

Sukri Janiani Vs. the State

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Court : Orissa

Decided On : Feb-13-1985

Reported in : 1985(I)OLR395

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

Acts : [Evidence Act, 1872](#) - Sections 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Jail Criminal Appeal No. 117 of 1981

Appellant : Sukri Janiani

Respondent : The State

Advocate for Def. : N.C. Panigrahi, Addl. Govt. Adv.

Advocate for Pet/Ap. : J.K. Misra and N.C. Misra (Through Legal Aid)

Disposition : Appeal allowed

Judgement :

B.K. Behera J.

1. The appellant, a tribal lady from the district of Koraput, stands convicted under Section 302 of the Indian Penal Code (for short, 'the Code') for having committed the murder of her husband Sukri Jani (to be referred to herainafter as 'the

deceased')at about 12 noon on May 10, 1930 by first hitting him by means of a crow-bar (M. O. I) and then by giving several blows by means of a stone (M. O. III) resulting in his death. The appellant, it was alleged, told her son (P. W. 6) that the deceased had committed suicide and receiving this information, P. W. 6 called out the villagers before whom the appellant also gave out that the deceased had committed suicide. A part of the dead body was hanging and a rope had been fixed to the roof. The body had been covered by a piece of cloth. P. W. 1 lodged a report in this regard before P. W. 10, the Assistant Sub-Inspector of Police attached to Jhorigam Police Station, who made a station diary entry (Ext. 3) and registered an Unnatural Death Case. P. W. 10 proceeded to the spot after sending information to the Officer-in-charge of the Police Station. P. W. 10 suspected it to be a case of homicide. On the report made by P. W. 6 On the spot, naming his mother as the assailant of the deceased, the first information report (Ext. 4) was drawn up by P. W. 10 who held inquest over the dead body and sent it for post mortem examination. The appellant was arrested and while in custody, her statement led to the discovery of two crow-bars (M. Os. I and II) in the land of P.W. 2 Sania. A piece of stone (M. O. III) was seized from the kitchen of the house of the appellant on production by her. Her Sari (M. O. IV), which she had worn, was seized. The appellant was forwarded to the Court with a request to record her confessional statement. P. W. 12, the Special Judicial Magistrate at Umerkote, recorded the confessional statement which had been admitted in evidence as Ext. 15. On the completion of investigation, a charge-sheet was placed and the appellant stood charged under Section. 302 of the Code.

2. The prosecution examined twelve witnesses to establish its case. P. W. 6, the son of the deceased, examined as the sole witness to the occurrence, had named his mother as the assailant of his father in the first information report and in his statement in the course of investigation, but did not support the case of the prosecution in the trial Court for which he was put leading questions under Section 154 of the Evidence Act. Left without the evidence of P. W. 6, the prosecution relied on the confession of the accused and the recoveries of the incriminating articles referred to above.

3. The learned Sessions Judge accepted the prosecution case, held the appellant guilty of the charge of murder and sentenced her to undergo imprisonment for life.

4. While Mr. J. K. Misra has contended on behalf of the appellant that the retracted judicial confession cannot be said to be voluntary and true and should not have been acted upon by the learned trial Judge without corroboration. The learned Additional Government Advocate has submitted that the order of conviction is well-founded.

5. There was some evidence to show that the deceased had been drinking heavily and even on the day of occurrence itself, he had taken liquor from P. W. 5 while he was already in a drunken state. The prosecution sought to show that for this, he had been squandering away what was being earned by the appellant and had been beating the appellant. Of this, there was no satisfactory evidence. P. W. 6, her son, had not spoken about it and P. W. 2 had spoken about this in a general way without reference to any particular occasion and his evidence did not find support in any other evidence. Thus the prosecution had failed to establish any motive for the commission of murder by a wife of her husband. Absence of proof of motive in a case of this nature would put the Court on its guard to examine the prosecution evidence with great care.

