Chamara Pradhani and anr. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/531374

Court : Orissa

Decided On : Aug-03-1983

Reported in : 1983CriLJ1706

Judge : B.K. Behera and ;G.B. Patnaik, JJ.

Appellant : Chamara Pradhani and anr.

Respondent : The State

Judgement :

B.K. Behera, J.

1. The Court of Session has accepted the pathetic story presented by the prosecution and has held it established that owing to a dispute between the deceased Bhagirathi alias Bhagaban Pradhani (hereinafter referred to as the 'deceased') on the one hand and his father Chamara (appellant no. 1) and brother Dibakar (appellant no. 2) on the other as the latter had not been allowing the deceased to cultivate the land given to him as his share the appellant Chamara, being armed with a Tangi (M.O. I) and the other appellant Dibakar, being armed with a Tangia (M.O. II), in furtherance of their common intention to commit the murder of the deceased, assaulted and dealt a number of blows on his neck and head resulting in his death when the deceased, in company with his sister-in-law Saraswati (P. W. - 2), had been distributing 'Bhoga' of the deity Birkam and was in front of the house of the appellant Chamara in the afternoon on June 18, 1978.

The appellants stand convicted under Section 302 read with Section 34 of the Penal Code and sentenced thereunder to undergo imprisonment for life.

2. Of the items of evidence on which reliance had been placed by the prosecution through the evidence of fourteen witnesses examined by it, the learned Sessions Judge accepted the ocular testimony of P. Ws. 1 and 2 besides that of P. Ws. 4 and 9, examined as witnesses to the occurrence, the evidence of the doclor (P. W. 3) who had conducted the autopsy, the judicial confession (Ext. 14) made by the appellant Dibakar and the evidence with regard to the recovery of M.O. I. produced by the appellant Dibakar at the Police Out-Post, the seizure of his Lungi (M.O. III) and. shirt (M.O. IV) seized from his person, all of which contained suspected stains of blood and the recovery of M.O. II with suspected stains of blood in it from a stack of wood in the courtyard of the house of the appellant Chamara. The learned Judge did not accept the evidence with regard to an extra-judicial confession said to have been made by the appellant Dibakar before some of the prosecution witnesses. Of the witnesses to the occurrence, P. Ws. 4 and 10 had been cross-examined by the prosecution under Section 154 of the Evidence Act as according to it, they had resiled from some incriminating statements said to have been made by them against the two appellants in the course of investigation.

3. Mr. I. C. Dash, the learned Advocate appearing on behalf of the appellants, does not challenge the finding recorded by the learned trial Judge that the dealh of the deceased was homicidal in nature and in view of the clear and categorical evidence of the doctor (P. W. 3) who had conducted autopsy over the dead body of the deceased on June 19, 1978 as per the post-mortem report (Ext. 3) and had, noticed an incised wound on the back of the neck and another such wound on the left cheek with consequent internal injuries as a result of the incised wound on the back of the neck, fatal in nature, which could be caused by sharp cutting instruments. It is also not disputed at the Bar that there had. been strained relationship between the parties resulting from the division of land, a portion of which had fallen to the share of the deceased. It is not necessary to catalogue the evidence in this regard in view of the admissions made by the two appellants in the statements recorded by the trial court. Mr. Dash has submitted that the evidence of P. Ws. 1 and 2 was that of the relations of the deceased who were on

inimical terms with the appellants besides being untrustworthy. According to him, the prosecution witnesses to the occurrence had given different versions about it and had disclaimed the presence of the others. It has also been submitted that the ocular testimony is at a great variance with the medical evidence and is in conflict with the confessional statement of the appellant Dibakar, and cannot be accepted. The recoveries of the articles, it has been submitted, would not, by themselves point to the guilt of the appellants and the confessional statement made by the appellant Dibakar was neither voluntary nor true. Mr. R. K. Patra, the learned Additional Government Advocate has not pressed into service the confessional statement (Ext. 14) of the appellant Dibakar as the statements made therein are that the other appellant Chamara was away at the fields at the time of occurrence and it was only he who had assaulted the deceased by means of a Tangi which were in direct conflict with the prosecution case presented through its witnesses. We would, therefore, exclude Ext. 14 from consideration. Mr. Patra has submitted that although the ocular testimony has been at variance with the medical evidence, the learned Sessions Judge has accepted the oral evidence for good reasons and this finding should not be interfered with.

