

Prasanta Kumar Sahu Vs. State

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Court : Orissa

Decided On : Nov-06-1998

Reported in : 1999CriLJ969; 1999(I)OLR71

Judge : S.N. Phukan, C.J. and ;A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Jail Criminal Appeal No. 393 of 1993

Appellant : Prasanta Kumar Sahu

Respondent : State

Advocate for Def. : S.C. Satpathy, Addl. Standing Counsel

Advocate for Pet/Ap. : Prasant Kumar Mishra, ;S.K. Ojha and ;Prativa Mishra

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. In the Persian tragic epic of Sohrab and Rustom father killed the son without knowing the identity. In the case at hand, a young boy of ten has met homicidal death. Prasant Kumar Sahu, the appellant (hereinafter referred to as the 'accused'), father of the deceased is said to be the perpetrator of the crime. The

unfortunate deceased was living with his mother, brother and sister in their maternal grand- father's house. Accused married Janaki (P.W. 3) sometime in 1981. There were frequent quarrels between the accused and his wife, which forced latter to leave her husband's house, and stay in the matrimonial home with the children for about four years preceding the date of occurrence, i.e., on 29.9.1991. Law was set into motion by Alekh Chandra Sahu (P.W.2) father-in-law of the accused alleging that on the date of incident at about 11 a.m. the deceased went out from his house and did not return till 4 p.m. Sankar Behera and two others came and reported to him that someone had slain his grandson. Immediately on hearing this news he and his daughter Janaki rushed towards the house of the accused and found the deceased lying with a pool of blood in a room of the first floor. The accused was present in the room and confessed to have killed his son. On the basis of information lodged, investigation was undertaken, and on completion thereof charge-sheet was placed.

2. The accused pleaded innocence.

3. Though eleven witnesses were examined for highlighting various circumstances to fasten the guilt on the accused, there was no eye-' witness. Accused did not examine any witness. Nine circumstances were highlighted by the prosecution to prove the guilt of the accused. Though P.W. 2 made a departure from some statements made in the FIR (Ext. 2), two letters were brought on record by him, which the accused allegedly wrote to him to contend that there was confession about commission of offence. Presence of blood on wearing apparels of the accused, his presence near dead body of the deceased and the extra-judicial confession allegedly contained in the letters formed the foundation of conviction by the learned Sessions Judge for commission of offence punishable Under Section 302, Indian Penal Code, 1860 (in short, 'IPC') and sentence of imprisonment for life was awarded.

4. Learned counsel for appellant urged that the learned trial Judge has failed to notice the irregularities and incredibility in the prosecution case and the circumstances highlighted do not make a chain so complete as to unerringly pointing the accusing finger at the accused. Learned trial Judge should not have

placed reliance on the so-called letters which surfaced for the first time during trial and were not brought on record when P.W. 2 was examined for the first time and subsequently was recalled to prove these letters. It has not been shown as to how P.Ws. 2 and 3 were acquainted with the handwriting of the accused. The other circumstances cannot be said to be conclusive to show that the accused was the author of the crime.

Learned counsel for State supported the judgment of conviction and sentence submitting that the circumstances rule out the possibility of anybody else to be the author of the crime.

5. The 'Panchsheel' of proof of a case based on circumstantial evidence which is usually called five golden principles have been stated by the apex Court in *Sharad v. State of Maharashtra* AIR 1984 SC 1622. They read as follows : '

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established, as distinguished from 'may be' established;

(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 for the inclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It is the cardinal principle of criminal justice that fouler the crime higher the proof required. A golden thread which runs through the web of administration of criminal justice is to the effect that if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to his innocence, the latter is to be adopted. This principle has a special relevance in cases where the guilt of the

accused is sought to be established by circumstantial evidence. Baron Alderson stated the following to the Jury in *Reg v. Hedge*, : (1838) 2 LAW 227 :

'The mind was apt to take a pleasure in adopting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

This was referred to in *Shankarlal v. State of Maharashtra* : AIR 1981 SC 765; and in *Jaharlal Das v. State of Orissa* :AIR 1991 SC 1388. Unlike direct evidence, indirect circumstances which throw light, may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction.

