

Tanguru Pradhan Vs. the State of Orissa

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Court : Orissa

Decided On : Aug-31-1984

Reported in : 1985(I)OLR117

Judge : B.K. Behera and ;K.P. Mohapatra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24 and 145

Appeal No. : Criminal Appeal No. 8 of 1982

Appellant : Tanguru Pradhan

Respondent : The State of Orissa

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : A.K. Padhi, Adv.

Disposition : Appeal dismissed

Judgement :

K.P. Mohapatra, J.

1. The appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment, for life by the learned Sessions Judge, Dhenkanal for having committed the murder of his step brother, Goura Pradhan on 9. 10, 1980.

2. Prosecution case in brief is that the deceased was the son of the first wife and the appellant is the son of the second wife of Jadu Pradhan (P. W. 9). They were living separate in mess and property. On the date of occurrence at about 9 a. m. the deceased was fencing a guava tree standing in the back-yard of their homestead with thorn twigs. The appellant protested saying that the deceased had no right to fence a part of the homestead which had fallen to his share. At this, there was exchange of hot words between the deceased and the appellant. All on a sudden the appellant assaulted the deceased by means of a Tangia on the neck and head. As the handle broke down, he picked up the Tangia of the deceased from the ground and repeated the assault by means of it although the deceased had in the mean time fallen down on the ground being seriously injured. As a result of the assault, the deceased died instantaneously. The appellant went to Balimi Police Station and lodged station diary entry (Ext. 11). The brother-in-law of the deceased, Giridhari Naik (P.W.1) lodged the F.I.R. (Ext.1) on 9. 10.1980 at 2 P. M. as to the occurrence at the said police station. The investigating officer (P.W.17) in course of investigation made inquest over the dead body (Ext. 6) and sent the dead body for postmortem examination. He seized from the place of occurrence two blood-stained Tangias (M. Os. I and II) by seizure-list (Ext. 9) and received the blood-stained napkin of the deceased (M.O. III) after the post mortem examination. He dispatched the blood-stained articles, such as, the Tangias and the napkin referred to above for chemical examination and serologist's report (Exts. 14 and 15). After close of investigation he submitted charge-sheet against the appellant for having committed an offence under Section 302 of the Indian Penal Code.

3. The plea of the appellant was denial simpliciter. On consideration of the prosecution evidence the learned Sessions Judge found the appellant guilty of the charge. Accordingly he convicted and sentenced him as already referred to above.

4. Dr. G.B. Naik (P.W.8) conducted the post mortem examination over the dead body of the deceased on 10. 10. 1980 at 12 noon. He found four incised wounds on the neck and occipital region of the deceased and another such wound on the left shoulder. According to his evidence, the injuries were ante mortem in nature and could have been caused by sharp and heavy weapons, such as, Tangias (M.

Os. I and II). He opined that one of the neck injuries which extended from the thyroid eminence to the middle of the right clavicle was fatal and sufficient in ordinary course of nature to cause death which was due to hemorrhage and shock. It thus appears from his evidence and report (Ext. 3) that the death of the deceased was homicidal in nature. This fact was also not challenged in appeal.

5. The prosecution evidence consists of an eye-witness account of the occurrence by the widow of the deceased, Supa Bewa (P.W.2), confessional soliloquy of the appellant proved by the informant, Giridhari Naik (P.W.1), extra judicial confession made by the appellant before. Bhagirathi Behera (P.W.10) and Dhruba Kishore Naik (P.W. 11) and the reports of the chemical examiner and serologist (Exts.14 and 15) proving that the Tangias (M. Os. I and II) were stained with human blood of 'A' group which was the blood group of the deceased.

6. The prosecution examined Supa Bewa (P.W. 2), Manjula Dei (P.W. 3), Pakeli Dei (P.W.4), Rama Dei (P.W.5) Ghanti Dei (P.W.6), and Tikili Dei (P.W.7) as eye-witness to the occurrence. Of them except the widow of the deceased, Supa Bewa, (P.W.2), the rest turned hostile and did not support the prosecution case during trial. The learned Sessions Judge, therefore, did not accept the evidence of the hostile witnesses and in his opinion rightly so. He, however, accepted the evidence of the widow of the deceased, Supa Bewa (P.W.2), the only eye-witness to the occurrence. Since Supa Bewa is the widow of the deceased and was the only eye-witness who supported the prosecution case during trial, her evidence is required to be closely scrutinised. She stated that on the day of occurrence while she was taking green gram and mustard seeds to deliver the same to the deceased for the purpose of sowing in the Bari, she heard the alarm raised by him and ran near the guava tree. She saw the deceased lying on the ground with bleeding injuries on the neck and the appellant assaulting him by means of a Tangia. When the handle of the Tangia broke down, the appellant picked up the Tangia of the deceased lying on the ground and assaulted him with it. When she protested, the appellant threatened her with assault. She raised alarm hearing which some people came to the place of occurrence. The appellant thereafter went away. She was cross-examined in detail, but no material discrepancy could be brought out. On the other hand, she clarified by stating that in all she saw the

