

Laxman Kumar Behera Vs. State

Laxman Kumar Behera Vs. State

SooperKanoon Citation : sooperkanoon.com/530475

Court : Orissa

Decided On : Dec-12-1996

Reported in : 1997(I)OLR78

Judge : D.M. Patnaik and ;P.K. Mishra, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 98 of 1995

Appellant : Laxman Kumar Behera

Respondent : State

Advocate for Def. : Jairaj Behera, Addl. Govt. Adv.

Advocate for Pet/Ap. : P.K. Dhal, A.K. Acharya, H.R. Behera, B.K. Panda, D.K. Das and S. Mohanty

Disposition : Appeal dismissed

Judgement :

D.M. Patnaik, J.

1. The appellant assails his conviction under sections.302 and 201 of the Indian Penal Code and sentence of imprisonment for life and Imprisonment for six months respectively. He has been acquitted of the charge of Dowry death

punishable under Section 304B, IPC.

2. Prosecution case is marriage between the appellant and deceased Jhunu alias Shakuntala took place in Falguna 1990. Though PW 1, father of the deceased had met the demand of dowry, yet he failed to keep his promise to pay Rs. 10,0 00/- towards the cost of a scooter for which it was alleged that, the appellant and his parents started ill-treating to deceased.

On 2-4-1994 receiving information that Shakuntala was ailing, PW 1 came to the house of the appellant and found his daughter to have recovered from the illness. On that day he witnessed the appellant quarrelling with the deceased for amount of Rs. 10,000/-promised by PW 1 to get. The appellant left the house at 4 p.m. towards the Bazar and returned at about 9 p.m. in a drunken state. Both the appellant and the deceased stayed in one room during the nighttime and PW 1 slept in another room. The following morning the deceased was found absent. On enquiry, the appellant informed PW 1 that the deceased had left house during the night hours. The mother of the appellant also could not supply any information. Being told by the appellant that Jhunu might have gone to his house (house of PW 1), PW 1 came back to his house and did not get any information about the deceased and thereafter on 4-4-1994 reported the matter at Khantapada Police Station, On 5-4-1994 the dead body of Jhunu alias Shakuntala was recovered from the tank belonging to the appellant. The dead body was sent for post mortem examination which revealed that death of Shakuntala was because of asphyxia by smothering and this was homicidal. After the investigation, charge-sheet was submitted and the appellant faced trial and was convicted and sentenced as stated above.

3. The plea of the appellant is denial of the occurrence. The appellant admitted in his statement under Section 313, Cr PC to have shared the room to the deceased but as disclosed, his statement was that Shakuntala was not keeping well. She was not looking after the in-laws and the family members were discontented with her behaviour. Since Shakuntala was suffering from various ailments she was often giving out to end her life. With regard to the demand of dowry he denied the allegations.

4. The case of the prosecution is based on circumstantial evidence and to prove the case, the prosecution has examined six witnesses which include material witnesses PW 1 father of the deceased, PW 3 the Executive Magistrate in whose presence the dead body of the deceased was recovered from the tank, PW 5 the Doctor who conducted the autopsy and PW 6 the I. O. The defence examined two witnesses from its side.

The trial Court accepted the testimony of PW 1 holding it to-be credible and successful in proving the circumstance of the case that the appellant and the deceased being husband and wife shared the same room in the night of occurrence. The Court also believed the presence of PW 1 at the relevant time in the house of the appellant. Taking this fact into consideration coupled with the opinion of the Doctor that death of Jhunu was homicidal in nature and that the dead body was found floating in the pond situated in the Bari of the appellant, the trial Court held the prosecution case to have been proved.

5. Mr. P.K. Dhal, learned counsel for the appellant, advanced extensive arguments by submitting that the trial Court committed gross error in accepting the evidence of PW 1 to be true inasmuch as Mr. Dhal laid stress in the fact that PW 1 was a highly interested witness being the father of the deceased and further, the evidence on record did not prove beyond doubt the presence of the said witness in the house of the appellant on the date of occurrence. Mr. Dhal further submitted that in the present case the prosecution has miserably failed to prove the motive of the appellant to murder the wife inasmuch as according to Mr. Dhal, the prosecution having been failed to prove the case under Section 304B, IPC it has to be accepted that there was no motive.

While submitting this, the learned counsel referred to a number of decisions in the memo of citation dated 9-7-1996. We do not feel it necessary to discuss those decisions since the law is well settled on the point that when the occurrence is proved beyond reasonable doubt by cogent and acceptable evidence, absence of motive becomes unimportant. Mr. Dhal has also relied on several other decisions relating to the appreciation of evidence in cases on circumstantial evidence mentioned therein. We also do not feel it necessary to discuss them since there is

no quarrel over the legal propositions laid down in those decisions of the apex Court as well as of this Court on that point.

6. While stretching his argument that amoral conviction however strong it may be, should not invite a legal conviction Mr. Dhal referred to the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in AIR 1984 SC 1622. However, the decisions in the cases of *Ananta Bhujang Rao Kulkarni v. State of Maharashtra* : II (1992) CCR 135 (SC) and *Fakirappa v. State* II (1395) CCR 102 a Division Bench case of the Bombay High Court referred by Mr. Dhal relating to the theory of last seen are discussed at the appropriate stage.

Mr. Jairaj Behera, learned Additional Government Advocate supported the Judgment of conviction of the trial Court.

