

Dasu Alias Jasoda Dei Vs. State

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Court : Orissa

Decided On : Feb-18-1984

Reported in : 1985(I)OLR382

Judge : B.K. Behera and ;P.C. Misra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 8 and 60

Appeal No. : Jail Criminal Appeal No. 14 of 1985

Appellant : Dasu Alias Jasoda Dei

Respondent : State

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

Advocate for Pet/Ap. : Rajen Mohapatra, Amicus curiae

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The elder of the two wives of Lalmohan Naik (P. W. 2) is alleged to have committed the murder of the younger one by assaulting her by means of an axe (M.O. III) in the jungle after both of them had gone to their land with manure in two baskets (M. Os. I and II) in the morning at about 7 to 8 A. M. of April 30, 1984. The

prosecution sought to establish its case by examining nine witnesses none of whom had given direct testimony about the assault on the person of the deceased by the appellant and the order of conviction against the appellant, recorded by Mr. B. Panigrahi, Sessions Judge, Keonjhar, sentencing her to undergo imprisonment for life, has been rested on circumstantial evidence. The circumstances fought by the prosecution were that the appellant and the deceased had left their house in the morning with baskets full of manure (M. Os. I and II), when the appellant, it was alleged, had been armed with an axe. At about 4 P. M., the dead body was found in the jungle by the son of the appellant (P. W. 1) M. Os. I and II were seen on the spot when the villagers gathered where after the first information report was lodged by P. W. 1 at the police station. The appellant was said to be absconding after the occurrence and she was apprehended at Keonjhar on May 2, 1984 by the Sub-Inspector of police (P. W. 9).

2. We have called upon Mr. Rajen Mohapatra, a young Advocate who has just joined the legal fraternity, to appear on behalf of the appellant and assist this Court and he has addressed us with considerable earnestness and zeal and has urged that the circumstances on which reliance had been placed by the prosecution had not been established and even assuming that they had been, the circumstances could not be incompatible with the innocence of the appellant and could not point to but one conclusion, viz., her guilt. He has invited our attention to the principles laid down in a number of decisions of the Supreme Court in this regard. Mr. D. P. Sahoo, the learned Standing Counsel, has submitted and in our view, very fairly so that he would not support the order of conviction in view of the highly suspicious features in the evidence which could not sustain the charge.

3. It would appear from the evidence of the doctor (P. W. 7) who had conducted the autopsy that the death of the deceased was homicidal in nature and the injuries sustained by her could be caused by a weapon like M. O. III. His evidence did not, however, rule out a possibility of the injuries having been caused by a fall and it was in the evidence of P. W. 8. the Assistant Sub-Inspector of Police, that the ground on which the dead body was lying was a stoney bed near a small cliff the height of which was about twenty feet. Assuming, however, that the death of the deceased was homicidal in nature, we find, for the reason? to follow, that the

contentions raised on behalf of the appellant shall prevail and the concession made by the learned Standing Counsel is fair and well-founded.

4. There was no evidence worth the name indicating any motive on the part of the appellant to kill the accused. On the other hand there was a clear statement made by P. W. 2, the husband of the appellant and the deceased, that at the time of the occurrence, the appellant and the deceased had cordial relationship. Depending as the prosecution did only on circumstantial evidence, absence of proof of motive would be of immense significance and would put the Court on its guard to examine the circumstantial evidence bearing on the guilt of the appellant with more than the ordinary care and with circumspection.

5. As has been laid down by the Supreme Court more than thirty years ago in AIR 1952 S. C. 343 : Hanumant Govind Nargundkar and Anr. v. State of M. P. in dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be fully established and the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the 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 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. The same principles have been laid down by the Supreme Court in AIR 1971 S. C. 2016 : Bakshish Singh v. The State of Punjab, AIR 1972 S. C. 54 : Udaipal Singh v. The State of U. P., AIR 1973 S. C. 2474 : Khashaba Maruti Sheika v. The State of Maharashtra, AIR 1977 S. C. 1063 : Hukum Singh v. The State of Rajasthan, AIR 1977 S. C. 1164 : Ram Das v. State of Maharashtra, AIR 1978 S. C. 424 : Umedbhai Jadavbhai v. The State of Gujarat, AIR 1979 S.C. 826 : S. P. Bhatnagar and Anr. v. The State of Maharashtra, and AIR 1982 S.C. 1157 : Gambhir v. State of Maharashtra to which our attention has been invited by Mr. Mohapatra appearing for the appellant. In

this connection, we may usefully quote an extract from AIR 1975 S. C 241 : 1974 Cri. L. J. 1249 : Dharm Das Wadhvani v. The State of Uttar Pradesh. V.R. Krishna Iyer, J., speaking for the Supreme Court, has observed and held:

