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Court : Orissa

Decided On : Jul-18-1962

Reported in : 28(1962)CLT375; 1963CriLJ470

Judge : S. Barman and ;G.K. Misra, JJ.

Appellant : Buli Dei

Respondent : The State

Judgement :

G.K. Misra, J.

1. The appellant has been convicted under Sections 302 and 324 I.P.C. and sentenced to R.I. for life and R.I. for one year respectively, the sentences to run concurrently.

2. The prosecution case is that at about midnight on 24-4-61 the appellant murdered deceased Gopi Padhan. Gopi Padhan was the younger brother of Raghu Padhan, the husband of the appellant Buli Dei. The brothers were living separate in separate houses having joint cultivation. Gopi Padhan had a wife Kalika and a concubine Asheli (P. W. 1). On the night of occurrence Asheli slept on the Danda Verandah of Gopi Padhan's house and Gopi Padhan was sleeping with his son Mamdeb aged about 10 years on a khatia in the Danda at a distance of two cubits apart from his own verandah, Chaitan Padhan (P. W. 2) and

Narsingh Behera (P. W. 3) are the front-door neighbours of Gopi Padhan. They were sleeping on their own verandahs.

At about midnight Asheli made a shriek as her left middle finger was cut by appellant. Soon after she saw the appellant giving a thrust with a Gupti into the throat of Gopi Padhan. Gopi Padhan groaned and caught hold of the Gupti but the appellant dragged the Gupti and gave another thrust with the gupti on the right side rib ot Gopi. Gopi thereafter moved a few cubits and fell down in the Danda in front of the house of one Benu Rout, and died. On the protest of Chaitan and Narsingha asking the accused not to commit the dastardly act the appellant gave a blow with the gupti on the left temporal region of Chaitan. When the appellant was trying to give a second blow, Chaitan raised up his left hand and the gupti hit the portion between the left index finger and the left middle finger. Narsingh caught hold of the appellant in his arm from her backside and Chaitan caught hold of her tuft of hairs. Narasingh snatched away the Gupti from her hands. Then Raghu Padhan; the husband of the appellant, was called and Raghu and his mother-in-law took Buli from Chaitan and Narsingh inside the house. Thereafter several villagers gathered on the spot. Buli was found absent. Somehow the Officer-in-charge of Gania Police Station got information that some person in village Kishoreprasad had been killed. On his arrival a search was made of the appellant who was found in village Indupata at a distance of one furlong from Kishoreprasad and was brought before the officer-in-charge.

A plain paper F. I. R. was drawn up on the spot on the report of P. W. i. Post-mortem examination was held on the dead body and the injuries on the person of P. Ws. 1 and 2 also were examined. The blood-stained gupti lying in the Danda, the blood stained chaddar which had been spread out on the khatia of Gopi Padhan, the blood-stained saree worn by the appellant and the blood-stained earth from the place where Gopi Padhan was lying dead in front of Benu Rout's house were seized and sent for chemical examination. The Serologist reported all these materials contained human blood,

3. The appellant in her statement under Section 342 Cr. P. C. before the learned Sessions Judge took the plea that Gopi Padhan entered into her bed-room,

pushed some cloth in her mouth and after bringing her down tried to outrage her modesty. So she thrust the Gupti into his body. At that time she did not recognise that the person trying to outrage her modesty was Gopi Padhan. Next day Gopi's wife and con-Cubine quarelled with her and so she tried to commit suicide by putting a rope around her neck. With regard to the injuries committed on P. W. 1 and 2 she gave a denial.

4. P. Ws. 1 to 3 are the eye-witnesses to the occurrence. P. W. 1 the concubine of the deceased was sleeping on the verandah of the deceased and the deceased was sleeping in the Danda, P. Ws. 2 and- 3 are the front-door neighbours. Nothing substantial has been established in cross examination against any one of these witnesses as to why they would falsely implicate the appellant in such a serious charge. It was in the month of April. The prosecution story is highly probable that P. Ws. 1 to 3 must have slept on their verandah on account of heat. It has been pointed out that P. W. 1 did not mention about all the injuries in the F. I. R. For instance, P. W. .1 did not mention of injury No. 1 on the nose extending from the bridge of and also did not mention about the puncture wound on the right side of the abdomen. Similarly the discrepancy in the statements of the witnesses as to whether the appellant went near P. W. 2 and 3 to attack them or P. Ws. 2 and 3 came near Gopi Padhan and were attacked by the appellant has been shown to be serious to cast a reflection on the so-called prosecution story.