6. The doctor (P. W. 11), who had conducted the autopsy and had noticed injuries on the person of the deceased including the head which could be caused by M. Os. I and III, was of the view that death was homicidal in nature, but his evidence would also show, that the fatal injury on the head could as well be caused by a heavy fall on a projected substance like a stone and the other injuries could be caused by falls. . Regard being paid to the nature of the injuries and their location on the person of the deceased, it would be reasonable to hold that one fall could not have resulted in all the injuries on the person of the deceased. The contention raised in this behalf by the defence had rightly been rejected by the trial Court. The Court is not concerned with hypothetical possibilities, but with practical realities. The same injuries may be caused in different ways, but that way which is in consonance with the evidence and the probabilities of the case is to be accepted.

7. As has been submitted at the Bar, if the confessional statement (Ext. 15) is held to be involuntary or rendered inadmissible on any account, the order of conviction cannot be sustained on the other materials placed by the prosecution. These submissions are quite reasonable as we notice that the Sari seized from the person of the appellant and the stone seized from the kitchen contained no blood on chemical test. M. O. I was said to be the crow-bar used by the appellant in assaulting the deceased, The other crow-bar had no stains of blood in it and had not been sent for chemical examination. On chemical examination, M. O. I did contain some blood, but its origin could not be determined. There was thus no material that these articles had stains of human blood. The recovery of M. O. I could be of no consequence to the prosecution. That apart, although the prosecution wanted to show that the two crow-bars including M. O. I had been recovered from the land of P. W.2 consequent upon the statement made by the appellant and her leading the Investigating Officer and others to the place of recovery; the evidence of witnesses read as a whole and in particular, that of P. W. 4 would indicate that the appellant was not the author of concealment of M. Os. I and II. First a search was made in the house of the deceased for the crow-bars and not finding them a search was made from place to place and ultimately the two crow-bars were found on the land of P. W.2. In such circumstances, Section 27 of the Evidence Act. would have no application and it could not be said on the Evidence that it was the appellant who has concealed M. Os. I and II.

8. There was no evidence that right from the time when the deceased came to the house upto the time when his dead body was found lying in the house, the appellant and the deceased were the sole inmates of the house and no one had visited the house or that the appellant was throughout present in the house. In a criminal trial it is for the prosecution to establish by true and trustworthy evidence that the appellant had committed the murder of the deceased. It is not for an accused person to say, much less to establish, that some one else had committed the murder. The appellant might have taken a plea that her husband had committed suicide owing to her nervousness or because a part of the body was hanging with a rope fixed to the roof. A false or weak defence cannot, by itself, establish the case of the prosecution and may be only an additional link if there be sufficient other evidence pointing to the guilt of an accused person.

9. We are now left with the confessional statement of the appellant. The appellant had retracted from the confession. While it is true that as a matter of law, a conviction can, in appropriate cases, be based only on a retracted judicial confession, it is equally well-settled that as a rule of prudence, the Court should require corroboration of a retracted confession. The rule of corroboration would mean not only corroboration with regard to the crime, but also with regard to complicity of the criminal. For instance, Section 133 of the Evidence Act provides that an accomplice shall be a competent witness and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But as has been laid down by the Supreme Court in AIR 1960 S. C. 961: Ramanlal Mohanlal Pandya v. The State of Bombay, AIR 1970 S. C. 1330 : Sheshanna, Bhumanna Yadev v. State of Maharashtra, and AIR 1980 S. C. 1382. State (Delhi Admn.) v. V. C. Shukla, the evidence of an accomplice is to be corroborated in material particulars and the corroboration should be with regard to the commission of the crime and the complicity of the criminal. Such evidence should receive corroboration from reliable sources. No doubt the rule as to corroboration of a retracted confession is not as rigorous as with regard to the evidence of an accomplice. A retracted confession is not required to be corroborated in material particulars and with regard to each of the facts stated therein as in that case, it would not be necessary for the prosecution to call the confession in aid. It is sufficient if a retracted confession, gets general corroboration {See AIR 1958 S. C. 66 : Subramania Goundan v. The State of Madras}. In the instant case, except the medical evidence pointing to the conclusion that the deceased had been done to death which could only be corroboration regarding the commission of the crime, there was no other corroborative evidence in support of the retracted confession. . Even a motive for the commission of the offence by the appellant had not clearly and satisfactorily been established.

10. We would, however, also like to record our view as to whether the confession in the instant case could be said to be voluntary. In order to be acted upon, a judicial confession must be perfectly voluntary and true and trustworthy.

