Moti Gouduni Vs. State

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Court : Orissa

Decided On : May-03-1982

Reported in : 1982CriLJ2342

Judge : N.K. Das and ;B.K. Behera, JJ.

Appellant : Moti Gouduni

Respondent : State

Judgement :

B.K.Behera, J.

1. In the early hours of June 13, 1971, Biswanath Gouda (hereinafter referredto as the deceased) of village Saranpur in the district of Koraput was found lying dead in his house with a Chadar covering the dead body. The appellant Moti, who was the second wife of the deceased, had, it was alleged, along with Ratan Gouda, who was said to be her paramour, killed the deceased in furtherance of their common intention, during the preceding night, the appellant by means of a knife, and Ratan by means of the blunt side of an axe and having first given out that the deceased died of gastric trouble, the appellant later made an extra-judicial confession before Tularam Naik (PW 2) and Raghunath Ganda (PW 3) to the effect that she and Ratan killed the deceased. On drawing up the first information report (Ext. 5), the Officer-in-charge (PW 8) of the police, station at Papadahandi took up the investigation, As the investigation was not completed for a long time, the appellant

and the co-accused, namely, Ratan Gouda, were discharged. In August, 1971, a chargesheet was placed and the co-accused Ratan Gouda, on being produced on the strength of a warrant issued against him, was tried and acquitted of the charge of murder. The appellant was said to be absconding and after she was produced in custody in July, 1978, she was committed to the court of session and tried being charged under Section 302 of the Indian Penal Code.

2. To bring home the charge to the appellant, the prosecution had examined eight witnesses. The case of the appellant was one of denial and false implication. No witness had been examined on her behalf,

3. The learned Sessions Judge found that the death was homicidal in nature and this fact has not been disputed at the Bar before us in view of the clear evidence of the Medical Officer (PW 5) who had conducted the autopsy over the dead body of the deceased. The learned Judge did not rely on the evidence that while the appellant was in custody, her statement had led to the discovery of a knife (MO I), a Saree (MO II) and a Chadar (MO III) from the backyard of the house of the deceased and rightly so, as besides the absence of evidence that M.O. I was the weapon of attack or that any of the articles was on the person of the appellant or the deceased at the time of the occurrence, the recoveries had been made from an un-fenced backyard and it could not be said that the appellant was the author of concealment of these articles, The learned Judge also discarded the evidence of P.W. 3 that during the night, the appellant had been seen going to the co-accused Ratan Gouda and the evidence of P.W. 7 with regard to the purchase of a pair of rings (M.O, IV) bv the appellant and an old man, which could have nothing to do with the commission of the offence of murder. The confession of the co-accused Ratan implicating only himself, as deposed to by P.W. 6, according to the learned Judge, could not be and was not to be utilised against the appellant. The learned Sessions Judge, however, accepted the evidence with regard to the extra-judicial confession allegedly made by the appellant before P.Ws. 2 and 3 and found that the fact that the appellant and the deceased were the only two persons present in the house and the medical evidence corroborated the extra-judicial confession made by the appellant. The learned Judge did not convict the appellant under Section 302 of the Penal Code with which she stood charged and although

the co-accused Ratan Gouda had, in a separate trial, been acquitted of the charge of murder, held that his acquittal would not stand as a bar to finding the appellant guilty under Section 302 read with Section 34 of the Penal Code and the appellant was accordingly convicted of the offence of murder by the application of Section 34 of the Penal Code and sentenced thereunder to undergo imprisonment for life.

4. Mr. N.K. Behera, the learned Advocate appearing on behalf of the appellant, has submitted that the order of conviction cannot be sustained on facts and maintained in law, Mr. A. Rath, the learned Additional Standing Counsel, has supported the order of conviction as well-founded.

5. There was no evidence whatsoever that the appellant had strained relationship with the deceased or that she was in love with the co-accused Ratan Gouda. The prosecution had failed to establish any motive on the part of the appellant to commit such a heinous crime by killing no other person than her husband. As has been laid down in the case of State of Haryana v. Sher Singh : 1981 CriLJ714 ; the prosecution is not bound to establish motive in a criminal case and motive is known only to the perpetrator of the crime and may not be known to others. But as has been laid down in an earlier decision of the Supreme Court in the case of Atley v. State of Uttar Pradesh : 1955 CriLJ1653 where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty. But the absence of clear proof of motive does not necessarily lead to the contrary conclusion. The absence of proof of motive has this effect only that the other evidence bearing on the guilt of the accused has to be very closely examined.

6. In the absence of proof of motive for the commission of the offence in a case where the wife has allegedly killed her husband, the evidence on which the prosecution has sought to build its case has to be examined with great care before the same is accepted.

7. The fact that the appellant and the deceased were the only occupants of the house could not be a guilt-pointing circumstance against the appellant. Although the prosecution sought to show that the dead body of the deceased was lying inside the room, the evidence of the Investigating Officer (P.W. 8) was that the

dead body was lying on the outer verandah of the house and in the absence of any evidence that the dead body had at any stage been removed from inside the room to the outer verandah, the case of the appellant that she had been sleeping inside the room and her husband had been sleeping on the outer verandah and in the morning, she found her husband lying dead would get assurance from the evidence of the Investigating Officer himself.

8. Even assuming that the appellant had made a false statement that her husband had died of gastric trouble, this could not point to her guilt in the absence of legal and cogent proof connecting her with the commission of the offence of murder. Falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea by the defence can at best be considered to be an additional circumstance if other circumstances point unfailingly to the guilt of the accused person. (See Shan-karlal v. State of Maharashtra : 1981 CriLJ325 . It would be seen from the first information report that when P.W. 1 reported about the death of the deceased at the police station, no allegation had been made about the statement of the appellant that the deceased died of gastric trouble.

