

Karan Majhi Vs. the State

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Court : Orissa

Decided On : Apr-06-1976

Reported in : 42(1976)CLT547; 1976CriLJ1672

Judge : R.N. Misra and ;N.K. Das, JJ.

Appellant : Karan Majhi

Respondent : The State

Judgement :

R.N. Misra, J.

1. The appellant has been convicted under Sections 302 and 201 of the Indian Penal Code by the learned Sessions Judge of Mayurbhanj and has been sentenced to rigorous imprisonment for life in the first count and no separate sentence has been passed under Section 201 of the Indian Penal Code.

2. According to the prosecution on the Gamha Purnima day (24-8-1972) when in the village there was a festival it transpired that deceased Kanka Majhi had stolen two banians belonging to accused Fatu. Karan had also been alleging that the deceased had committed theft of rice from his house. The accused persons tied the deceased to a Sal tree in the village. In a meeting it was decided that they should do away with the deceased and in the evening he was taken into the jungle in the close vicinity of the village and was killed there by blows given by Karan on

his head. A young daughter of the deceased had followed the party and before her father was killed, she pleaded for him. She was also done to death by Karan. Another young girl (P.W. 5) had seen the occurrence by concealing herself behind a tree. She reported about the incident at the police station next morning and after due investigation the prosecution was launched.

3. Karan was charged under Section 302 of the Indian Penal Code for committing murder of both the deceased persons while the other accused persons were charged for the commission of the offence of murder by being members of an unlawful assembly and all the accused persons were charged for the offence under Section 201 of the Code.

4. The defence was one of complete denial. Prosecution examined P.Ws. 2, 3, 4, 5 and 7 as eye- witnesses to the occurrence. All these witnesses, however, turned hostile excepting P.W. 5. Prosecution tendered the evidence of P.Ws. 2, 3 and 4 examined at the committal stage under Section 288 of the Code of Criminal Procedure and such evidence were marked as Exts. 1, 2 and 3. Prosecution also relied upon certain incriminating circumstances.

5. The learned Trial Judge came to hold that the present case had to be tried according to the new Code of Criminal Procedure and as such Section 288 of the old Code had no application. In the circumstances, while ruling out Exts. 1, 2 and 3 from consideration, he accepted the circumstantial evidence to be cogent and definite and convicted Karan Majhi (appellant) under Sections 302 and 201 of the Indian Penal Code and gave him the punishment of rigorous imprisonment for life and acquitted the others.

6. Counsel for the appellant contends that when all other evidence had been discarded, merely on the circumstantial evidence, conviction should not have been sustained. Learned Additional Government Advocate argues that the view taken by the learned Trial Judge regarding non- admissibility of Exts. 1, 2 and 3 is clearly erroneous and the evidence of P.Ws. 2, 3 and 4 at the committal stage should have been accepted in support of the prosecution case.

7. Admittedly by 1-4-1974, when the new Code of Criminal Procedure came into force, the commitment of the accused persons was over and the sessions trial was pending. Section 484(2) of the Code of Criminal Procedure provides:

Notwithstanding such repeal,-

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement, (hereinafter referred to as the Old Code), as if this Code had not come into force:

Provided.....

As the sessions trial was pending, Sub-section (2) (a) of Section 484 of the Code of Criminal Procedure applies and such a trial is to be made in accordance with the provisions of the Code of Criminal Procedure, 1898. The learned Trial Judge unnecessarily referred to irrelevant aspects and came to an erroneous conclusion. Our view is directly supported by a decision of the Andhra Pradesh High Court in the case of P. Prakash v. State (1974) 2 Andh WR 334 : 1975 Cri LJ 762, We would accordingly hold that to the trial before the Sessions Judge, the old Code had application and prosecution had correctly invoked the aid of Section 288 of the old Code of Criminal Procedure for bringing in the evidence before the committing court.

8. P.Ws. 2, 3 and 4 were examined during the commitment proceeding and each of them supported the prosecution case. Two of them were cross-examined while one had not been though he was available for cross-examination. It is settled law that the evidence received on record at the trial under the mechanism provided in Section 288 of the old Code of Criminal Procedure is evidence in the strict sense and it is for the court to decide which evidence - the evidence supporting the prosecution in the committing court or the evidence at the trial of the hostile witness - should be accepted. There is no justification to hold that the witnesses

had supported the prosecution case by speaking falsehood. On the other hand, it is legitimate to infer in the circumstances of the case that though they had spoken the truth while supporting the prosecution case in the commitment proceeding, they have been won over and have now changed their version. Exts. 1, 2 and 3 are thus good evidence to support the prosecution case.

9. The circumstances which were relied upon by the learned Trial Judge are indeed very implicating. They are:

- (i) Recovery of blood-stained clothes from the person of the appellant;
- (ii) Appellant producing blood stained axe and rope while in custody;
- (iii) Appellant giving discovery of the dead bodies in a ditch at a distance of 5 to 6 kilometers from his village; and
- (iv) his giving recovery of a wooden post on which blood was also found.

According to the I. O. (P.W. 13), a lungi and a half-pant were seized from the person of the appellant. On chemical examination, the lungi has been found to contain human blood. Similarly the axe and the rope (M.Os. III and IV respectively) which appellant produced while in custody have also been found to contain human blood upon chemical examination. Thus it is the appellant who gave discovery of the dead bodies lying at a distance of more than five kilometers of the village within a jungle. These certainly establish beyond doubt that it is the appellant who was the author of the ghastly murders.

The Supreme Court pointed out in the case of *Bakshish Singh v. State of Punjab* : 1971 CriLJ1452 :.....In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act

must have been done by the accused.

We think, the circumstantial evidence placed in this case satisfies these requirements.

10. Thus in our view the circumstantial evidence and the evidence of the three eye-witnesses, P.Ws. 2, 3 and 4 as per Exts. 1, 2 and 3 clearly establish the guilt of the appellant. The appeal is, therefore, without merit and must stand dismissed.

N.K. Das, J.

I concur. Our view is also supported by the decision of a Special Bench of the Calcutta High Court in *State v. Haridas Mundhra* 1974 Cal LJ 1341. In that case, the order of committal to the court of session was passed prior to the 1st April 1974 and it was held that it would be deemed to be a case of 'trial pending under Section 484(2)(a) of the new Code and has to be disposed of in accordance with the provisions of the old Code. The expression 'trial pending' in Section 484(2)(a) of the new Code cannot be restricted to 'commencement of trial' within the meaning of Section 271 of the old Code as the expression 'trial pending' has a wide connotation. The trial, in the instant case, became pending in the sessions court when that court took cognizance of the offence in terms of Section 193 of the old Code. Once cognizance is taken, the case is before the court of session and can be ended only by an order of that court. Therefore, there appears to be no difference between a 'case pending' and a 'trial pending. After a court of session takes cognizance, applications for bail may be moved before that court and the court passes orders on those applications. After taking cognizance, the court of session also fixes the date of trial and issues summons to witnesses in furtherance of trial. The court of session also can entertain applications for discharge of the accused. The trial, therefore, in the instant case, became pending in the court of session.