

Arjuna Pujari Vs. the State

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Court : Orissa

Decided On : Jun-25-1975

Reported in : 1976CriLJ772

Judge : S.K. Ray and; N.K. Das, JJ.

Appellant : Arjuna Pujari

Respondent : The State

Judgement :

N.K. Das, J.

1. The appellant, a postal runner of Malkangiri area district Koraput, has preferred this appeal against his conviction under Section 302, Penal Code and sentence to undergo rigorous imprisonment for life and under Section 404, Indian Penal Code and sentence of R. I. for two years; both the sentences to run concurrently. The prosecution case emerging out of the facts is, that on 8-1-72 at about 3.00 p.m. the appellant went inside the Bharabi temple at Malkangiri and caused death of Ramdas Babaji, Puiari of the temple assaulting his head by means of an iron rod. Thereafter the appellant removed the transistor radio belonging to the deceased from the temple. The appellant tried to dispose of the radio with the help of others but was unsuccessful. Two other persons, namely; Ram Chandra Patnaik and Trinath Naik were charged under Section 380, Indian Penal Code for committing theft of the transistor radio but they have been acquitted. The accused pleads

complete innocence and has denied the charges altogether.

F. I. R was lodged by P.W. 8 on 8-1-72 at 6.30 p.m. at the police station situated at a distance of 3 kilometres. The Investigating Officer, P.W. 20 immediately started to the spot. After holding inquest over the dead body and sending the dead body for post-mortem, he sized the iron rod (M. O. III) stained with blood near the dead body. He also seized a bag (M. O. II) from the house of the appellant which was blood stained. After arrest, the appellant while in custody, gave recovery of the transistor radio from the house of one Trinath who was originally one of the accused persons but has since been acquitted. P.W. 20 also took the nail clippings of the appellant and sent the same for chemical examination. It appears from the report of the chemical examiner and the serologist, Exts. 23 and 24 respectively that the iron rod (M. O. III) was stained with human blood so also the bag (M. O. II) said to have been carried by the appellant was stained with human blood. The nail clippings of appellant were also stained with human blood.

2. P.W. 11 held post-mortem examination on 9-1-72 at about 12.30 p.m. and his report is Ext. 14. He found the following injuries:

1. One lacerated wound 3'x1/2' and scalp deed on right side of back of head 1 1/2' to right of middle line and 1/2' above the level of occipital, protuberance.
2. Lacerated wound 1' x 1/2' x scalp deed transversely on left side of back of head 2' above occipital protuberance and extending from middle line.
3. Lacerated wound 1 1/2'x1/3' and scalp deed on right side of back of head 1' above mastoid process and 3 1/2' to right of middle line.

The edges of these injuries were inverted, red deeply stained not removed by washing. On dissection clotted blood was found between the scalp and bones. On removing the clotted blood he found fractures of occipital bones corresponding to injuries 1 & 2 and fracture of right temporal bone corresponding to injury No. 3. A piece of bone 1 1/2' x 1/2' at the end of fractured end of occipital bone corresponding to injury No. 1 is found separated and piercing into brain substance. This piece of bone is from the upper part of the right side of the fracture. Lombard

suture is found separated. In the dura mater and brain clotted blood was found. Membranes were torn corresponding to the fractures. Brain substance lacerated corresponding to fracture of injury No. 1. Clotted blood was found between the membranes and the brain substance. Both sides of heart were empty.'

According to him death was due to shock and haemorrhage as a result of injuries which were homicidal and antemortera. He also examined the appellant but did not find any injury on him. From the evidence of the doctor it is clear that death was homicidal.

3. There is no eye-witness to the actual occurrence. Prosecution relies on the evidence of circumstances and the judicial confession of the appellant.

P.W. 1 usually supplies water to the deceased Babaji. She saw the appellant going inside the temple compound on a cycle with the bag and after some time coming out of the temple with the bag and a radio. Immediately thereafter she found the Babaji lying down near the deity and was not responding. On her information P.Ws. 2, 7 and 8 went inside the temple and saw the Babaji lying dead near the deity with injuries on him in a pool of blood. M. O. III the iron rod was lying near by stained with blood. P.W. 8 thereafter lodged F. I. R. at the police station.

P.W. 3 states that the appellant took a cycle on hire from him at about 1.45 p.m. that day and went towards the Bhairabi temple. Appellant had the bag with him at that time. P.W. 12 states that he had seen appellant going towards Malkangiri from Jeypore side on a cycle holding the bag M. O. II. P.W. 4 has seen the appellant coming out of the temple with the bag, M. O. II at the relevant time. P.W. 1 is definite that no body else was inside the temple premises during the time when the appellant was found going inside the temple compound and coming out of it and immediately thereafter she found that the Babaji was dead.

4. M. O. II the bag carried by the appellant was stained with human blood which appears from Exts. 23 and 24 the chemical and serological reports. This bag was identified in T. I. parade as well as in Court by the witnesses who saw the appellant carrying the bag. It was seized from the house of the appellant. The iron rod M. O. III is found to be stained with human blood.

