Madkami Baja Vs. State

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SooperKanoon Citation : sooperkanoon.com/530611

Court : Orissa

Decided On : Jan-31-1985

Reported in : 1985(I)OLR421

Judge : B.K. Behera and ; D.P. Mohapatra, JJ.

Acts : Evidence Act, 1872 - Sections 3, 32 and 134; Code of Criminal Procedure (CrPC) , 1973 - Sections 154

Appeal No. : Jail Criminal Appeal No. 98 of 1981

Appellant : Madkami Baja

Respondent : State

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

Advocate for Pet/Ap. : Manoranjan Panda and G.R. Nai

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Section 302 of the Indian Penal Code and sentenced thereunder to undergo imprisonment for life having committed the murder of Padiami Ganga (to be described hereinafter as 'the deceased') on June

11, 1980 in village Pujariguda in the district of Koraput by shooting the deceased by means of an arrow (M. O. I) when the latter challenged him as to why he had cultivated the land of Padiami Sanu (P. W. 1), his uncle, which had already been redeemed. To bring home the charge, the prosecution had examined nine witnesses of whom P. W. 1 had testified about the dying declaration said to have been made by the deceased naming the appellant as his assailant and P. Ws. 4 and 6 were said to be the witnesses to the occurrence. Of them, P.W. 4 did not support the case of the prosecution and he was put leading questions by it under Section 154 of the Evidence Act. P W. 6 had deposed that he had seen the appellant shooting an 'arrow at the deceased. There was the evidence of the doctor (P. W. 5) who had conducted the autopsy over the dead body of the deceased and his evidence was that death was homicidal in nature. The learned Sessions Judge accepted the prosecution case mainly on the basis of the evidence of P. Ws, 1 and 6 and recorded an order of conviction.

2. Mr. Panda, appearing for the appellant, has submitted that the evidence of P. Ws. 1 and 6 was not worthy of credence and that of P. Ws. 2 and 3, far from supporting the evidence of P. W. 1 with regard to the dying declaration would demolish it and therefore, the order of conviction cannot be sustained. Mr. Panigrahi, the learned Additional Government Advocate, has, however, submitted that there was no reason to discard the evidence of P. Ws. 1 and 6 and the order of conviction is well-founded on the basis of their evidence supported by the medical evidence and the evidence of P. Ws. 2 and 3 apart from the falsity of the defense case put forward by the appellant in his statement at the trial that the arrow of the deceased had pierced into his chest when he fell down under a Salap tree.

3. It is not disputed that the deceased had died a homicidal death. Regard being had to the nature of the external and internal injuries and the evidence of the doctor, it would be reasonable to hold that the shooting of an arrow had caused his death and the theory of the defence that the arrow had pierced into the chest of the deceased accidentally could not be accepted. Falsity of the defence version, however, would not establish the prosecution case and can only be an additional link if there be other evidence pointing to the guilt of an accused person.

4. There was, no doubt, some evidence that all was not well between P. W. 1 on the one hand and the appellant en the other with regard to the possession of a piece of land. This could not constitute a motive for the appellant to commit the murder of the deceased. Even assuming and accepting the case of the prosecution that the intervention of the deceased by challenging the appellant as to why he had cultivated the land of P. W. 1 could constitute some motive, it could be of no assistance to the prosecution in the absence of guilt-pointing evidence against the appellant. Motive, however adequate, cannot sustain a criminal charge. It may lend assurance to the other evidence on which the conclusion of guilt can be rested.

5. Corning to the evidence of P. W. 6, he had stated thus:

'I know the accused and the dceased. In last Jesta on a Wednesday at about 11 A. M. the deceased came to a place in between the house of the accused and his brother Pandu and enquired from Pandu as to why they cultivated the land of Sonu, This accused was then standing under the Salap tree nearby Salap tree is at a distance, of 15 cubits from the spot. The accused was then armed . with a bow and arrows. He shot an arrow at the deceased which hit just below the left arm-pit of the deceased. After the arrow shot the deceased ran away from the spot and after running some distance he fell on the ground near the threshing-floor of Dasarath Pujari.'

6. In order that the evidence of a solitary witness to the occurrence can be acted upon, such evidence must be clear, cogent and trustworthy and above reproach, The evidence of P. W. 6 is not to be discarded merely because he had neither raised a cry nor had he intervened at the time of the occurrence as different persons react differently when they see a murderous assault. In this connection, reference may be made to the observations of the Supreme Court in AIR 1983 S.C. 680 ; Rana Partap and others v. State of Haryana. We, however, find that there are inherent weaknesses and improbabilities in the evidence of P. W. 6 and it would not be safe, reasonable and proper to accept his evidence.

7. It would appear from the materials placed before the trial Court that until the Investigating Officer came to the scene two days after the occurrence, P. W. 6 had

not disclosed about what he had claimed to have seen to any one in the village and not even to P. W. 1. He had offered no explanation-far less a reasonable one-as to how and why he kept quiet and did not disclose the occurrence to any one if he had, in fact, seen the appellant shooting an arrow at the deceased. It would be seen from the evidence of P. Ws. 1 to 3 that at about 4 P. M. on the day of occurrence, a meeting of the Panchayat took place over this incident. There was no evidence that P. W. 6 went to that meeting and told anyone about the occurrence. Non-disclosure of the occurrence to any one until the police officer came to the scene without any reasonable explanation would certainly affect the credibility of the testimony of P. W. 6 and it would not be reasonable and proper to accept his testimony. We are fortified in this conclusion by the observations made in the case of Babull v. The State of Orissa. AIR 1974 S.C. 775 and Sonia Behera v. State of Orissa, 1983 S. C. C (Cri.) 444.

