons given by her in the statement. The boy might have been placed on higher level and he might have slipped and in the course of falling down might have died of syncope before falling into the water or might have fallen into the water and then died. As according to the A. S. I. (P. W. 17) the bank was about 15 cubits higher than the level of the water, both the above modes of death are probable and it cannot be held that the boy was stabbed and then put into the Water after he died in view of the authorities and the evidence stated above.

8. Another circumstance relied upon by the learned Sessions Judge is that the appellant had a motive for killing the boy, as she was jealous that P. W. 2 had a son whereas she had not. But in my opinion this is a very weak motive inasmuch as both P. Ws. 1 and 2 stated in their evidence that P. Ws. 1 and 2 the appellant lived together for two years and that they used to have exchange of hot words sometimes. P. w. 1 also stated that his brothers and father did not abuse him when he brought Adi (the appellant) as his mistress: that she was taking care of the children and looking to the outside works; that soon after Adi and Dalimbo had a quarrel, they used to mix again; and that Gupto used to stay sometimes with Adi

and sometimes with Dalimbo. In the face of this conduct for two years, it is difficult to hold that the appellant had a motive to kill the boy Gupto Pangi on account of jealousy.

9. The next important circumstantial evidence taken into account by the learned Session Judge is that the deceased was last seen alive with the appellant and that the evidence of Udliia Paraja (P. W. 5) that he saw the appellant carrying the boy Gupto in her arms towards the stream in the morning of that Monday just before sunrise strongly corroborates the evidence of P. W. 2 that the boy was given to the appellant for purpose of taking him to his grand-father's house. P. W. 5 has stated this fact even before anybody suspected that the boy might have died & when in spite of viro-rous search the boy could not be traced out on that Monday and the appellant, being questioned on the same day, pleaded that she left the boy in the street and went away, no report was lodged before the police implicating the appellant with the murder, but only a missing report was given. Another circumstance relied upon by the learned Sessions Judge is that the appellant was seen by Ratani (P. W.3) and Kurupta Bhumia (P.W.15) two neighbours of her mother in the street of the village Mundiguda putting on wet clothes and that she was not carrying any child. The learned Sessions Judge did not attach any importance to the recovery of the rings (M. Os. II to II-c) from the house of the appellant's mother as also the evidence of P. W. 4 and P. W. 13 to the effect that P. W. 4 saw the appellant taking Gupto to Tenda Khunto Munda and that she heard the boy's cry therefrom, and did not accept that evidence. These circumstances of her being seen by P. W. 5 going towards the stream with the boy Gupto Pangi in her arms and her being seen by P. Ws. 3 and 15 later with wet clothes going towards her mother's house in Mundiguda are in my opinion consistent with the statement made by her in the night of Sunday. From the evidence of P. W. 2 it is clear that early in the morning the boy was handed over to the appellant for being taken to the house of his grand-father. It is quite likely that she wanted to ease herself after leaving the house might have taken the boy to the stream and placing him on the bank might have eased herself. The boy might have fallen down and in falling into the water 14 cubits down below on account of fear he might have had syncope which resulted in his death and might have fallen into the stream afterwards. Naturaliy it is also possible that she was afraid that she

would be taken to task by P. W. 1 and might have buried the dead body. This possibility is there and therefore the circumstances present in this case cannot be said to be inconsistent with her innocence.

10. In the result, therefore, I am of opinion that the appellant is not proved to be guilty beyond the possibility of all reasonable doubt and is entitled to have the benefit of doubt. Her conviction and sentence, therefore, are set aside. The appeal is allowed and I direct that the appellant is to be set at liberty forthwith.

11. I may add before closing the judgment that in this case the learned Sessions Judge ought not to have recorded a finding of acquittal on the charge under Section 201, I. P. C., without going into that question & taking the evidence into consideration, on the mere ground that as she was convicted under Section 302 I. P. C. she is to be acquitted of the charge under Section 201 I. P. C. and there is no appeal by the State against her acquittal under Section 201 I. P. C. This case illustrates the danger of not recording a conviction on the alternative charge, as in my opinion, had the learned Sessions Judge gone into the evidence relating to this charge and recorded a finding and the State have appealed against the acquittal under Section 201 I. P. C., there might have been a case made out against the appellant under Section 201, I. P. C. Though she is acquitted in accordance with my judgment under Section 302 I. P. C. nothing further can be done in view of the categorical finding of the acquittal recorded by the learned Sessions Judge on a charge under Section 201 I. P. C. and in the absence of an appeal by the State against that acquittal.

Narasimham, C.J.

12. I agree.