5. The appellant has also admitted in his statement before the committing court that he went inside the temple and had talks with the Babaji at the relevant time. Therefore none but the appellant was present at the time of occurrence inside the temple and the irresistible conclusion is that he has caused the murder of the Babaji.

6. P.W. 10 recorded the confession of the appellant on 12-1-72. This confession was duly recorded after following the requisite cautions and warnings and time for reflection. Appellant admitted that he has killed the Babaji by means of the iron rod, M. O. III. This iron rod was found to be stained with human blood and it was lying near the dead body when P.Ws. 1, 2, 7 and 8 went inside the temple immediately after the occurrence and police also seized the same from that place. In his confessional statement appellant says that as he wanted to break the coconut before the deity, the Babaji objected and gave a slap and out of anger he gave two strokes by means of iron rod on the head of the Babaji which terminated in death of the Babaji. It is argued on behalf of the appellant that this confession should be taken as a whole and the reasons assigned for the assault given by the appellant cannot be separated from the inculpatory statement,

7. In all cases of confession the whole of the confession should be given in evidence because, as a general rule the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favourable to him, not merely as evidence that he had made such assertion but admissible evidence of the matter thus alleged by him. But though the whole of what he said at the same time, and relating to the same subject must be given in evidence, it does not follow that all the parts of the statement should be regarded as equally deserving of credit; but the court must consider, under the circumstances, how much of the entire statement it deems worthy of belief, including as well the facts asserted in his own favour as those making against him. If there is no other material or evidence on record, the court should accept the confession as a whole in reaching its conclusion. The court can reject part of the entire statement if it is improbable or there are sufficient grounds for the same or the prosecution has contradicted any

part of it. (See *Nishi Kant v. State of Bihar* : 1969 CriLJ671 .

Thus the Court, in the given circumstances and evidence in each case, has to come to its own conclusion whether to accept the confessional statement as a whole or to reject a part of it and accept the other part on the ground mentioned above. In the instant case it is amply established that the appellant committed the murder. It is to be seen whether the story of altercation with the Babaji and the slap given by the Babaji, as stated in the confessional statement, is to be accepted. This assertion is contradictory by the appellant's own statement in the committing court as well as before the Sessions Court. He does not say anything about such an incident in both the statements. The witnesses who came to the spot immediately after the occurrence do not say of any sign of breaking of any cocoanut at the place nor any suggestion to that effect has been made to any of them. The appellant also never stated to the Investigating Officer about such altercation or the slap given by the deceased. Accordingly this exculpatory portion of the confessional statement cannot be accepted. The inculpatory part of the confessional statement is in consonance with the other circumstantial evidence stated above.

The aforesaid circumstances coupled with the judicial confession clearly establish that the appellant committed murder of the Babaji.

8. It is contended on behalf of the appellant that the murder was committed without pre-meditation and in a heat of passion upon a sudden quarrel. According to the appellant there was grave and sudden provocation by which the appellant lost his self control and assaulted the Babaji which resulted in death of the Babaji. This contention would have been sustainable if it would have been established by the appellant, either from the circumstances of the case or from the evidence of the prosecution witnesses, that there was sudden quarrel and that there was grave and sudden provocation from the side of the Babaji resulting in loss of self control of the appellant. Section 105 of the Evidence Act runs as follows:

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part

of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

A person is deemed to know the legal consequences of his action. The presumption of law_ is against existence of the exceptions stated in the Indian Penal Code. Therefore, the accused has to establish his plea under such exception. The burden of proof is not so heavy on the accused as on the prosecution but he has to establish that the plea of exception raised by him is reasonably probable as a prudent man will accept his contention on the given circumstances and evidence. The appellant, in the instant case has failed to establish by any circumstance or by any evidence that there was grave and sudden provocation. This contention, therefore, is devoid of merit.

Thus the conviction under Section 302, I. P.C. is well founded.

9. It has been sufficiently established by evidence that the radio M. O. I belonged to the Babaji. The licence of the radio also stands in his name. The witnesses have seen the appellant coming out of the temple immediately after the occurrence with the radio. He has admitted in his confessional state- ment to have taken away the radio. P.W. 6, the maternal uncle of the appellant, has stated that the appellant came with the radio and on request of one Trinath (who was an accused and has since been acquitted) he kept the radio with him. After arrest the appellant gave recovery of the radio P.Ws. 13 and 18 are the witnesses to the fact that the appellant brought the radio and at the instance of Trinath the same was kept with P.W. 6. Ext. 8 is the seizure list of the radio seized from the house of Trinath and P.Ws. 5 and 8 are the seizure witnesses. Thus it has been sufficiently established by the prosecution that the appellant removed the radio belonging to the deceased and the offence under Section 404, I. P.C. has been established.

In the result, the appeal fails and is dismissed.

S.K. Ray, J.

10. I agree.