11. Section 164 of the code of CPC the mode in which a confessional statement is (sic) recorded. Recording of a confessional statement is a sacred and sacrosanct

act and every Magistrate recording it must take adequate care and precaution to see that an accused person is about to make a confession voluntarily before he proceeds to record the same. Apart from the provision made in the Code of Criminal Procedure, rules have been prescribed by this High Court in General Rules and Circular Orders (Criminal), Volume I, published in 1977. Chapter VIII of Part I contains the rules in this regard and we would mention a few of them. Ordinarily an accused person should be allowed a few hours for reflection, free from the influence of the police, before his statement is recorded and the police should not be allowed to be present when it is recorded. Confession should be recorded in the open Court and during the Court hours except when unusual circumstances require a different procedure, as for instance, when an open record would be detrimental to the public interest or when the recording of the confession in the open Court is rendered impracticable by reason of the fact that the Court is closed for two or more successive days on account of holidays. A Magistrate recording a confession should satisfy himself in every reasonable way that the confession is made voluntarily. The Magistrate should question a confessing prisoner with a view to ascertaining the exact circumstances in which the confession was made and the connection of the police with it. In other words, the Magistrate should record the confessions in as much details as possible with a view to obtaining materials from which its genuineness can be judged and to testing whether it is freely made or is the outcome of suggestion. To the certificate required by Section 164 of the Code of Criminal Procedure, the Magistrate should add a statement in his own hand of the grounds on which he believes that the confession is genuine, of the precautions which he took to remove the accused from the influence of the police and of the time, if any, given to him for reflection. The Magistrate should formally warn the accused, though not necessarily in set words, that anything said by him will be taken down and may therefore be used as evidence against him, even if he retracts the same.

12. The provisions made in the Code of Criminal Procedure and the rules prescribed by this Court are to be followed scrupulously. We may not be understood assaying that any breach thereof would entail the rejection of the confession in toto even if there has been substantial compliance and we express no opinion on this question. But the provisions and the rule's are to be observed by

their compliance and not by their breach. In the instant case, it would be seen that the salient provisions and rules have been contravened and the materials would clearly indicate that the confessional statement was not one which had voluntarily been made by the appellant.

13. We notice from the record of the Court of the Judicial Magistrate at Umerkote that the appellant was produced before him for the first time on May 13, 1980 with a forwarding ' report wherein a request had been made to record her confessional statement. The learned Judicial Magistrate directed production' of the appellant before the Special Judicial Magistrate at Umerkote on May 16,1980 for recording her statement under Section 164 of the Code of Criminal Procedure. There, is nothing to show in the order passed on that day that the appellant was asked as to whether she wanted to make a confessional statement and no warning had been given to her that she was not bound to confess and that if she made a confession it might be used against her even if it was retracted later on. The appellant was produced before the Special Judicial Magistrate (P. W. 12) on May 16, 1980 and he recorded the confessional statement. We would quote below all' that the learned Special Judicial Magistrate had recorded in the order-sheet of that date :

'The accused Sukri Janiani was produced before me at 8. A. M. She was given time to Cool her brain and warned her to think over the matter and tell the truth. I have recorded. her statement at 4.00 P. M. under Section 164 Cr. P. C. remanded her to jail custody till 27. 5. 1980. Put up before J. M. F. C. Umerkote for further action.'

The order by itself does not show that the necessary warning and caution had been administered to the appellant. In the confessional statement, however, the learned Special Judicial Magistrate had recorded that he had disclosed his identity to the appellant and had warned her by saying that she was not bound to confess and that if she confessed, her confession might go against her.

14. As had been deposed to by P. W. 12, his Court was then having morning sittings and the Court was to be closed at 1.00 P. M. The appellant had been produced before him at 8.00 A. M. His evidence was that after giving the necessary caution, the appellant was seated in' the Court room in charge of his

peon and this process continued beyond the Court hours till 4.00 P. M. . P. W. 12 had admitted in his evidence that he had left the office at 1.00 P. M. and returned again at 1.30 P.M. There was nothing to show as to whether on return to his office, he had made any enquiry either from the appellant or from the Court peon, under whose care the appellant had been kept as to whether any police officer had come to the scene. There was no other evidence that during that half an hour, the police officers or officials were away from the scene where the appellant had been sitting.. It could not be that the peon had been sitting from 8.00 A. M. to 4.00 P. M. without any food. It was also strange as to how the appellant was kept inside the Court room from 8.00 A. M. to 4.00 P.M. as claimed by P.W. 12 in his evidence, without any food having been given to her. We, have just mentioned the rules prescribed by this Court that normally and in the absence of exceptional circumstances, a confessional statement is to be recorded within Court hours. It had not been done in this case and no exceptional circumstances had been shown.