'Every evidentiary circumstance is a probative link, strong or 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 on to the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient. '

Five golden principles relating to the appreciation of circumstantial evidence which have so aptly been described as the 'Panchshil' of circumstantial evidence have been enunciated by the Supreme Court in AIR 1984 S. C. 1622 : Sharad Birdhichand Sarda v. State of Maharashtra, The five principles are : (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances must or should and not may be established, (ii) the fact 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, (iii) the circumstances should be of a conclusive nature and tendency, (iv) they should exclude every possible hypothesis except the one to be proved, and (v) there must be a chain of evidence so complete as not to leave any reasonable ground for 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.

Judged in the light of the aforesaid principles laid down by the Supreme Court from time to time, the evidence led by the prosecution in the instant case was far short of the mark.

6. Coming to the first circumstance that the appellant and the deceased had left for the land in the morning with baskets of manure (M. Os. I and II), the learned Sessions Judge committed an error of record by saying that they had gone 'together' as of this, there was no evidence.

7. P. W. 1 had testified that when he returned home, his grand-father Khudia Naik (not examined) had informed him that his mother (appellant) and step-mother (deceased) had gone to the field with manure. The learned Sessions Judge not only referred to this statement, but also seemed to have relied on it although legally it was impermissible. This part of the evidence of P. W. 1 must be rendered inadmissible as his grand-father had not been examined. If a person makes a statement that he had received some information from another and the latter is not examined, the information which the former claims to have received must be rendered hearsay and therefore, is not admissible in evidence. (See, AIR 1983 S. C. 906 : Bhugdomal and Ors. v. The State of Gujarat). We also notice a similar statement in the evidence of P. W. 2 and according to this witness, Goura Naik and Raghu Naik had informed him that the appellant had slain his second wife (deceased). For the same reason, this statement was not admissible and should not have been admitted in evidence by the trial Court.

8. P. Ws. 3 to 5 had testified that they had been the appellant and the deceased going towards their field with baskets containing manure. There was no clear and categorical evidence that they were found 'together' going towards the field. The theory of the accused and the deceased being last seen envisages that they must have been last seen in the company of each other and of this, there was no clear evidence. Although P. Ws. 4 and 5 had stated in their examination-in-chief that besides baskets in their hands, they had also seen an axe in the hand of the appellant, they had clearly stated in their cross-examination that besides the baskets, they had not marked any other thing being carried by the appellant. Unjustifiably and unreasonably, the trial Court observed that there was no reason to discard the evidence of these two witnesses that they had seen the axe in the hand of the appellant as initially stated by them. It is pertinent to note that P. W. 3, who had also claimed to have seen the appellant and the deceased going towards the land, had not stated a word about any axe having been carried by the appellant. All this would tell its own tale and would definitely indicate that P. Ws. 4 and 5 had been made to speak in their examination-in-chief that the appellant had been carrying an axe although it was not true. The theory of the appellant being last seen with the deceased while the appellant was going with an axe must, therefore, be discarded.

9. In the instant case, the appellant and the deceased had left their village at about 7 to 8 A. M. as the prosecution sought to establish. The dead body of the deceased was seen at about 4 P. M. by P. W. 1. There was no evidence about the probable time of death. As has been held by the Supreme Court in AIR 1982 Supreme Court 1157 (supra) in the absence of any positive evidence about the probable time of death, it is difficult to connect the accused with the crime as there might be a long gap and many more persons might have come in between. In the instant case, the evidence had suffered from the same lacuna. Besides, there was no evidence whatsoever of any person that the appellant and the deceased had been seen together in the jungle or on the land or at any place near about the place where the dead body was lying.