8. It had not been brought out by the defence as to how and why this witness would be hands-in-glove with the prosecution and depose falsely against the appellant. But mysterious is the working of the human mind and it is not always possible for an accused person to say as to how and why a case has. been foisted against him and some witnesses have come forward to depose against him. In this connection, it would not be out of place to quote an extract from the decision of the Supreme Court in AIR 1981 S. C. 765 : Shamkarlal Gyarasilal Dixit v. State of Maharashtra, The Supreme Court has observed :

'Our judgment will raise a legitimate query : If the appellant was not present in his house at the material time, why then did so many people cospire to involve him falsely The answer to such question is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions.'

The evidence of a witness to the occurrence in a criminal case, is not to be accepted merely because the defence has not bean able to say-as to why the accused has been involved or as to why a witness has come forward to depose against him or because the witness is a disinterested person. Disinterested

evidence is not necessarily true and interested evidence is not necessarily false. In a criminal trial, a person accused of commission of an offence is not to answer the question : if not he, who?

9. For the aforesaid reasons, we are not prepared to place implicit reliance on the evidence of P. W. 6 and hold that he had seen appellant shooting an arrow at the deceased.

10. P. W. 1 was undoubtedly a highly interested witness who would look for a successful termination of the trial against the appellant having dispute with him over the possession of a piece of land. According to him, after the deceased proceed towards the house of the appellant, he followed and saw on the way that deceased had fallen down with an arrow (M. O. I.) sticking to his chest below his left arm-pit and on his query, the deceased gave out that the appellant had shot that arrow at him. The learned Sessions Judge has heavily relied on this evidence in support of the order of conviction. As has been held by the Supreme Court in AIR 1976 S. C. 1994 : K. Ramachandra Reddy and another v. The Public Prosecutor, the Court has to apply the strictest scrutiny and the closest circumspection to a dying declaration made by the deceased. While great sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to -implicate an innocent person, the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. In this connection, reference may also be made to the principles laid down by the Supreme Court in AIR 1984 S. C. 1622 : Sharad Birdhich and Sarda v. State of Maharashtra. In the case of Purna Chandra Singh v. State 6i Orissa : 1984 (I) OLR 156, this Court has referred to a number of decisions of the Supreme Court with regard to the concept of dying declaration and its evidentiary value. It has been observed and held :

'Section 32 of the Evidence Act provides that statement, written or verbal, of relevant facts made by a person who is dead are themselves relevant facts when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admitted

on the principle of necessity. Being a testimonial statement made out of Court, the declarant is open to discredit in the game way as any other witness. The dying declaration is a piece of untested evidence and must, like any other evidence, satisfy the court that what had been stated therein is the unalloyed truth and that it is absolutely safe to act upon it.'

The evidence with regard to a dying declaration must be. very carefully and critically scrutinised as the accused has no opportunity to challenge such statement by way of cross-examination.

11. The evidence of P. W. 1 must be tested keeping in mind the aforesaid settled principles of law. P. W. 1 had stated that after the dying declaration was made and the deceased succumbed to the injuries, he informed the villagers about it whereafter a meeting of the Panchayat was held. This had not been supported by P. W. 2 who had given evidence that at about 4 P. M. on the day, that is, about five hours after the occurrence which allegedly had taken place at about 11 A. M., P. W. 1 went to him and told him that the appellant had shot an arrow at the deceased and that the deceased was lying dead. It would be seen from his evidence that thereafter a meeting of the Panchayat was convened. Thus P. W. 2 had not, in terms, stated that at the first point of time when P. W. 1. met P. W. 2, he had stated about the statement said to have been made by the deceased. On the other hand, his. evidence was that in the meeting of the Panchayat, the villagers learnt from P. W. 1 that the deceased had stated that the appellant had shot an arrow at the deceased. This was not the evidence of P. W. 1 as he had not stated that he had made any such statement in the meeting of the Panchayat. The evidence of P. W. 3 was that P. W. 1 called him saying that the deceased had been shot an arrow by the appellant and accordingly he went to the place where the dead body was lying. He had not spoken anything about the dying declaration said to have been made by the deceased and his evidence would give an indication that no statement in this regard had been made by P. W. 1 to him. Thus the evidence of P. W. 1 regarding the dying declaration said to have been made by the deceased had not found assurance from any other evidence of a reliable character.

12. There was no evidence about the ownership of M. O. I. The recoveries of a bow and an arrow (M. Os. II and III) from the house of the appellant were of of consequence.

13. One cannot lose sight of the fact that the first information report in this case had been lodged as late as at 4 P. M. on June 12, 1980, i.e., more than a day after the occurrence. No reasonable explanation had been offered by the prosecution for this inordinate delay in lodging the first information report. The criticism of the defence that this would indicate that the report had been made after due deliberation is legitimate and cannot lightly be brushed aside. As has been observed by the Supreme Court in the Case of Apren Joseph alias Current Kunju-kunju and others v. The State of Kerala ; AIR 1973 S. C. 1, it is very useful if the first information report is recorded before there is time and opportunity to embellish or before the informant's memory fades Undue or unreasonable delay in lodging the first information report inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In AIR 1973 S.C. 501: Thulia Kali v. The State of Tamil Nadu, the Supreme Court has observed and held:

' The first information' report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of- an 'offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature 6i afterthought. On account of delay the report not only gets benefit of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account of concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.'

In the instant case, no explanation had been given for the inordinate delay in lodging the first information report. This was yet another highly suspicious feature of which due notice had not been taken by the trial Court.

14. For the foregoing reasons, we find that the charge had not been established by the prosecution and the appellant was entitled to an acquittal.

15. The appeal is allowed. The order of conviction and sentence passed against the appellant is set aside. The appellant be set at liberty forthwith.

D.P. Mohapatra, J.

16. I agree.