15. P. W. 12 himself had deposed and it would clearly appear from the record that the appellant was an illiterate lady who had been putting her left thumb impressions in the papers and she had no idea about date and time, but the learned Special Judicial Magistrate had recorded the following questions and answers:

Questions Answers

(1) On which date, at what I was first placed under observation/
time and place you were arrested at Gobagada 8 A.M./P.M. on
arrested by a police. on 11.5.1980 in village/town/city of
of Gobagada.

(2) To which place you were I was taken to Jharigam Police
taken after arrest. Station at 9 A.M. on 16.5.1980.

(3) From which place you have I was sent to you from Nawrangpur

been sent to me. Jail at 10 A.M. on 16.5.1980.

The appellant was certainly not in a position to answer the questions as recorded by the learned Special Judicial Magistrate by giving the specific dates and time for different occasions. An English rendering of the confession would read :

' On 11. 5. 1980 at 12 noon I dealt a blow on the back side of the head of my husband Suku Jam by a Sabal. He fell on the ground. I then dealt several blows on his hands and feet by a stone (Pakhana). My son could not prevent me. I concealed the Sabal and the stone. I covered a napkin over the dead body, I hanged a rope to the roof of the house. I sent for the co-villagers through my son. I told them that my ' husband had committed suicide. My son gave out the truth. While in police custody. I produced the stone and the Sabal which had been concealed by me.'

16. While making a confessional statement, a tribal and literate lady would never say that she produced the articles while she was in custody. (The underlined portion is important). A perusal of the statement would lead one to a reasonable conclusion that the appellant had been made to say about certain aspects of the prosecution case including discovery of the crowbar. Although the occurrence had taken place, as alleged by the prosecution, on 10. 5.1980, it had been stated in the confessional statement that the occurrence had taken place on 11. 5 1980. The appellant could at best give the week day and not the date of the occurrence.

17. The certificate signed by the learned Special Judicial Magistrate at the end of The confessional statement would read:

' I have explained to the accused that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.'

A bare reading of it would exhibit non-application of mind. Even the word 'him' had not been corrected as 'her'. As per the rules of this High Court referred to above, the learned Special Judicial Magistrate was required to state brief reasons for believing that the statement was voluntarily made. Against this heading at serial No. 7, nothing had been mentioned and it had been left blank. Although it had been mentioned in the order sheet that after recording the confession, the appellant was remanded to jail custody, this fact was required to be, but had not been mentioned against serial No. 8 in Ext. 15 which would read thus :

'The statement having been recorded, the accused is forwarded to at'

No proper care had been taken even to fill in the blank spaces.

18. A strict and faithful compliance of Section 164 and the rules prescribed by the High Court would in a large measure guarantee the voluntariness of the confession. Failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements, as observed in AIR 1977 S, C 1579 : 1977 Cri. L. J. 1206 : Dagdu and Ors. v. State of Maharashtra.

19. We thus find that no due care had been taken by the learned Special Judicial Magistrate before and while recording the confessional statement to ensure that it was being made- voluntarily. We repeat, the retracted confession had not received any corroboration indicating the complicity of the appellant.

20. For the aforesaid reasons, we are of the view that no voluntary confessional statement had been made by the appellant in the case and the confession, as recorded, would appear to be too unreal and artificial and could never have-been acted upon. The learned Sessions Judge should have seen through all this and rejected the confession outright as highly unreliable and untrustworthy. Instead, he accepted it and even acted upon it.

21. For the foregoing reasons we must hold that the charge against the appellant had not been brought home to her and she was entitled to an acquittal.

22. In the result, the appeal is allowed and 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 forthwith.

P.C. Misra, J.

23. I agree.

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