It is pointed out that P. W. 1 stated that Chaitan and Narsingha both ran up to her seeing the accused giving a gupti (blow ?) while P. Ws. 2 and 3 stated that they remained in their verandahs and the appellant went up to Chaitan standing there and gave two gupti blows to Chaitan at that place. All these discrepancies are very minor. It is to be noted that the murder was committed in the dead of night when Gopi Padhan and P. Ws. 1 to 3 were fast asleep. All of a sudden the attack was made and they are likely to have got confused over the horrible act committed in their presence.

Moreover though it was bright fortnight the evidence is that the moon light was not falling very clearly on the Danda. The P. Ws. clearly stated that things were not clearly visible at that time when the murder was committed. In such circumstances

it was not possible to give exact details of the thrusts and injuries at that time. Moreover before the F, I. R. was given P. Ws. 1 to 3 had full opportunity of seeing the injuries on the dead body and if P. W. 1 wanted to give a false report she could have easily mentioned all the injuries on the body of her husband. I do not find much substance in the argument that the evidence of the eye-witnesses should be discarded on the basis of these minor discrepancies.

5. It is next contended that Bamdeb who was sleeping with Gopi Padhan was a material witness and should have been examined. Bamdeb is a boy of 10 years and must have been asleep at that time of occurrence. The evidence is that he fled away in fear. So in the circumstances his non-examination is not very material.

According to the Investigating officer some-persons gave him information at the police station that a murder had been committed in village Kishoreprasad. He got no definite information and the production of the station diary would not in any way improve the case. It is only after he got the definite information about the crime on the spot that he drew up the F. I. R.

There is no explanation why the I. O. did not get the S. D. entry exhibited in the case. But in the circumstances its non-production does not materially affect the prosecution case. Neither can it be said that the F. I. R. (Ex. 6/1) is not to be treated as a F. I. R. in the eye of law. The station diary entry, according to I. O. contains merely a vague information of the fact that a murder had been committed. There are no details in it as to any part of the crime.

6. It was vehemently contended by Mr. Asok Das for the appellant that the blood stains on the Khatia or the earth near about the khatia were not sent for chemical examination The Chaddar lying on the Khatia was sent for chemical examination and it was found to contain human blood. There is no evidence that blood was lying on the spot near the khatia so as to be sent for chemical examination. There were some sprinklings of blood on the khatia and in view of the fact that the Chaddar on the khatia was sent for chemical examination, it was not necessary to send the sprinkling on the Khatia for chemical examination also. Profuse blood was found on earth in front of the house of Benu Rout where the dead body of

Gopi Padhan was lying. The existence of profuse blood-stains on the chaddar lying on the khatia and the blood on the earth in front of the house of Benu Rout are strong piece of evidence fully corroborating the versions of the eye-witnesses as to this place and manner of the atrocious crime committed.

The appellant was sleeping at 'C' as shown in the spot map near her husband. The fact of absence of blood stain on anything near about 'C' supports the prosecution version that the crime was not committed there or near about the place. The facts that the dead body of Gopi Padhan was lying in the Danda off from the house of the appellant the concubine was sleeping just near and the appellant was sleeping near her husband are circumstances which strongly militate against the contention that the appellant was attempted to be lifted by Gopi Padhan for outraging her modesty. The appellant does not give a version that P. Ws. 1 to 3 combined with the deceased Gopi for lifting her. By itself such a story would be absurd, The concubine (P. W. 1) would not be a party to the deceased carrying on sexual intercourse with the appellant. Secondly if all these four persons would engage themselves in lifting the appellant it would not be possible for the appellant to strike all of them with injuries and go unscathed. The injuries on deceased Gopi Padban and P. Ws. 1 and 2 are only consistent with the crime that all of them were attacked unawares by the appellant when they were fast asleep. If the appellant was in the right that she attacked Gopi Padhan because the latter wanted to outrage her modesty then she must have come forward with such a story immediately when she was caught by P. Ws, 2 and 3. On the contrary, her absconding from the village in the dead of night and being traced out from another village is consistent with the version that she wanted to conceal her presence soon after the ghastly crime she committed.