4. As to the production of M.O. I with the suspected stains of blood at the Mundiguda Police Out-Post before the Assistant Sub-Inspector of Police (P. W. 13), it may be kept in mind that even according to the prosecution case itself, this was not the weapon of attack carried or used by this appellant and it was allegedly in the hands of the other assailant, namely, his father Chamara. The evidence of P. W. 13 was that the wearing clothes (M. Os. III and IV) of this appellant had also been seized by him. He had not stated in his evidence that these two articles had suspected stains of blood. On chemical examination, blood was detected in M. Os. I, III and IV, but the origin of blood could not be determined. There is thus no evidence that the M. Os. I, III and IV contained human blood. The recovery of M.O. II, which had allegedly been used by the appellant Dibakar in assaulting the deceased, was said to have been made from the courtyard of the other appellant Chamara. There was no evidence that it was not an accessible place. Besides, neither the statement of the appellant Chamara nor that of the appellant Dibakar had led to its discovery. In the absence of evidence showing that both the appellants or either of them had concealed the article in the stack of wood, the

recovery of M.O. II could not be a guilt-pointing circumstance against them. No human blood had been detected in it. The recoveries, by themselves, would not be conclusive proof of the guilt of the appellants and could only support the other evidence pointing to their guilt.

5. The main question for consideration, therefore, is as to whether the evidence of P. Ws. 1 and 2 in particular and that of P. Ws. 4 and 9 could reasonably be accepted. P. W. 1 is no other person than the widow of the deceased and P. W. 2 is her sister. Apart from the land dispute which the deceased had with the appellants, it had been stated by P. W. 9 that P. Ws. 1 and 2 used, to quarrel with the appellant Chamara regarding the division of land. This was also the evidence of P. W. 10. True it is that P. W. 10 had been put leading questions by the prosecution on the ground that he had turned hostile. It is, however, well-settled that the evidence of a hostile witness is not to be rejected in toto and has to be considered for what it is worth. See : 1979 CriLJ1374 Syad Akbar f State of Karnataka. Besides being close relations of the deceased who was not on good terms with the appellants, these two witnesses had also quarrelled with the appellant Chamara on some occasions. The evidence of interested and inimical witnesses is not to be rejected being of a partisan character and is not to be thrown out as such evidence is not necessarily unreliable evidence. Such evidence, however, is to be approached with a little caution and has to be examined with care before the same is accepted. See : 1980 CriLJ1330 Hari Obula Reddi v. State of Andhra Pradesh : 1981 CriLJ1701 State of U.P. v. Manoharlal and : 1982 CriLJ850 State of U.P. v. Suresh. The rule of caution relating to the appreciation of the evidence of the witnesses who are related to the deceased and are on inimical terms with the accused persons is to be kept in mind while appreciating their evidence.

6. The evidence of P. Ws. 1 and 2 was that while the deceased, was in front of the house of the appellant Chamara, this appellant Chamara dealt a blow by means of M.O. I. on his cheek and dealt another blow by the same instrument on the back of the neck of the deceased. The deceased fell down after this assault and thereafter, the appellant Dibakar dealt many blows by means M.O. II on the head of the deceased. P. W. 2 went a step further by deposing that the appellant

Chamara had, chased the deceased before dealing the first blow on him by M.O. I. She had also added that on being called by the appellant Chamara, the other appellant came out of his house with M.O. II before dealing the blows by it on the head of the deceased, P. W. 1 had claimed to have informed Gobardhan Dandasena about what had happened immediatly after the occurrence. The prosecution had chosen not to examine him. P. W. 1 had asserted in her cross-examination that each of the two appellants had dealt three blows on the deceased. Strangely enough, although she was no other person than the wife of the deceased, she did not even raise a cry when the deceased, was given the blows by the two appellants. None of the other witnesses had, spoken about the presence of P.W. 1 near about the spot.

