

Manju Alias Mohan Das Vs. State

Manju Alias Mohan Das Vs. State

SooperKanoon Citation : sooperkanoon.com/529838

Court : Orissa

Decided On : Jan-18-1985

Reported in : 1985(I)OLR194

Judge : B.K. Behera and ;S.C. Mohapatra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3

Appeal No. : Criminal Appeal No. 229 of 1981

Appellant : Manju Alias Mohan Das

Respondent : State

Advocate for Def. : P.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Padhi and S.K. Padhi, Advs.;

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant, it was alleged, committed the murder of Ghana Behera (hereinafter referred to as 'the deceased') during the night of the 5th/6th June, 1980 near village Talabeda in the district of Dhenkanal by means of a Katari (M. O. I.) belonging to the appellant because some time prior to this occurrence, the

deceased had, in a state of drunkenness, quarrelled with the appellant and had hit his head by a bottle which broke into pieces causing a bleeding injury on the person of the appellant as noticed by the doctor (P. W. 1) for which the appellant had kept a grudge and had threatened to see the deceased whereafter in the following morning, the dead body of the murdered deceased was seen by the side of the road with M. O. I and its handle (M. O. II) lying near that spot with a banian (M. O. III) stained with blood said to be belonging to the appellant kept in a bush nearby. To bring home the charge under Section, 302 of the Indian Penal Code, the prosecution had examined fifteen witnesses while the appellant, who had denied the charge, had not examined any witness in his defence. The learned Sessions Judge found that the prosecution had established its case and accordingly the appellant was convicted of the offence with which he stood charged and sentenced thereunder to undergo imprisonment for life.

2. Mr. S. K. Padhi, appearing for the appellant, has contended that the circumstances on which the prosecution sought reliance had not been established and even assuming that they had been, the circumstances taken together could not lead to but one conclusion that the appellant was the author of the crime. Mr. Mohanty, appearing for the State, has submitted that the motive on the part of the appellant and the recovery of M. O. I near the spot would indicate that it was he who had killed the deceased.

3. In a case depending on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent only with the hypothesis of the guilt of the accused and incompatible with his innocence. The circumstances should be of a conclusive nature and should be such as to exclude every hypothesis but the one proposed to be proved.

Speaking of the Supreme Court, V. R. Krishna Iyer, J., dealing with the probative value of circumstantial evidence, has observed 'in the case of Dhawna Das Wadhvani v. State of Uttar Pradesh AIR 1975 Supreme Court 241:

'Every evidentiary circumstance is a probative link, strong weak, and must be made out with certainty. Link after link forged firmly by credible testimony may form

a strong chain of sure guilt, binding the accused. Each link taken separately may just suggest but when hooked onto the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Sh t of that is insufficient. '

In AIR 1984 Supreme Court 1622 : 1984 Cri. L. J. 1738 : Sharad Birdhichand Sarda v. State of Maharashtra, the Supreme Court has observed and held :

'A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must should and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be should be proved' as was held by this Court in Shivaji Sabebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 ; (AIR 1973 SC 2622) where the following observations were made :

'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.'(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground f the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.'

Keeping in mind these principles, it is to be seen as to whether the order of conviction could be rested on the circumstantial evidence relied on by the prosecution.

4. It is not disputed at the Bar and it is clear from the evidence of the doctor (P. W. 2) that the deceased had died a homicidal death as a result of the injuries - external and internal - which could be caused by an instrument like M. O. I.

5. There was no paucity of evidence that prior to his death, the deceased had, in the course of a quarrel, hit the appellant by means of a bottle causing a bleeding injury on his person. But as has been rightly submitted by the learned counsel for both the sides, the evidence adduced from the side of the prosecution that the appellant had challenged the deceased and had threatened to see him was not quite consistent and therefore, was not acceptable. Even assuming that the previous quarrel could constitute the motive to commit the murder which could not reasonably so constitute, motive, however adequate, is not sufficient to sustain a criminal charge. If there be other evidence pointing to the guilt of an accused person, it may be an additional link.

6. The learned Sessions Judge did not accept as an incriminating circumstance the recovery of M. O. III said to be belonging to the appellant and kept near a bush at some distance from the spot which, on chemical and serological test, had contained human blood. He had, however, placed reliance on the recovery of M. O. I and its handle (M. O. II) from near the spot where the dead body was lying. On chemical test, blood had been detected in M. O. I but its origin could not be determined. P. Ws. 4, 5 and 7 had not spoken about the ownership of M. O. I. P. Ws. 6 and 8 had testified that M. O. I belonged to the appellant and they could know about it as the appellant had shown it to them on an earlier occasion. Both these witnesses had neither stated to the Investigating Officer nor before the Magistrate who had recorded their statements under Section. 164 of the Code of Criminal Procedure that the appellant had shown M. O. I to them previously. P. W. 9 had testified that M. O. I belonged to the appellant as he had seen him earlier

cutting trees by means of that instrument. This witness was not a co-villager of the -appellant and his statement in this regard had not found support in any other evidence. The prosecution had not established by clear and acceptable evidence that M. O. I did belong to the appellant.

7. Even if it be held that M. O. I. did belong to the appellant, in the absence of other evidence pointing to the guilt of the appellant, the recovery of M. O. I at the spot coupled with the evidence relating to a previous quarrel, could not sustain the charge. The recovery of a blood-stained article of an accused person can be used to corroborate other evidence and it cannot, by itself, prove a charge of murder.

8. It was in evidence that a pair of chappals (M. O. VII) belonging to the appellant had been found near the Tadi Bhati where the appellant had gone on the previous day. If the appellant had left his pair of chappals at the place where he had previously gone, that could not be a guilt-pointing circumstance against him.

9. The circumstances relied on by the prosecution might give rise to a suspicion regarding the appellant's complicity in the crime, but could not be said to be compatible with his innocence and consistent only with the hypothesis of his guilt. Suspicion, however grave, cannot take the place of proof. The order of conviction cannot be sustained.

10. We would allow the appeal, set aside the order of conviction and sentence passed against the appellant under Section. 302 of the Indian Penal Code and direct that he be set at liberty forthwith.

S.C. Mohapatra, J.

11. I agree.