7. The learned Sessions Judge relied on the extra-judicial confession of the appellant before Narsingh Panigrahi (P. W. 6). I am not placing any reliance on this as P. W. 6 had made a statement to the Police : 'I do not remember it

I stated before the police that Buli volunteered before me that she murdered 3 persons Gopi, Chaitan, and Asheli and would have murdered Pari, Bana Dhadi and others who humiliated her much and wanted to outrage the modesty'. As the

witness had not frankly admitted that he made such a statement before the Police it would be dangerous to rely on the statements of such a person for accepting the extra-judicial confession. (8) The doctor (P. W. 9) held the post mortem examination and found the following injuries on the deceased.

1. One abrasion 1 1/2 ' X 1/16' on the nose extending from the bridge.

2. A punctured wound 1' x 1/2' x 2' on the front of the neck above the supra sternal notch.

3. A punctured wound 1' x 1/4' x 1 1/2' on the right side of the abdomen at the sternal end of the right tenth rib.

4. Incised wound 4' x 1/4' x 1/2' on the right palm extending from the base of the thumb to the base of the little finger.

5. Incised wound 3' x 1/2' x 1/2' on the back side of the right hand extending below wrist joint.

6. Incised wound 2' x 1/4' x 1/4' on the back of the right forearm above the wrist joint.

In his opinion the injuries were ante-mortem.

He also found one incised wound 3' x 1' x 1/2' on the back of the left hand extending to the back of the base of the middle finger of Asheli (P. W. 1).

He also found the following injuries on the person of Chaitan Pandhan, P. W. 2.

1. One incised wound 1/3' x 1/2' x 1/4' on the left temporal region.

2. One incised wound 6 1/2' x 1' x 1/2' on the middle of the left palm extending to the back of the middle finger crossing to the back of the hand in between the middle finger and index finger.

3. One incised wound cutting away the palmer surface of the left thumb of at the distal phalanx 1/2' x 1/2' x 1/2

It is to be noted at this stage that Mr. Asok Das brought to our notice from the records a report of the same Medical Officer, P. W. 9 wherein a ligature mark around the neck of the appellant was noticed. Besides this there were no other injuries on her person. This report has not been exhibited and neither the doctor had made any reference to such a report. The report is not inconsistent with the prosecution story. The ligature mark is the result of putting a rope around the neck of the appellant which she admitted in her statement under Section 342 Cr. P. C. as has been earlier referred to. Non-examination, of the Medical Officer with reference to this report therefore does not affect the prosecution case and does not amount to any suppression of material fact as contended by Mr. Das. The death of Gopi Padhan was due to syncope from shock and hemorrhage resulting from the injuries.

(q) On a summary of all the material evidence on record it is manifestly clear that the ghastly crime was committed by the appellant in. the midnight when all persons were sleeping and Gopi Padhan was taken unaware.

It is contended that the prosecution has not been able to show sufficient motive for the crime committed by the appellant. It is well settled that proof of motive is not an essential link in establishing the prosecution case. It however transpires from the evidence of P. W. i that the husband of the appellant is an idiot and the appellant is a young lady carrying on intrigues with youngmen of the village. Gopi took exception to such intrigues. This evidence appears probable and carries conviction. On a review of the entire evidence on record I have not the least hesitation to hold that the appellant committed the murder of Gopi Padhan and the prosecution case has been proved beyond reasonable doubt.

10. At this stage it is necessary to discuss as to how far the statement of the appellant under Section 342 Cr. P. C. that she killed Gopi Padhan as he wanted to outrage her modesty amounts to an admission of guilt. It is contended by the learned Government Advocate that this amounts to an evidence against the appellant.

I am unable to subscribe to this view. Section 342 Cr. P. C. Sub-section (3) lays down that answers given by the accused may be taken into consideration in such

enquiry or trial and put in evidence for or against him in any other enquiry into/ or trial for any other offence which such answers may tend to show he has committed. The language used in the first part is the same as used in Section 30 of the Evidence Act. The second part makes it clear that it would be used as evidence in other enquiry. The statute could have made it clear that it should be treated as evidence in the very case itself.