7. It is important to note that in the first information report (Ext. 1) which was got scribed by Narasingha Khora (P.W. 5) to whom (P.W. 1 had reported the occurrence, P. W. 1 had given a substantially different version by stating that the appellant Chamara dealt one blow by a Tangi on the neck, the appellant Dibakar dealt two blows* by a Tangia on the head and thereafter Tilu Pradhani brought a Thenga and dealt two blows by it on the head of the deceased, as a result of which the latter died on the spot. Because of this report, a case had been registered against the two appellants and Tilu Pradhani. P.W. 1 gave a go-by to this story in her evidence and leaving Tilu Pradhani, testified about the dealing of two blows by the appellant Chamara and successive blows by the appellant Dibakar on the person of the deceased. It is, indeed, unfortunate that the learned Sessions Judge took no notice of this highly suspicious feature in the case before him.

8. P. W. 2 had not stated in the course of investigation as testified in the court of trial that the appellant Chamara chased and dealt a Tangi blow on the mandible of the deceased. She had claimed, to have raised cries at the time of occurrence. None of the other witnesses, however, had stated about the presence of P, W. 2 on the spot or about her cries. P. W. 1 could not see where P. W. 2 was at the time of occurrence. P. W. 4 had stated that he had not seen P, W. 2 at the spot. The evidence of P. W. 9 was that P. Ws. 1 and 2 were not present at the place of occurrence. The evidence of P. W. 2 was that P. W. 1 had also raised cries when

the deceased was being assaulted. This was not the evidence of P. W. 1 herself.

9. The other witnesses to the occurrence, namely, P. Ws. 4 and 9, had given a substantially different version. According to them, appellant Chamara was away in his lands at the time of occurrence and he was not present at the scene. This was also the evidence of P. W. 10. P. W. 10 had spoken nothing about the assault by any of the appel-lants on the person of the deceased in his evidence in court, although he is said; to have made some incriminating statements in the course of investigation. According to P. W. 4, while he was on his way to his land, he found the -appellant Dibakar assaulting the deceased by means of M.O. II on the backside of his neck when the deceased had fallen on the ground. But the evidence of P. Ws. 1 and 2 was that it was the other appellant Chamara who had dealt a blow on the back of the neck of the deceased, by means of M.O. I. P. W. 4 had not spoken about the assault on the head of the deceased by the appellant Dibakar, as had been deposed to by P. Ws. 1 and 2. The evidence of P. W. 9 was that when he came out on hearing a cry, he saw that the deceased had fallen on the ground in between his house and that of Butu and the appellant Dibakar had been dealing a Tangia blow on the neck of the deceased. We may state at the cost of repetition that this was not the evidence of P. Ws. 1 and 2, The defence of the appellant Chamara that he was away in his lands had found support in the evidence of the prosecution witnesses, to which reference has already been made.

10. As earlier indicated by us, it was not in the evidence of P. Ws. 1 and 2 that the appellant Dibakar had dealt any blow on the back of the neck and cheek of the deceased. The assault on these parts of the person of the deceased had been attributed by them to the appellant Chamara. P. Ws. 4 and 9 had. however, a different story to tell and of this, we have already taken notice. The evidence of P. Ws. 1 and 2 was that the appellant Chamara dealt two blows on the back of the neck and the mandible of the deceased and that the other appellant Dibakar had dealt successive blows on the head of the deceased. The doctor (P.W. 3) had noticed but two external injuries on the person of the deceased which were : (i) incised wound involving the back of the neck of the vertebral column and the spinal cord at that site, and (ii) incised, wound 6' x 2' on the left cheek. According

to him, the injury on the cheek was simple in nature while the other incised wound which had caused congestive cordiac failure as a result of the cutting of the spinal cord at the site of the neck was fatal. He had stated:

I did not notice any injury on the head. Thus the evidence of P.Ws. 1 and 2 regarding the assault on the person of the deceased by the appellant Dibakar had been demolished by the medical evidence. It is unthinkable that a wanton assault by dealing several blows by means of M.O. II on the head of the deceased, would leave no injury thereon.