10. In the absence of other evidence pointing to the guilt of an accused, evidence of the accused and the deceased being last seen together cannot lead to a conclusion of guilt. {See AIR 1979 S. C. 1620 Lakhanpal v. The State of Madhya Pradesh., AIR 1982 S. C. 1157 {supra), 1985 (1) OLR 4 : 1984 C. L. R. (Cri) 220 : Mantu alias Sunil Kumar Bhuyan v. State and 1983 Cri. L. J. 1854 (Cal) Madhav Ghoshe v. The State.

11. On his own showing, P. W. 1 had not seen M. Os. I to III on the spot when he first saw the dead body of the deceased and according to him, when he later went by which time a number of villagers had gathered on the scene, he saw M. Os. I to III lying there. As rightly submitted by Mr. Mohapatra, for the appellant, there was no evidence that M. O. III had any finger print of the appellant nor was there any evidence of any foot print of the appellant on that spot or near about. P. Ws. 4 and 5, who had claimed to have seen the appellant-carrying an axe which has been discarded by us, had not identified M. O. III to be the axe which was in the hand of the appellant. This weapon was sent for chemical examination and blood was detected on it, but its origin could not be determined. If M. O. III was the weapon of attack and had been stained with blood. Human blood could have been detected on it, but had not been. Unfortunate as it might seem, the learned Sessions Judge has commented oh the defence and has observed that it was for the appellant to show that the blood noticed on M. O. III was not human blood. This observation is unwarranted and opposed to the basic principles of criminal jurisprudence. The

recoveries of M. Os. I to III on the spot could not be of any significance in fixing the guilt on the appellant.

12. The only other circumstance for consideration is the fact of absence of the appellant after the death of the deceased. It would clearly appear from the evidence and circumstances of the case that after about 4 P. M., a number of persons had gathered at the scene. To be an absconder, a person should have taken precautions to hide so that the process of law may be avoided. (See AIR 1976 S. C. 76 : Kartarey and Ors. v. State of U. P.) Absconding, by itself is not conclusive of the guilt or of a guilty conscience. A person may abscond on account of fear of being falsely involved in the offence or for any other allied reason. Mere absconding may lend some weight to the other evidence establishing the guilt of the accused, but, by itself, is hardly any evidence of guilt. The conduct of one making oneself scarce for some days is relevant under Section 8 of the Evidence Act and might be indicative to some extent of a guilty mind, but this is not the only conclusion to which it must lead the Court. Even an innocent person may, when suspected of grave crimes, be tempted to evade arrest and such is the instinct of self-preservation in an average human being. Absconding is a weak link in the chain of circumstances as even an innocent person may try to keep out of the way on learning about false implication in a serious crime reported to the police. (See AIR 1963 S. C. 74 : 1963 Cri. L. J. 70 Raghav Prasanna Tripathi and Ors. v. State of Uttar Pradesh, AIR 1971 S. C. 1050 : 1971 Cri. L. J. 913 Matru Girish Chandra v. The State of U. P. , AIR 1971 S. C. 1871: 1981 Cri. L. J. 1314 : Thimma v. The State of Mysore, AIR 1971 S. C. 2156 : 1971 Cri. L. J. 1468 : Raghubir Singh v. The State of U. P. and AIR 1972 S. C. 110 . 1972 Cr. L. J. 23 : Rahman v. The State of U. P. That apart, as has been observed by the Supreme Court in AIR 1983 S. C. 61 : 1983 SCC (Cr) 83 : Prem Thakur v. State of Punjab, if a person is arrested at a particular place while going about openly, it would be difficult to accept the accusation that the person had absconded to that place. In the instant case, the appellant was found moving at an open place when she was arrested only two days after the occurrence. This circumstance cannot, therefore, further the case of the prosecution in any manner and that, too, in the absence of any other evidence pointing to her guilt.

13. In this view of the matter, we do not feel ourselves called upon to examine the evidence led by the defence to show the improbability in the prosecution version.

14. For the foregoing reasons, we are of the view that the order of conviction was unfounded on facts and misconceived in law and therefore, it must be set aside.

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15. The appeal is allowed. The order of conviction recorded against the appellant under Section 302 of the Indian Penal Code and the sentence passed against her thereunder are set aside. The appellant be set at liberty forth with

P.C. Misra, J.

16. I agree.

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