

Basanta Kumar Barik Vs. State of Orissa

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Court : Orissa

Decided On : Mar-23-1999

Reported in : 89(2000)CLT121; 1999(I)OLR485

Judge : A. Pasayat and ;P.K. Misra, JJ.

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

Appeal No. : Criminal Appeal No. 26 of 1994

Appellant : Basanta Kumar Barik

Respondent : State of Orissa

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : B. Panda, D. Panda, D. Dash and ;P.K. Patra

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. Appellant Basanta Kumar Barik (hereinafter referred to as the 'accused') has been convicted by the learned Sessions Judge, Keonjhar for commission of offence punishable Under Section 302 of the Indian Penal Code, 1860 (in short, 'IPC') for allegedly having committed homicidal death of Fakir Charan Barik

(hereinafter referred to as the 'deceased'). He was sentenced to undergo imprisonment for life.

2. Background facts as presented by the prosecution essentially are as follows :

Deceased was the nephew of the accused. Houses of the accused and deceased were adjacent each other and they were living separately in mess and property at Badadanda Sahi, Old Town, Keonjhar. Relationship between the accused and family members of the deceased was strained and on the date of occurrence, i.e., 4.5.1991 the accused abused the father of the deceased and other members of his family in most obscene words and deceased objected to such obnoxious conduct. During the course of quarrel the accused picked up a Gupti (M.O.I.) and gave a piercing blow on the right side abdomen of the deceased, while he was standing in front of his house. On account of the stroke dealt by the accused, the deceased sustained profuse bleeding from his abdomen and raised a cry that the accused had assaulted him. Younger brother of the deceased, Pradeep Kumar Barik (P.W.I) came to the spot on hearing the cry. Accused was standing at the spot with the Gupti. Apprehending that the accused may give further blows, P.W. 1 snatched away the Gupti from the accused. Same was subsequently produced before the Investigating Officer during investigation. Informant (P.W.1) carried the deceased in a car to the District Headquarters Hospital, Keonjhar where he was treated. But he succumbed to the injuries on the following morning. Information was lodged at the Town Police Station, Keonjhar in the early morning of the next day, i.e., 5.5.1991. Investigation was undertaken, and charge sheet was placed.

3. Eight witnesses were examined to further the prosecution case. P.Ws. 1 and 2 i.e., the younger brother and mother of the deceased claimed to have witnessed the occurrence.

Accused pleaded innocence. He took the stand that there was dispute between the accused and the family of the deceased and therefore, a false case has been foisted. In order to prove his innocence accused examined one witness, i.e., the driver of the vehicle in which the deceased was carried to the hospital. It was his stand that he deceased has sustained injuries by falling on the ground under the influence of liquor.

During trial stand of the accused was that it is in the evidence of P.W. 3, the doctor that when the deceased was taken to the hospital he was given first aid treatment and after the treatment was rendered, he was taken to his home. It is revealed from the evidence of P.W. 3 during cross-examination that a group of persons, who carried the deceased to the hospital disclosed before him that the injuries sustained by the deceased were due to fall over a heap of chips and when the deceased was brought before him for treatment he was found to be in a drunken state. Later on they told him that the person who was brought for treatment had died and that is why the report was lodged with police vide Ext. 2.

Learned Sessions Judge on assessment of evidence came to hold that the accused was guilty and convicted and sentenced as aforesaid.

5. Main plank of argument of the learned counsel for the accused is that the medical evidence is inconsistent with the oral testimony and therefore, the prosecution version is untrustworthy. It is stated that the medical evidence is to the effect that three injuries were noticed, while the ocular testimony is to the effect that only one blow was given. Additionally it is submitted that the doctor who examined the deceased in an injured stage stated that no information was given by him to the police officials, as the persons accompanying the injured told him that the injured sustained the injuries on account of fall. This itself is sufficient to show that later on information was given implicating the accused falsely. Learned counsel for State submitted that when the ocular testimony is cogent and credible, merely because there is some minor variation with medical evidence former is not to be discarded. Additionally it is stated that the doctor's statement is suspicious and he appears to have given a different version to protect his own skin.

6. The question is how to test the veracity of the prosecution story especially when it is in variance with the medical evidence. Mere variance of the prosecution story with the medical evidence in all cases, should not lead to conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for Which Courts are created. To search it out, the Courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and

dust remains, the criminals are clothed with this protective layer to receive the benefit of doubts. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicious are created. It is onerous duty of the Courts within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. If in spite of such effort suspicion is not disclosed, it remains writ at large, benefit of doubt has to be credited to the accused. For this, one has to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eye- witnesses including the medical evidence, of course after excluding that parts of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a Judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt. This position has been indicated by the apex Court in Mohan Singh and Anr. v. State of M.P. : 1997(1) Supreme 201.

7. It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story: consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts the credit of the witnesses; their performance in the witness- box; their power of observation etc. Then the probative value of such evidence become eligible to be put into the scales for a cumulative evaluation.

A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to proof is an exercise particular to each case. Referring to of probability amounts to proof is an exercise the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says : (See 'The Mathematics of proof II', Glanville Williams : Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)).

'The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who ran away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.'

Doubts would be called reasonable if they are free from a rest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element. In the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense

and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.

The above position was illuminatingly highlighted in *State of U.P. v. Krishna Gopal and Anr.* : AIR 1988 SC 2154.

8. Position in law regarding discrepancy between the medical evidence and ocular evidence has been highlighted above. It is always the question of acceptability of the version and not the question of any type of evidence getting primacy over another. Taking into consideration the totality of the circumstances, more particularly evidence of P.W. 3, discrepancy between the medical evidence and the ocular evidence, it would be unreasonable to convict the accused. At this juncture it is relevant to take note of the evidence of D.W. 1. The fact that the deceased was carried to the hospital and was brought back home is not disputed. Mention is made about this in the first information report and in the evidence of P.W. 1 and 2. Accordingly the judgment of conviction and sentence is set aside. Accused be set at liberty forthwith, unless he is required to be in custody in connection with any other case.

The appeal is allowed.

P.K. Misra, J.

I agree.

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