11. Notice has been taken by the learned trial Judge of the fact that at the inquest, the Assistant Sub-Inspector of Police had noticed a number of injuries and he observed that the doctor might have failed to properly notice the other injuries on the person of the deceased. This conclusion, in our view, has been based on an unwarranted, conjecture. Although P. W. 13 had deposed that at the inquest as per Ext. 5. the inquest report, he had noticed three cut injuries on the back of the neck, two cut injuries on the head and one injury on the left cheek, the only witness to the inquest, namely, Narasingha Khora (P. W. 5) had stated in his cross-examination that he had seen only one injury mark on the person of the deceased. The prosecution had not brought any material in the evidence of the doctor (P. W. 3) to discredit or throw suspicion on his evidence. Dealing with a case where there was such conflict between the evidence of the doctor and the inquest report, the Supreme Court, in 1983 SCC (Cri) 199 : (1983) 1 SCC 379 Maula Bux v. State of Rajasthan observed and held:. the learned trial Judge held that the bruise marks on scapular region and waist of the dead body noted in the Inquest Panchanama by the Investigating Police Officer, 'were nothing but the marks of post-mortem stainings'. This view of the evidence taken by the trial court could not be said to be palpably wrong. Nor was the High Court fair enough, to the medical officer, Dr. Sati Punjabi, inasmuch as it held that she had failed to note some contusion marks mentioned in the Inquest Panchanama, through sheer 'inadvertence or by design'. The Police Officer who prepared the Inquest Panchanama was not an expert in medical jurisprudence. The possibility of his having mistaken the postmortem staining marks on the waist and shoulder of the deceased., for ante-mortem bruises, could not be ruled out In any case, in such a

situation, as a matter of judicial caution, the benefit of this discrepancy between medical evidence and the inquest report, on this point in issue, aught to have been given to the appellants....

Instead of preferring the acceptable evidence of the doctor (P. W. 3), the learned Sessions Judge wrongly placed greater reliance on what had been found, by the Assistant Sub-Inspector of Police (P. W. 13) at the inquest, as deposed to by him, which had not got support from the evidence of the only witness to the inquest examined at the trial. In view of the clear and categorical evidence of the doctor that he had noticed two external injuries, the learned. Sessions Judge unjustifiably held that the doctor might not have noticed the other injuries on the person of the deceased.

12. We are not oblivious of the legal proposition that when the evidence of the eye-witnesses is clear, cogent and consistent and is not demolished by the medical evidence, such evidence can be relied on and made the basis of an order of conviction. In the instant case, however, the evidence of P. Ws. 1 and 2 was of a highly interested character, as besides being related to the deceased who was not himself on good, terms with the appellant, they had not been pulling on well themselves with the appellant Chamara. In a case of this nature, when there is conflict between oral testimony and evidence of the doctor which does not fit in with the ocular testimony, the oral evidence would certainly be affected and it would not be safe to rely on such evidence. In this connection, reference may be made to the principles laid down in : 1980 CriLJ1298 Purshottam v. State of Madhya Pradesh and : 1981 CriLJ998 Mohar Singh v. State of Punjab. In the instant case, the evidence of the witnesses to the occurrence relied on by the prosecution has seriously been affected by the medical evidence.

13. The case of the defence was that the deceased had been armed with bow and arrow and had aimed an arrow at the appellant Dibakar. This had been denied by P. Ws. 1 and 2. The fact, however remains as would be apparent from the evidence of P. Ws. 13, that he had seized a bow and an arrow lying near the dead body. His evidence and that of P. W. 14, another investigating police officer, would indicate that the ownership of these articles and as to how the bow and arrow

were near the dead body could not be ascertained. A deeper probe ought to have been made in this regard.

14. We find that the prosecution had not presented a true and complete picture about the occurrence. The evidence of P. Ws. 1 and. 2 was untrue and untrustworthy and no reliance could be placed thereon. As indicated by us, the evidence of P. Ws. 4 and 9 was at variance with that of P. Ws. 1 and 2. The prosecution evidence itself showed that one of the appellants, namely, Chamara, was away in the fields when the occurrence had laken place. The recoveries of M. Os. 1 to IV would not lead to a conclusion that the appellants or any of them had committed the offence with which they stood charged.

15. In the result, we would allow the appeal, set aside the order of conviction and sentences passed against the appellants and direct that they be set, at liberty forthwith.

G.B. Patnaik, J.

16. I agree.