

Dula Majhi Vs. the State

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Court : Orissa

Decided On : Jul-06-1966

Reported in : 1967CriLJ1236

Judge : S. Barman, Ag. C.J. and ;G.K. Misra, J.

Appellant : Dula Majhi

Respondent : The State

Judgement :

S. Barman, Ag. C.J.

1. The accused appellant Dula Majhi aged about 60 years was convicted and sentenced to imprisonment for life on a charge of having murdered his eldest son Kaghua Majhi aged about; 35 years by means of a katari, on July 14, 1964 in the mid-night while he was sleeping. The motive of the murder is said to be some dispute over property in the circumstances hereinafter stated:

2. The accused had three sons Baghua, Majhi, the deceased, Ludhuia Majhi and Budban Majhi. It is said that the deceased separated from the accused and his two brothers, about three years ago and demanded a share out of the joint family property; the accused refused to give a share to the deceased and the son and the father are said to have been frequently quarrelling over this.

3. On the date of occurrence on July, 14, 1964 sometime before evening while the deceased was plucking leaves from a Sajana Tree standing in their Bari the accused objected to it and there was a quarrel between them, later when the deceased drove his buffaloes to the common cattle-shed, the accused is said to have closed the door of the cattle-shed and did not allow the buffaloes to enter into it. It is said that the deceased forcibly opened the door and tied the buffaloes there, thereupon the accused is said to have been angry and he threatened to assault the deceased ; the wife of the deceased P. W. 1 intervened in this scuffle between the deceased and the accused.

4. The prosecution case is that at night after meals the deceased and his wife P. W. 1 and their children were sleeping in an open shed; at about mid-night the wife of the deceased woke up on hearing the groaning sound of her husband and found him lying on the ground; she noticed the accused and two other persons running away from the open shed; she could see a katari in the hand of the accused at that time; she saw her husband lying dead in a pool of blood; she raised an alarm and went to the house of her neighbour Mohan Majhi (P. W 2), but did not find him as he had gone to the house of his neighbour Bhaduli Majhi (P. W. 3) on hearing the alarm; both P. Ws. 2 and 3 arrived in the house of the deceased; the wife of the deceased told them the same night that she had seen the accused running away from the open shed with a Katari in his hand. Next morning the villagers assembled in the house of the deceased; the accused is said to have made an extra-judicial confession before P. W. 2 Mohan Majhi and P. W. 4 Badra Majhi of his having committed the murder,

5. The first information report was filed by the wife of the deceased the following morning on July 15, 1964 at 8-10 a. m. In due course after police investigation the accused appellant was charged, committed and sent up for trial before the learned Sessions Judge, who convicted and sentenced him as aforesaid.

6. The confessional statement said to have been made before the Magistrate P. W. 6 is that the deceased having caught hold of the neck of the accused and having thrown him on the ground three times and having kicked him, the accused got injuries on his cheek and it was then that the accused killed the deceased with

a Katari. In other words, the accused's statement is that he killed the deceased in exercise of his right of private defence. The said confessional statement being exculpatory is not admissible in evidence. As the Privy Council held in *Pakala Narayana Swami v. Emperor*, *Alts 1939 P. C. 47*, a confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence an admission of a gravely incriminating fact, even a conclusively incriminating fact is not itself a confession; a statement that it contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Thus in the present case if the deceased had assaulted the accused and thereafter the accused had killed the deceased purporting to be in self-defence in the manner as stated by him before the Magistrate, then such killing in self-defence will not constitute an offence; it will be open to the accused to take the defence of right of private defence. That being so, the statement before the Magistrate will not be admissible in evidence.

7. The main basis of the prosecution case is the extra-judicial confession said to have been made by the accused before P. W. 2 and P. W. 4. The evidence of P. W. 2 is that early next morning the villagers were called; that he himself and one Sajana Patra went and asked the accused about the occurrence; the accused confessed before them that he had killed the deceased with a Katari. Similarly the evidence of P. W. 4 is that early next morning he went to the house of the deceased where he found that the widow of the deceased (P. W. 1) was crying; he went to the accused and asked him how his son died; in reply the accused told him that he had killed the deceased with a Dauli, on the previous night; the accused also told him that he had a quarrel with the deceased in the evening and on that account he killed him. As regards P. W. 2 it was suggested on behalf of the defence in cross-examination that about four years prior to the occurrence once he had a quarrel with the accused as his (P. W. 2's) cattle damaged his crop. With regard to P. W. 4 however, there is no suggestion of any enmity. In fact P. W. 4 said that he had no ill feeling with the accused.

8. There is also strong circumstantial evidence against the accused in that the deceased's widow (P. W. 1) had seen the accused along with two other unknown

persons running away from the open shed. The evidence of P. W. 1 in substance was this : In the night her husband slept on a charpoy with her minor son in an open shed; she also slept in that shed with her minor daughter on another charpoy; at about mid-night she woke up on hearing the groaning sound of her husband; her husband had fallen down from the Charpoy; she could see the accused and two other unknown persons running away from the open shed; she could not recognise those two persons; but she could clearly see the accused; the accused had a Dauli in his hand; she found a cut wound on the neck of her husband; her husband was lying dead in a pool of blood.

9. It was sought to be argued on behalf of the defence relying on certain alleged discrepancies in her evidence that her evidence should not be accepted. It was commented that in examination-in-chief she said that she slept on a charpoy while in cross-examination she said that she slept on a mat by the side of the charpoy on which her husband slept. The defence also commented that as regards two persons running away along with the accused P. W. 1 did not mention anything about this in her F. I. R.

It was also commented that in her examination-in-chief, she said that she saw two other unknown persons whereas in cross-examination she said that she saw her husband's brother Ludhru and one Tente running away with the accused; and also in her deposition before the committing Court she named two other persons Ludhru and Tente. That apart, it was also commented that in examination-in-chief she mentioned that the accused has a Dauli in his hand while in cross-examination she said that the accused had a Tabla in his hand. In our opinion these are not such material discrepancies in her evidence as to make her testimony with regard to the material part of her evidence, namely that she actually had seen the accused running away with the Dauli or Tabla in his hand in the circumstances as stated by her in evidence before the learned Sessions Judge, unacceptable. The fact of non-mention in the F. I. R. of two other persons running away with the accused which is only a matter of details, is mere omission; her subsequent mention of two unknown persons and also her naming them as Ludhru and Tente does not affect the substantial evidence as against the accused.

10. In the opinion of the doctor P. W. 12 who held the post-mortem examination the oblique incised wound along the nape of the neck in front and right side of the neck-gaping 4' x 2' x 1' in dimension tailing towards the left, might have been caused by sharp cutting weapon like the Katari M. O. II.

11. The extra-judicial confession made by the accused before P. W.2 and P. W. 4 corroborated by strong circumstantial evidence-namely that the deceased's widow P.W.1 had seen the accused running away with the Katari M. O. II in his hand and also the evidence of the doctor P. W. 12 that the injury found on the deceased could have been caused by such a Katari, M. O. II established beyond doubt that it was the accused who had committed the murder of the deceased.

12. In this view of the case the order of conviction and sentence of the accused-appellant passed by the learned Sessions Judge is upheld.

13. This Criminal appeal is dismissed.

G.K. Misra, J.

14. I agree.

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