

Bishnu Deo Vs. the State

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Court : Orissa

Decided On : Nov-28-1981

Reported in : 53(1982)CLT380; 1982CriLJ493

Judge : P.K. Mohanti and; B.K. Behera, JJ.

Appellant : Bishnu Deo

Respondent : The State

Judgement :

B.K. Behera, J.

1. This appeal arises out of the order of conviction passed against the appellant Under Sections 302, 201 and 506 of the IPC with sentences of imprisonment for life, rigorous imprisonment for two years and rigorous imprisonment for one year for the respective offences. The appellant, then working as the Gadidar of the liquor shop at village Dunga in the district of Kalahandi, had allegedly committed the murder of Shiva Bhagwan Sharma, then working as the Manager in that liquor shop (hereinafter described as the deceased) on the 30th May, 1976, at about 9 p.m., by means of the Tangi (M. O. I), witnessed by Meta Harijan (PW 1), then working as a labourer also in the same liquor shop and had allegedly caused evidence of the commission of the offence of murder to disappear by carrying the dead body of the deceased with the help of PW 1, by intimidating and' keeping him under grave threat to do away with his life in case he did not assist him and did not

keep it a secret and burning it by the side of a Nala and burying the remnants thereof, burning the books of account -and by cleaning M. O. I with water. The order of conviction of the appellant mainly rests on the evidence of PW 1, who did not disclose the occurrence to any one until the arrival of the Grama Rakshi (P.W2) of village Padadunga, on the 4th June, 1976, whereafter the first information report (Ext. 1) was got scribed on the information given by PW 1 and lodged at the police outpost at Jubarajapur, which was a little over two kilometres from the place of occurrence on the basis of which investigation was first taken up by the Assistant Sub-Inspector (not examined) attached to that police outpost and later by the Officer-in-Charge (PW13) of the police station at The Rampur. Ultimately another police officer submitted charge-sheet against the appellant who, after commitment, stood trial, denying the charges made against him and pleading false implication in the case. The prosecution had examined fourteen witnesses to substantiate its case and the appellant had examined none in his defence.

2. While according to the learned Counsel for appellant, the prosecution evidence was highly unsatisfactory and could not sustain any of the charges, the learned Additional Government Advocate has pressed into service the evidence of PW I and other circumstances in support of the order of conviction.

3. We have been taken through the evidence of PW 1 and the statements made by him in the first information report. PW I had testified that the appellant killed the deceased although he (PW 1) could not say by what weapon and then with his help by threatening him to be killed in case he did not obey him, the appellant carried the dead body and burnt it by the side of a Nala and buried the bones etc. of the deceased and cleaned the Tangi (MO I) and the cot on which the deceased fell and which had been stained with blood had also been thrown away by the appellant. This witness had asserted that by being terrorised by the appellant, he did not disclose the occurrence to any one until the arrival of the Grama Rakshi (PW 2) and thereafter he lodged the written report. The Investigating. Agency chose to get the statement of PW 1 recorded Under Section 164 of the Cr. P. C. As has been observed by the Supreme Court in the case of Balak Ram v. State of U. P reported in : 1974 CriLJ1486 , relying on the principles laid down in the case of Ram Charan v. State of U. P. : 1968 CriLJ1473 , the evidence of witnesses

cannot be discarded merely because their statements were recorded Under Section 164, but their evidence must be approached with caution as such witnesses fell tied to their previous statements given on oath and have but a theoretical freedom to depart from the earlier version and a prosecution for perjury could be the price of that freedom. It is open to the court to accept the evidence of a witness whose statement was recorded Under Section 164, but the salient rule of. caution must always be borne in mind.

4. It may be kept in mind that this important witness chose not to disclose the occurrence to any one under a supposed .grave threat administered to him by the appellant until the arrival of the Grama Rakshi (PW 2) and it is not understood as to how and why if the appellant had threatened PW 1 with serious consequences, this grave threat, after the presence of the Grama Rakshi who had reportedly absented himself from his village and had gone to Bhawanipatna to attend a case, a fact which the Investigating Officer (PW 13) could, but did not take care to verify from the records which could not be accepted in these circumstances and without proper' verification had suddenly vanished and the incident was reported. On his own showing, PW 1 was not an outsider and had been working as a labourer in the same liquor shop in which the appellant and the deceased had been working and he did not make any report to the owner or the checker (PW 9) of that liquor shop and he neither reported to the Ward Member of village Dunga nor to the Sarpanch residing in village Nangi about two miles away from the liquor shop. It would appear to us that the explanation given by PW 1 for not disclosing the occurrence was but a myth and such a serious incident, if really witnessed by PW 1, was not reported to the police authorities although the police outpost was at a distance of only over two miles from the scene of occurrence until five days thereafter and no reasonable and plausible explanation had been offered for this inordinate delay in lodging the first information report and for the nondisclosure by PW 1 about the occurrence. The object of insisting upon prompt lodging of the report to the police is to obtain early information regarding the circumstances in which the crime was committed. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought and on account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or

concocted story as a result of deliberation and consultation and for these reasons, it is essential that delay in lodging the first information report should satisfactorily be explained. (See : 1972 CriLJ1296 , Thulia Kali v. State of Tamil Nadu), In the instant case, the unexplained and inordinate delay in lodging the first information report would certainly affect the bona fides of the prosecution case.