6. It is settled principle of law that the circumstances relied upon by the prosecution must be fully established, and the chain of evidence furnished by those circumstances should be fully complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. In a case of circumstantial evidence not only various links of evidence should clearly establish guilt of the accused, but also it must be such as to rule out a reasonable likelihood of the innocence of the accused. Where the various links satisfactorily make out a case and the circumstances point to the accused as the probable assailant with reasonable definitions and in proximity to the accused as regards time and situation and the accused offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence. Such absence of explanation or false explanation would itself be an additional link which completes the chain. But at the same time it has to be borne in mind that it does not mean by implication that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must meet any and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In other words, when deciding the question of sufficiency, what the Court has to consider is the cumulative effect of all proved

facts, each one of which reinforce the conclusion of guilt, and if the combined effect of all those facts taken together is conclusive, and establish guilt of the accused, conviction would be justified even though it may be that any one or more of these facts by itself is not decisive.

7. The first circumstance which has weighed with the learned trial Judge to find the accused guilty relates to alleged confession made in the letters stated to have been written by the accused, P.W. 2 who brought the letters on record was examined for the first time on 13.7.1992. He was recalled on the basis of a petition filed on 30.7.1992 for further examination on 5.8.1992. For the first time on 5.8.1992 he referred to letters stated to have been received by him. He has admitted that he did not possess any other writings of the accused. He claimed to have seen the accused writing in his presence about one and half years ago, and even before. He also accepted that after receipt of the letters he did not visit the jail and did not try to ascertain the truth or otherwise of the contents of those two letters. He handed over those two letters to the A.P.P. about 20 days prior to his examination on 5.8.1992.

8. The credibility of the witness (P.W. 2) has to be gauged in the background of relationship between him and the accused. The witness has admitted about strained relationship between his daughter (P.W. 3) and the accused. It is to be noted that P.W. 3 had also been Summoned on 13.7.1992, and she was recalled on 5.8.1992 to state about the letters. She has accepted that she did not know when the accused sent the letters. She stated that she had been to jail after receipt of the letters. Although her father had received the letters before she visited the jail she had no discussion with the accused regarding the letters. The first letter is of November, 1991 and the Jail Officer's signature and date appear therein. But in the second letter the date on which it was passed by the Prison Welfare Officer has not been indicated. The evidence of P.Ws. 2 and 3 is to the categorical effect that the letters are in the handwriting of the accused and they are not of different handwritings. Learned counsel for the accused stressed that a bare look at the letters reveals that they are not in the same handwriting. The learned trial Judge has observed that the letters dated 4.12.1991 and 23.6.1992 clearly show that the letters were sent by the accused and, they are in his

handwriting. He has relied on the evidence of RWs. 2 and 3 that they are acquainted with the handwriting of the accused, and therefore, the contents of the letters (Exts. 16 and 16/1) related to this offence, and there is no reason as to why a third party would manipulate the letters. He has dealt with Exts. 16 and 16/1 to hold that they are the confessional soliloquy of the accused regarding the offence committed by him. He has, however, observed that no conviction can be rest solely upon the confession and corroborative evidence is necessary. The position in law as stated by the learned trial Judge is not correct. Extra-judicial confession solely can form the basis for conviction, but the Court acting on such confession has to be careful to test evidence of witnesses on the touchstone of credibility. It has to be found out by the learned Judge as to whether the person before whom the confession is made is one on whom the witness could repose confidence. If the extra-judicial confession is found to be credible and cogent, as indicated above, conviction can be based solely on it. In view of the emphatic plea of the learned counsel for the accused that the letters are in two different handwritings, we have perused both the letters. A bare look at the two shows that they are in two different handwritings. Interestingly the first letter was not addressed to P.W. 3 and it was addressed to her mother. Learned counsel for State submitted that it was addressed to P.Ws 2's wife, i.e., P.W.3's mother, and therefore, P.W. 3 has stated that she and her mother went to see the accused after receipt of the letters. In the second letter there is some writing which according to learned counsel for State was under the signature of accused. Same is in different ink and in different handwriting from that relating to contents of the letter. In the address portion of the letters name of P.W. 2 appears and the same is in a different handwriting from that used to write the contents. The contents of the letter read in full shows that. It was significant that both the letters were not addressed to P.W. 2. Learned counsel for State submitted that it was addressed to him. But reading the contents it appears to be otherwise. Significantly these letters were not brought on record when both P.Ws 2 and 3 were examined on 13.7.1992. Learned counsel for State accepts that these letters were received much prior to the aforesaid date. No explanation whatsoever was offered as to why the letters were not brought on record at the time of explanation of P.Ws. 2 and 3, i.e., on 13.7.1992. The records of the learned trial Judge show that on 13.7.1992, the learned A.P.P. declined to