7. PW 5 is the Doctor who was attached to the Headquarters Hospital, Balasore as Assistant Surgeon. He stated to have conducted the post-mortem examination of the deceased on 5-4-1994. According to his evidence, the external appearance of the body was of average built and the whole body was bloated with blisters and at places the skin was pealed, palms and soles were swollen, tongue protruded, eyes were soft and bulging. The Doctor stated in his evidence to have found ante-mortem injuries on the body like bruises situated transversely on the left mandible 1/2 from middle eye. right corner of the mouth and linear abrasion on the labial surface of the upper lip. On dissection he found that the brain was soft and semi-liquid, both the lungs were congested and soft, the heart was soft and the chambers were empty. The spleen, kidney and liver congested and soft. According to the opinion of the Doctor the cause of death was due to smothering by asphyxia.

Nothing has been elicited in the cross-examination of the Doctor that death could have been a suicidal or accidental one. Therefore, we have no hesitation to confirm the finding of the trial Court that death of Sakuntala was homicidal in nature and that apart, the external injuries found on the body of the deceased Sakuntala as already indicated above, which according to the Doctor were ante-mortem in nature, circumstantially prove that the deceased sustained the injuries which could have been the cause of assault and from the very nature of the

injuries under no circumstance it could be imagined to have been caused by accident or at the time of committing suicide.

8. Since the charge under Section, 304B. IPC has not been proved, we do not feel it necessary to discuss that part of the evidence of PW 1, the sole witness on whose testimony the trial Court has accepted the case to be true.

So far as presence of PW 1 in the house of the appellant and the quarrel between deceased Sakuntala and the appellant over the issue of payment of Rs. 10,000/- are concerned his material evidence was that on 2-4-1994 on getting the information that Sakuntala was ailing he wanted to see her. On arriving he found Sakuntala to have recovered. He stayed there till the next morning. During his stay he saw the appellant quarrelling with Sakuntala on the issue of payment of Rs. 10,000/- by PW 1 as promised by him. He stated, around 4. 00 p. m. the appellant left for Bahanga Bazar and returned about 9. 00 p.m. in a drunken state. Both the appellant and deceased . Sakuntala slept in the same room whereas he slept in another room without taking food. On the following morning when the son of the deceased aged about a year and half cried, PW 1 enquired from the appellant about Sakuntala to which the appellant replied that she might have left for her parent's house in the night, The mother of the appellant also did not tell anything. He found the ornaments of his daughter lying on the bed. PW 1 went back to his house and searched for the deceased but did not get any trace of her. On 4-4-1994 he gave a report to the police under Ext. 1 about the missing of his daughter. On 5-4-1994 he got the information that the dead body of Sakuntala was floating in the pond situated inside the Bari of the appellant. PW 1 stated that the pond had knee-deep water.

Though he was cross-examined at length, nothing has been elicited in the cross-examination to disbelieve the fact of PW 1 reaching the house of appellant on 2-4-1994, staying in the night and his evidence that appellant quarrelling with the deceased and thereafter both of them sleeping in the same room. His evidence that in the following morning he found that Jhunu alias Sakuntala was missing and thereafter getting the information of the dead body of his daughter floating in the pond of the appellant has not been discredited. We have no hesitation to accept

that though PW 1 is none else other than the father of the deceased he had seen the appellant and the deceased sharing the same room in the night of occurrence, The fact that the appellant and the deceased were last seen together is admitted by the appellant in his 313 statement. He has not come forward with the case that even for a fraction of moment he was absent from the house during the night. In fact during the night he stayed inside the room with the deceased. The evidence of PW 3 the Executive Magistrate was that, in his presence the dead body was brought out from the pond of knee-deep water. This eliminates the possibility of Sakuntala dying in accidental death or committing suicide by drowning in the pond having only knee-deep water.

Therefore, on the basis of the evidence of PW 1 coupled with admission of the appellant that the deceased was in his company during the night of the occurrence, we have no hesitation to hold that the appellant was the perpetrator of the crime.

9. It was contended by Mr. Dhal that since prosecution failed to prove the charge under Sec. 304.3, IPC it can well be said that the appellant had no motive to commit the alleged offence.

We are unable to accept this since it cannot be said that non-fulfilment of the demand for dowry by PW 1 could have been the only motive for the appellant to commit the crime. There may be other reasons for which he might have done the act. That apart, as observed earlier on the face of clinching evidence, though circumstantial, absence of motive cannot be of any assistance to the appellant's plea of innocence.

10. The learned counsel with reference to Ext. F series, the letters written to the appellant by the deceased, submitted that those letters proved the love and affection of the appellant towards the deceased. Those letters cannot be of any help to judge the appellant's case on the face of the evidence of PW 1 which we have accepted as having proved the prosecution case.

A lot of criticism was also advanced by the learned counsel against the prosecution for having not examined many other charge-sheet witnesses and

particularly witnesses Paramananda Bari and Janaki Barik. In this regard we may say that prosecution relied only on the circumstantial evidence of the last seen theory. When the prosecution came forward with a positive case that it was PW 1 alone who had seen the appellant and the deceased sharing the room in the night of the occurrence and the dead body of Shakuntala was recovered from inside the pond of the appellant, non-examination of other witnesses whose evidence can be said to be only corroborative to other aspects of the prosecution case cannot be considered to be fatal.

11. Having considered the materials on record, we do not find any infirmity in the order of conviction and accordingly we dismiss the appeal as having no merit.

P.K. Mishra, J.

12. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com