appellant dealing four or five Tangia blows with both the Tangias on the neck and head of the deceased. Mrs. Padhi, learned counsel for the appellant, pointed out that the witness had stated before the investigating Officer that she was the appellant dealing only one stroke to the deceased by means of a Tangia. According to her, this was a material discrepancy which rendered the evidence of the witness unreliable. In this connection, it is necessary to make reference to the evidence of the Investigating Officer (P.W. 17), who stated that on the date of occurrence it was impossible on his part to record the statement of Supa Bewa, because she was weeping and disconsolate. He could only record her statement on 10.10.1980. Supa Bewa at a young age lost her husband who was killed in a brutal manner to which she was a witness. She must have been distressed and shocked even on the day the Investigating Officer recorded her statement. Therefore, even if she stated that she saw only one stroke being dealt by the appellant to the deceased by means of a Tangia, it cannot be treated as a vital discrepancy so as to discard her evidence. On consideration of her evidence as a whole we find that the same is of unimpeachable character. Even if she is the solitary eye-witness to the occurrence, her testimony being entirely reliable, there is no legal impediment to accept the same. Law is well settled that conviction can be based on the testimony of a single eye-witness if it is found to be above reproach or suspicion, [A.I.R.1957 S.C. 614: Vadivelu Thevar v. The State of Madras and 1984 (1) O.L.R. 653: Chintamani Nahak alias Naik v. State]. Further as she is the widow of the deceased and an interested witness, her evidence cannot be rejected on the aforesaid ground alone when after close scrutiny it is found to be reliable, truthful and worthy of credit, [A. I. R. 1957 S. C 199 : Mangal Singh and Ors. v. State of Madhya Bharat and 1984(1) O.L.R. 653 : Chintamani Nahak alias Naik v. State]. We, therefore, have no hesitation in the facts and circumstances of this case to entirely accept the evidence of Supa Bewa (P. W. 2).

7. The informant, Giridhari Naik (P. W.1) is the brother of Supa Bewa (P. W.2). On the date and at the time of occurrence he was working in a nearby thrashing floor. He heard the alarm raised by his sister Supa Bewa (P.W. 2) and ran to the place of occurrence. He saw that the deceased was lying on the ground with bleeding injuries and the appellant was going away holding a Tangia saying 'SALAKU HANI DELIBHALA KALI meaning 'I did well by killing him'. The aforesaid statement

made by the appellant was a confessional soliloquy. The cross-examination of the witness shows that no material was elicited so as to disbelieve the confessional soliloquy made by the appellant. It is for consideration whether the confessional soliloquy made by the appellant is admissible in evidence and can be used against the maker of it. In this connection reliance can be placed on a decision reported in A.I.R. 1966 S. C. 40 : Sahoo v. State of Uttar Pradesh, in which Subba Rao, J. (as he then was) made a lucid exposition of the evidentiary value of a confessional soliloquy as quoted below :

'But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act ; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low; the words may be confused ; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.'

As already referred to above the witness stated the exact words uttered by the appellant and his evidence has not been impeached in any manner. Therefore, we accept his evidence and believe that the appellant made the confessional soliloquy immediately after the occurrence which, however, is a corroborative piece of evidence and cannot be the sole ground of conviction.

8. Soon after the occurrence, the appellant left the village and proceeded towards Balimi. He appeared at the police station and made a station diary entry on the same day at 3.30, p. m. (Ext. 11). Bhagirathi Behera (P.W.10) stated that he had adopted Alekh Dharma and was known as 'Dhulia Bhai' in the locality. While he was sitting on the verandah of the Mahima Tungi in their village, Khali Berana