9. P.Ws. 2 and 3 are the witnesses who have testified about the extra-judicial confession said to have been made by the appellant before them. The evidence relating to extra-judicial confession, in the very nature of things, is a weak piece of evidence, as observed by the Supreme Court in the case of State of Punjab v. Bhajan Singh : 1975 CriLJ282 . The evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accept ed. A Division Bench of this Court con sisting of one of us, in the case of Buti alias Gunasagar Behera v. State of Orissa. 53 Cut LT 130 : 1982 Cri Ll 938 has held that the value of the evidence as to the extra-judicial confession like any other evidence depends upon the veracity of the witnesses to whom it is made and it is not an invariable rule that the court should not accept the evidence if not the actual words but the substance is given by the witnesses. Reliance had been placed on the principles laid down by the Supreme Court in the cases of Mulk Rai v. State of Uttar Pradesh AIR 1959 SC 902 : 1959 Cri LJ 1219 and Maghar Singh v. State of Punjab : AIR 1975 SC1320 .

10. In the instant case, P.Ws. 2 and 3 had testified that the appellant had first given out that her husband had died of gastric trouble, If so, there was no reason on her part, in the absence of evidence to show that some materials were found out connecting her with the crime, to blurt out a statement implicating herself and Ratan as the perpetrators of the crime merely because some injuries were noticed on the person of the deceased. The evidence of P.Ws. 2 and 3 as to who asked her and in what circumstances she made the extra-judicial confession was highly discrepant. While according to P.W. 2. It was not he, but Mudi Naik who questioned the appellant after which the appellant, made the extra-judicial confession, P.W, 3 had claimed that he was the first man to question the appellant about it. Even as noticed by the learned Sessions Judge, Mudi Naik had not been examined by the prosecution. On the facts and in the circumstances of the case, Mudi Naik was a material witness with regard to the extra-judicial confession and his non-examination would cast a serious reflection on the bona fides of the prosecution and an inference could legally be drawn that had he been produced and examined, his evidence would have gone against the prosecution. Neither P.W. 2 nor P.W. 3 had testified that after the accused made an extra-judicial confession, he had informed the co-villagers immediately thereafter which, in the normal course of human conduct and action, these witnesses were supposed to do. The evidence of P.W. 6 was that the co-accused Ratan had made a confession before him that he had killed the deceased with a tangia. The evidence of this witness would not indicate the complicity of the appellant with the crime and he (P.W. 6) had testified that Ratan had repeatedly told that he had killed the deceased. The learned Sessions Judge did not take notice of these improbabilities and infirmities in the evidence and unjustifiably accepted the evidence of P.Ws. 2 and 3. Judged in the light of the principles laid down by the Supreme Court and keeping in mind that the evidence as to extra-judicial confession has to be examined with care before the same is accepted, it would be seen that the evidence in the instant case with regard to the extra-judicial confession was far short of the mark. Moreover, there was no evidence corroborating this evidence besides, of course, the medical evidence which would show that it was a case of homicide. There was no other evidence pointing to the guilt of the appellant.

11. On a careful consideration of the evidence of P.Ws, 2 and 3, we have no hesitation in holding that the evidence of these two witnesses was untrue and unreliable and could not be acted upon. Merely because it has not been shown by the defence as to why they should come forward to depose against the appellant attributing extra-judicial confession to her, their evidence cannot be trusted and accepted. If the evidence of a witness is found to be incredible, the fact that it has not been shown as to why the witness has implicated an accused person cannot stamp his evidence with truth. Interested evidence is not necessarily false and disinterested evidence is not necessarily true.

12. In view of the findings recorded by us, the order of conviction cannot be allowed to stand.

13. Coming to the question of the legality of the order of conviction, we notice that the learned Sessions Judge recorded the conviction of the appellant, who was the sole accused person before him, by applying Section 34 of the Penal Code, although the only other co-accused person, who had allegedly committed the murder along with the appellant in furtherance of the common intention of both of them, had earlier stood trial and was acquitted of the charge. The ground given by the learned Judge that the acquittal of the co-accused would not stand as a bar to finding the appellant guilty under Section 302 read with Section 34 of the Penal Code is unfounded in law and the order of conviction must not have been recorded in the manner it has been done. Section 34 of the Penal Code can be applied when a criminal act is done by several persons in furtherance of the common intention of all as in such a case, each of such person is liable for the act in the same manner as if it were done by him alone. Section 34 lays down a principle of joint liability in the doing of a criminal act and that liability is to be found in the existence of common intention animating the accused persons leading to the doing of a criminal act in furtherance of such intention. When the definite case of the prosecution is that only two persons, in furtherance of their common intention, had committed the offence of murder and one of them has been acquitted at an earlier trial and the acquittal is in force, the co-accused person, cannot, under the law, be convicted of the offence of murder by the application of Section 34 of the Penal Code, This principle is so elementary and fundamental that the learned

Sessions Judge should never have held that the acquittal of the co-accused person in a separate trial would not stand as a bar to the application of Section 34 of the Penal Code in respect of the appellant.

14. We thus find that the order of conviction recorded against the appellant was factually unfounded and legally misconceived.

15. We would allow the appeal and set aside the order of conviction and sentence passed against the appellant who shall be set at liberty forthwith

N.K. Das, J.

16. I agree.