Jayasingh Madakami Vs. State

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Court : Orissa

Decided On : May-02-1985

Reported in : 1985(I)OLR627

Judge : B.K. Behera and; R.C. Patnaik, JJ.

Acts : Indian Penal Code (IPC) - Sections 100

Appeal No. : Jail Criminal Appeal No. 60 of 1985

Appellant : Jayasingh Madakami

Respondent : State

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : Sashi Das, Amicus curiae

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Sec. 202 of the Indian Penal code (for short, 'the Code') and sentenced to undergo imprisonment for his by the Court of Session after acceptance of the case of the prosecution, on the basis of the evidence of P. Ws. 1 to 3 about an extrajudicial confession said to have been

made by the appellant and the recovery of an axe (M. O. I.) which, on chemical and serological test, had been found to have stains of human blood, from the place of concealment consequent upon a statement made by the appellant while in custody, that at midnight on October 12, 1983, the appellant had killed his brother-in-law (to be referred to hereinafter as 'the deceased') by means of M. O. I.

2. We have heard the learned counsel for both the sides. It is not disputed that the deceased had died a homicidal death. Of the witnesses examined for the prosecution, P. W. 4, the widow of the deceased, had been examined to say that she had seen the actual assault on the person of the deceased by the appellant. She did not support this . part of the case of the prosecution although evidence was led through P. Ws. 1 to 3 that she had made a statement before them that the appellant had killed her husband.

3. P. Ws. 1 to 3 had given evidence that oh the day following the day of occurrence, when asked about the incident in a meeting of the Panchayat, the appellant admitted to have killed the deceased. Apart from the discrepancies in their evidence as to the actual words used by the appellant and the absence of circumstances indicating as to the reason or motive on the part of the appellant to make a confession and as to why he would repose confidence in P. Ws. 1 to 3, it would be seen from their statements that the appellant had told them that as the deceased, being armed with axe, bow and arrow, threatened to kill him, he killed the deceased. A confession must either admit, in terms, the offence or at any rate, substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, is not, of itself, a confession. A statement that contains a self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. {See AIR 1939 P. C. 47 : Pakala Narayan Swami v. Emperor). Even assuming that the appellant had made a statement as testified by P. Ws. 1 to 3, he had clearly set out a right of private defence of his person and under Sec. 100 of the Code, the appellant did have the right under the law to kill the deceased who, with deadly weapons, had threatened to kill him The appellant could have reasonable apprehension in his mind that death or grievous hurt would be caused to him if he did not exercise the right of private defence of his person. Thus the statement

allegedly made by the appellant contained on exculpatory matter which, if accepted, would negative the offence. Therefore, it could not be said from the evidence of P. Ws. 1 to 3 that the appellant had made an extrajudicial confession before them.

4. The only other evidence was the recovery of M. O. I. with stains of human blood on the basis of a statement of the appellant. In the absence of other evidence pointing to his guilt, this circumstance, by itself, cannot sustain a charge of murder. In this connection, reference may be made to a decision of this Court reported in XXXV (1969) C. L. T. 351 : Satrughana alias Satura Majhi v. State. Even if it is accepted on the basis of the statement of the, Investigating Officer that the appellant's statement had led to the discovery of M. O. I., it could give rise to a strong suspicion regarding the complicity of the appellant, but would not be sufficient to establish a charge of murder. That apart, as the appellant's alleged statement before P. Ws. 1 to 3 would show, he had stated to have killed the deceased in exercise of the right of private defence of his persons P.W. 4 had stated in her cross-examination that as the deceased threatened to kill the appellant, the latter killed him. Therefore, even assuming that the appellant had used M. O. I. for his defence, he could not be held guilty of the charge.

5. Regard being had to the aforesaid features in the evidence, the learned Standing Counsel has fairly submitted that the evidence on record would not warrant the impugned order of conviction.6. In the result, the appeal succeeds and the same is allowed. The order of conviction and sentence passed against the appellant is set aside. The appellant be set at liberty forthwith.

7. It has come to our notice that this Jail Criminal Appeal was received from the jail without any application of the appellant for engagement of a counsel through legal aid being provided by. the State. On receipt of the memorandum of appeal, the High Court office has not taken steps for engagement of a counsel through legal aid : Instructions have been issued to the jail authorities to forward memorands of appeals and applications in Criminal Revisions from the Jail as by providing legal aid. We do hope that the jail authorities would follow the instructions scrupulosly in future. A copy of this judgment shall be forwarded to the Secretary to the

Government of Orissa in the Home Department and the Inspector-General of Prisons for their information and appropriate action.

R.C. Patnaik, J.

8. I agree.