In : AIR 1953 SC247 Vijendrajit v. State of Bombay their Lordships observed that the statement recorded under Section 342 Cr. P. C. cannot be regarded as evidence. The observations of the Supreme. Court in : AIR 1953 SC468 Hate Singh v. State of Madhya Bharat do not mili-gate against this view. There their Lordships said that though the statement does not amount to an evidence it must be treated like any other piece of evidence coming from the mouth of a witness and matter in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against Him. '

The later decision of the Supreme Court was referred to in : AIR1958 Cal616 Moral Majhi v. State. The Division Bench of the Calcutta High Court after referring to Section 342 A, Cr. P. C. laid down that statement under Section 342, Cr. P. C. will not be evidence in the technical sense of the word evidence within the meaning of Section 3 of the Evidence Act. This is However not to say that the statement of the accused under Section 342 Cr. P. C. has no value. It may be taken into consideration by the Court in terms of the language of the statute.

11. The next question arises whether the statement amounts to an admission or not. In the first part of the statement the appellant clearly admits the offence that she committed the murder of Gopi Padhan. In the second part she gives explanation that she committed the murder as he wanted to outrage her modesty. Question arises whether the first part of the statement can be utilised by the prosecution as an admission while rejecting the second part giving explanation for the murder as false. If the entire statement related to two different facts there is no doubt in law that the admission in relation to one fact can be accepted as true and be admissible while rejecting the other fact dissociated from it. This has been well settled by the decision of the Supreme Court in : AIR 1953 SC247 . Their

Lordships observed:

The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement made under: Section 342 did not consist of two portions part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown.

This principle was reiterated in AIR 1954 SC 204 Karnail Singh v. State of Punjab where their Lordships observed that in the particular case 'the admission of the appellant that he was present at or near the scene of occurrence is distinct and separate from his explanation as to how he received the injuries. The learned Judge having disbelieved the statement of the appellant that the house was burnt by some unknown enemies of Gurubaksh Singh and that it was they who murdered him, we do not see any objection to the statement of the appellant that he was present at the scene of the occurrence from being used as an admission.

These two decisions of the Supreme Court clearly establish the principle that if the entire statement relates to two different facts the admission with regard to one fact may be accepted while the admission with regard to the other part may be rejected. The admission of Buli Dei does not come within the category of cases referred to in the Supreme Court decisions. They do not relate to two facts but rather relate to one fact -- the fact and the reason of the commission of the murder. Both these statements have intimate connection with each other.

12. There is another category of cases wherein a part of the admission can be accepted and the other part can be rejected though they relate to the same fact. Such a category of case is well illustrated in AIR 1931 All 1 (FB) Balmukund v. Emperor. The facts of this Full Bench case have full application to the appeal.

There the confession comprised of two elements (a) an account of how the accused killed the woman and

(b) an account of his reasons for doing so the former element being inculpatory and the latter exculpatory. Their Lordships were called upon to answer the question:

Can the Court, if it is of opinion that the inculpatory part commands belief and the exculpatory part is inherently incredible act upon the former and refuse to act upon the latter?' Their Lordships gave the answer as follows:

Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. Where there is other evidence a portion of the confession may in the light of that evidence, be rejected while acting upon the remainder with the other evidence.

This case directly illustrates the point that even though the entire admission relates to one fact a part of it may be accepted and the other part rejected provided there is satisfactory prosecution evidence for accepting the inculpatory part and rejecting the exculpatory part.

This Full Bench decision received the approval of the Supreme Court in : 1953 CriLJ154 Palvinder Kaur v. State of Punjab. In paragraph 17 of the report their Lordships fully concurred with the observations made in the Full Bench decision of the Allahabad High Court. The case of the appellant comes within the dictum of this Supreme Court decision. As I have already held the prosecution evidence establishes beyond reasonable doubt that the appellant murdered Gopi Padhan and the admission in the first part is fully supported by the prosecution evidence. The second part of the admission that she killed Gopi Padhan as he wanted to outrage her modesty giving reason for the murder is clearly proved to be false by the prosecution evidence and is rejected.

13. There is no merit in this appeal which fails and is dismissed.

S. Barman, J.

14. I agree.

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