examine other six prosecution witnesses who were present that day and as such, the said witnesses were discharged without examination. It is to be noted that names of ten persons were indicated in the hazira filed but only four witnesses were examined. The matter was directed to be fixed on 16.7.1992 for further examination of Basanta Das. In one part of the order the name of the witness appears to be Basanta Sahoo. On 16.7.1992 no witness was present. The A.P.P. filed a memo for issue of bailable warrant against the witnesses. The date was posted to 24.7.1992. On the said date as no witness was present fresh bailable warrant was directed to be issued. On 30.7.1992, the A.P.P. filed hazira of 6 witnesses. At that stage prayer was made to recall P.Ws 2 and 3, and two post-cards were filed. On 11.8.1992 prayer was made by the State Defence Counsel appearing for the accused to send the letters along with the admitted signature of the accused for examination of the Expert. On that date it appears that the statement of the accused was recorded Under Section 313', Code of Criminal Procedure, 1973 (in short 'Code'). The matter was disposed of by the learned trial Judge with the following observations :

'Even those letters are sent to the Hand Writing Expert and opinion obtained favourably, it would not be treated as conclusive piece of evidence. The opinion of the Hand-writing Expert has not reached so much perfection as to rely exclusively on the report without any further evidence. The Hand-writing Expert's opinion can merely be taken as a piece of evidence and nothing beyond that. So, the Court while deciding the case may take into consideration about the writings of the accused in Exts. 16 and 16/1 along with the admitted writings of the accused Under Section 73 of the Evidence Act. So, I did not find any merit in the application and the same is accordingly rejected.'

A bare perusal of the order passed by the learned trial Judge shows that he did not at any stage make comparison of the handwriting with the admitted signature of the accused, and relied upon the evidence of P.Ws. 2 and 3. Learned counsel for State as well as the accused stated that though the course may be unusual, we may peruse the letter to find out whether there was any similarity in the writings. We have compared the handwritings as appearing in the statement recorded Under Section 313, Cr.P.C. A bare look at the writings in the two letters leaves no

manner of doubt that they are in different handwritings. Therefore, the learned trial Judge was not justified in concluding that the letters contained extra-judicial confession and considering same to be a factor to establish guilt of the accused.

9. The other circumstances highlighted by the prosecution relate to presence of the accused at the place of occurrence and the blood- stains found on his clothes. It is evident from the evidence of P.Ws. 2 and 3 that when they went to the house of the accused, they found him near the dead-body of the deceased. In the first information report as well as in Court P.W. 2 stated that he had heard from Sankar Behera, Rama and Gelei that the accused killed the deceased. On hearing this P.W. 2 went to the house of the accused where the deceased was lying dead. By the time he arrived about 20 to 30 people had,already gathered in the house of the accused. He did not stay there and went to Mangalabag Police Station. When the Police came to the house of the accused he was found outside.

P.W. 3 has stated that Gelei first informed that somebody had killed her son who was lying in the house of the accused. After hearing it she rushed there and found her son lying de.ad and her husband ('accused) siting beside him. P.Ws. 2 and 3 were definitely not the persons who saw the dead body first. As indicated above, P.W. 2 is stated to have heard it from the street people about accused killing the deceased. P.W. 3 has named the persons from whom she had heard about the incident. According to her one Geli told her that somebody had killed the deceased and he was lying in the house of her husband. Significantly, she has not stated that accused was pointed out to be the killer. None of these persons who allegedly informed., P.Ws. 2 and 3 has been examined. Had they been examined much light could have been thrown as to how the dead body was discovered, who discovered and under what circumstances. Presence of the accused near the dead body by itself is not a dominant factor to fasten the guilt on the accused. Undisputedly, the house where the dead body was seen was accused's house. Learned counsel for the accused submitted that when the accused tried to touch the dead body possibility of blood stains on his wearing apparels cannot be ruled out. The evidence on record shows that the place where the dea-d body was found is accessible to many and presence of any person other than the accused in the house is possible. Evidence of P.W. 3 in this regard is clear. She has stated that

the other members of the family could easily come to the room where the dead body was lying. It would be hazardous to convict the accused on the evidence on record. The chain of circumstances cannot be said to be so complete as to unerringly fasten the guilt on the accused. The conviction and consequentially the sentence cannot be maintained.

The appeal is allowed. The order of conviction and sentence is set aside. The accused be set at liberty forthwith, unless his custody is required in connection with any other case.

S.N. Phukan, C.J.

10. I agree.

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