along with Dhruva Kishore Naik and another and discussing with Babaji, the appellant whom he previously knew came from his village side and expressed before him that he killed his brother, Goura.' The exact words stated by the appellant were 'DHULIA BHAIR DHULIA BHAIR MU GOURA BHAIRU MARIDELI SE MARIGALA' meaning 'Dhulia brother, Dhulia brother, I assaulted my brother, Goura who died', Dhruva Kishore Naik (P.W.II) corroborated P. W. 10 and stated that while he was in the Alekh Tungi of Bhagabat Behera along with some others and was discussing about Alekh Dharma with Babaji Antaryami Baba in the month of Aswina, the appellant whom he previously knew came from his village side and said that he killed brother, Goura and was going to the police station. The exact words repeated by him were Dhulia Bhai Dhulia Bhai Goura Bhaitaku Hani Deli Thanaku Jauchhi' meaning 'Dhulia brother, Dhulia brother, I killed brother Goura and am going to the police station'. In the cross-examination of both these witnesses before whom the appellant made extrajudicial confession of having committed the murder of the deceased, nothing was elicited so as to disbelieve their testimony. They were independent and disinterested, witnesses of another village before whom the extrajudicial confession was made by the appellant, out of a deep sense of remorse for having murdered, his own. elder step-brother in a fit of rage. The appellant's deep sense of remorse on account of the crime committed by him is evident from the fact that he himself went to the Balimi Police Station and made a station diary entry (Ext.I4). Relying on the evidence of these two witnesses we cannot but arrive at the conclusion that the extra judicial.. confession made by the appellant was voluntary in character and so the same can be used against the appellant. Law is well-settled that when an extra judicial confession is found to be both true and voluntary, there can be no impediment in law to base a conviction on the same, [1977 C.L.R. 417: Panu alias Pranabandhu Gochhayat v. The State and 1984 O.L.R. (N.O.C.) 13 : Sukarmani Mundani v. State].

9. Jadu Pradhan (P.W.9), father of the deceased and the appellant did not support the prosecution case with regard to extrajudicial confession said to have been made by the appellant before him soon after the occurrence. Therefore, he was declared hostile and was cross-examined by the Public Prosecutor. He stated in his evidence that the broken Tangia (M.O.I) belonged to the appellant and the other Tangia (M. O. II) belonged to the deceased. Both of them were lying at the

place of occurrence near the dead body. He also stated that the napkin (M. O. III) was worn by the deceased at the time of his death. The Investigating Officer (P. W. 7) stated that he seized the blood-stained Tangias (M Os I and II) from the place of occurrence by seizure list (Ext. 9) and the napkin (M.O.III) was delivered to him by the Constable after the postmortem examination was over.. These three material objects were sent for chemical examination and serologist's report. From the report of the chemical examiner (Ext. 14) it appears that the Tangias and the napkin marked C, D and H by him contained blood. The report of the serologist (Ext. 15) shows that those material objects contained human blood of 'A' group. Patently, therefore, the deceased who was wearing the napkin (M.O.III) at the time of the occurrence and with whose blood the napkin was stained had blood group 'A'. He was assaulted by means of the Tangias (M.Os.I and II) which also contained the same blood group. Therefore, there is no doubt that M.Os.I and II were used in the murder of the deceased. It may be pointed out that the part of the evidence of Jadu Pradhan (P. W. 9) in which he identified M.O. I as belonging to the appellant and M. Os. II and III belonging to the deceased cannot be disbelieved, because, being the father of both, he had personal knowledge of possession of those material objects. Further, merely because he was declared hostile and was cross-examined by the prosecution this part of his evidence which is of reliable character cannot be discarded. In this respect, after consideration of a series of decisions, law has been enunciated in a decision reported in A. I. R. 1976 S.C.294 : Sat Paul v. Delhi Administration as follows :

'From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be credit worthy and act upon it. If in a given case, the whole of the testimony of the witness

is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.'

(Also see A.I.R. 1976 S.C.202 : Bhagwan Singh v. The State of Haryana, 1979 C. L. R. 36 : Golak Das v. The State of Orissa).It is, therefore, clear from the evidence of Jadu Pradhan and Exts. 14 and 15 that the Tangias (M.Os.I and II) were used for the murder of the deceased.

10. After careful consideration of the evidence on record, we have no hesitation to accept the findings of the learned Sessions Judge that the appellant having assaulted the deceased by means of sharp cutting weapons, such as, the Tangias (M.Os.I and II) inflicted injuries on the head and neck, thereby, intentionally causing the death of the deceased. Accordingly, the conviction of the appellant under Section 302 of the Indian Penal Code and the sentencethere under cannot be disturbed.

11. In the result we find no merit in the appeal which is accordingly dismissed.

B.K. Behera, J.

12. I agree.