5. On his own showing, PW 1 did not disclose the occurrence to any one until the 4th of June, 1976 and the reason given by him has not appealed to us as it has not been probalised leaving alone being substantiated and this tells its own tale and would seriously affect the version of PW 1, examined as the sole eye-witness to the occurrence. On the principles laid down in the cases of Babuli v. State of Orissa : 1974 CriLJ510 and Panda Nana Kare v. State of Maharashtra : 1979 CriLJ640 , we are of the view that apart from the intrinsic weaknesses and self-condemned statements made by PW 1 from time to time to be discussed hereinafter, the evidence of PW 1 cannot safely be accepted because of the belated disclosure made by him and for not naming the assailant immediately after the occurrence which in the normal course of conduct and action and in the absence of special circumstances, PW 1 was supposed to do.

6. The prevaricating and inconsistent statements of PW 1 made in the first information report and in his evidence in the court would bring about his own condemnation. While in the first information report, he had distinctly and definitely claimed i to have seen the appellant dealing a blow on the neck of the deceased by means of a Tangi his evidence in the court was that blood lowed from the neck of the deceased and spread on the ground while he saw the appellant standing near the cot of the deceased holding M.O.I., the blade of which had been besmeared with fresh blood and at that time, the deceased was lying on the cot with bleeding injury on his neck. He had disown-ed his statement made in his first information report that the had seen the appellant giving a blow on the neck of the deceased and had categorically stated in his evidence that he had not seen the appellant giving the blow on the neck of the deceased and his statement in his deposition that he had seen the appellant standing with M.O.I, near the deceased with the Tangi besmeared with fresh blood and the deceased lying .on the cot with bleeding injury was conspicuous by its absence in the first information report and

these two inconsistent and irreconcilable statements could not be characterised as inconsequential. Besides, the assertion of PWI that he saw the occurrence while he was inside the treasury room would be belied by the statement of PW 9, who had been working as a checker in the same Liquor shop, that the spot where the alleged assault took place was not visible from the treasury room. This would further seriously affect the evidence of W X.

7. In the course of investigation, the Assistant Sub-Inspector of Police had seized M.O.I, which, on chemical examination, was found not to have contained blood and had also seized some bones from the bank of the Nala where allegedly the dead body of the deceased had been burnt and the remnants had been buried. The bones collected from that place had been examined by PW 11, the Associate Professor of the Department of Forensic Medicine of the Medical College at Burla and according to him, it was not possible to give a definite opinion that the bones belonged to a male person. The recovery of some bones would not be of any consequence,

8. The learned Additional Government Advocate has pressed into service a false defence said to have been set up by the appellant, as deposed to by P.W. 9, that to his query, the appellant had told him that the deceased had picked up a quarrel with him (appellant) and fled away, for which P.W. 9 had sent a letter to the proprietor informing him about this fact. This letter had not been proved by the prosecution. No reliance can be placed on this circumstance. That apart, any stand taken by an accused person can hardly be used as evidence unless the prosecution establishes its case. If other circumstances point unfailingly to the guilt of the accused person, falsity of the defence can be considered as an additional link. In this connection, reference may be made to the principles laid down in the case of *Kishan Chand v. Delhi Administration* : 1979 CriLJ921 and *Shankarlal Gyarasilal Dixit v. State of Maharashtra* : 1981 CriLJ325 . In the absence of legal and reliable proof from the side of the prosecution establishing the guilt of the appellant, the statement allegedly made by the appellant to P.W. 9, which occasioned the letter to Address a letter to the proprietor, a fact which could be corroborated and evidenced by the letter, but had not been, could not be of any avail to the prosecution as it could be but an additional link and could not, by itself,

lead to an inference of guilt of the appellant.

9. P.W. 13 had testified that he had seized one green coloured Lungi (M.O. II) and a towel with suspected stains of blood from the appellant at the police station after examining him, as per Ext. 2, but it would be seen from Ext. 16, the report of the Chemical Examiner, that no blood was detected in the Lungi sent for chemical examination and this aspect was noticed by the learned trial Court in its judgment.

10. The evidence of Kanduri Dei (P.W. 3), then serving as a sweepress in the same liquor shop, that she had, while sweeping the liquor shop, noticed blood-drops in the liquor shop, a portion of which had been pasted with blood-dung and water coupled with the testimony of P.W. 13, the Investigation Officer, that on visiting the liquor .shop on 8-6-1976, he had noticed the yard to have been plastered with cow-dung could not, in the absence of other evidence pointing to the guilt of the appellant, be taken as an incriminating circumstance against him to connect him with the crime of murder.

11. On a careful consideration of the evidence on which the prosecution sought to build its case and reliance had been placed by the learned trial Court, we find that the prosecution had failed to bring home any of the charges to the appellant.

12. We allow the appeal, set aside the order of conviction and sentences passed against the appellant Under Sections 302, 201 and 506 of the IPC and direct that he be set at liberty forthwith.

P.K. Mohanti, J.

13. I agree.