

Budhia Singh Vs. State

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Court : Orissa

Decided On : Apr-27-1982

Reported in : 1983CriLJ1020

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

Appellant : Budhia Singh

Respondent : State

Judgement :

B.K. Behera, J.

1. Poverty in a triabal household in the village of Upardiha in the district of Balasore consisting of the appellant, his deceased father-in-law Gopinath Singh, whom the appellant allegedly murdered Bela Dei (P. W.

6) and Jema Dei (P. W. 1). the wife and mother-in-law respectively of the appellant, all of whom had been serving on daily' wages to feed their bellies, led to the unfortunate incident of the appellant killing his father-in-law in the night of the 5th-6th Nov. 1977 after he was driven away by the deceased from his house by being called a dog as the appellant did not part with four Gaunis of paddy which were due to be paid to him and had been brought by his mother-in-law (P. W. 11 from Gajendra Narayan Mishra (P. W.

2) under whom the appellant had been serving as the family had no food to eat and the appellant sold this paddy away to Nanda Kishore Das (P. W.

8) without sparing it for the household and being enraged on his being called a dog. it was alleged, the appellant came armed with his knife (M.O. IV) and while his wife (P. W.

6) was sleeping in the only room of the house and the deceased with P. W. 1 and some children was sleeping on the outer verandah and P. W. 1 had temporarily gone to ease herself, the appellant stabbed the deceased on his chest and left the place. The appellant was seen in the process of running away from the place of occurrence by his mother-in-law (P. W.

1) and Shyam Sunder Singh (P. W.

51. nephew and neighbour of the deceased, p. W. 6, the wife of the appellant, was informed by P. W. 1 about the occurrence and so. too, were the co-villagers, namely. Kulamani Mishra (P W. 3). Surendra Patra (P. W. 4). Baidhar Sahu (P. W. 71 and Hadibandhu Sahu (P. W.

9) who came to the spot and saw the deceased lying dead with the blade portion of the knife inside his chest and its handle portion sticking to the chest. The first information report (Ext.

10) was lodged by P. W. 1 at 5.00 a. m. on November 6, 1977 and investigation followed in the course of which inquest was held and the dead body of the deceased was sent for post mortem examination which was conducted by Dr. K. C. Panigrahi (P. W.

11) as per Ext. 8, the post mortem report and it was he who had taken out the knife (M.O. IV) from the person of the deceased which was seized by the Investigating Officer as per Ext. 9, the seizure list. The witnesses were examined, the appellant was arrested and while in custody, his statement led to the discovery of a Gamucha {napkin), identified as M.O. I. during the trial, with stains of blood in it from inside a bush in the reserved forest to the west of village Godarasul and this napkin had been worn by the appellant, as the prosecution

sought to show, at the time of the occurrence. The Scientific Officer (P. W. 101 of the District Forensic Science Laboratory had taken some photographs of the dead body with the knife sticking to the chest. On the completion of investigation, a chargesheet was placed and the appellant stood prosecuted being charged under Section 302 of the Penal Code with having committed murder by intentionally causing the death of the deceased to which he had pleaded not guilty and his case was one of denial and false implication with a suggestion that Shyam Sundar Singh (P. W. 5), who had opposed to the proposal of the marriage of the appellant with P. W. 6, had committed the murder of the deceased.

2. At the trial, the prosecution had examined twelve witnesses to bring home the charge to the appellant who had not examined any witness in his defence. On a consideration of the evidence, the learned Sessions Judge found that the case against the appellant had been established on 'facts and that he had committed the offence of murder and accordingly for his conviction under Section 302 of the Penal Code, the appellant has been sentenced to undergo imprisonment for life.

3. Mr. R. C. Rath, the learned Advocate appearing on behalf of the appellant, has challenged the findings recorded by the trial court against the appellant while it has been submitted by Mr. Patra on behalf of the State that the order of conviction is well-founded and cannot be assailed.

4. It would be clear from the evidence of P. Ws. 1 and 6 that after her marriage with the appellant, p. w. 6 remained in the house of the father of the appellant for some days in village Ayodhya where owing to poverty, the father of the appellant was not even able to feed the member of the family and had been giving but one seer of rice per day for which P. W. 6 was ill-fed and she left the place and came to the house of her parents followed some time thereafter by the appellant and the appellant and his wife had been staying with the deceased and P, W. 1 feeding themselves on the wages earned by them as labourers. As would appear from the evidence, on the Thursday preceding the fateful night, there being no rice for cooking, P. W. 1 went to the house of p. W. 2 and brought four gounis of paddy due to be received by the appellant towards his wages, but the appellant would not allow this paddy to be used for feeding the family as he wanted to sell the same

and for this, there had been a quarrel between the appellant and the deceased. On the day following, i. e. on Friday, there was also a quarrel between the two for the same reason when the deceased told the appellant that he was like a dog and that he should leave the house and go away and at this, the appellant left the house and went away with a threat to the deceased that he would set him right. We see no justification for rejecting the testimony of P. Ws. 1 and 6 in this regard. The deceased was the husband of P. W. 1 and the father of P. W. 6. but at the same time, the appellant is the son-in-law of P. W. 1 and the husband of P. W. 6 and they would not falsely implicate the appellant in such a grave crime by ascribing a motive which was not in existence,

5. The prosecution has thus established a motive for the commission of the offence. Motive, however adequate, cannot, however, sustain a criminal charge unless the other evidence unfailingly points to the guilt of an accused person.

6. Coming to the dying declaration made by the deceased immediately after he was stabbed on his chest naming the appellant as the assailant, there is the evidence of P. W. 1. the wife of the deceased, p. w. 1 had testified thus:

At about midnight, I got up from my sleep as I wanted to pass urine. When I got up and went to pass urine, I found that my husband Gopinath was sleeping as usual with his face upwards. I urinated at a distance of about five cubits from my husband, under the outer verandah of our house, where my husband was sleeping. Our outer-verandah was not very high and the height was about 2 1/2 feet. I was urinating by sitting on the ground. While I was urinating, I heard my husband shouting that Budhia (accused) stabbed him. Hearing this. I immediately turned my face and found that accused Budhia was running away. Accused Budhia was wearing a red cloth. M.O. I is the red cloth (Napkin) which Budhia was wearing. I came near my husband and found that a knife had been stabbed into the chest of my husband, My husband told me 'Budhia stabbed me with a knife and ran away,' Give me some 'Turani' (gruel).' I gave some turani (gruel) to my husband and he drank the same, Subsequently, my husband began to sink gradually and ultimately, he died....

If after searching scrutiny, the court is satisfied that the dying declaration represents a truthful version of the occurrence in which the deceased received the injuries which led to his death, a conviction can be founded thereon even in the absence of any independent corroboration (See the cases of *Kusa v. State of Orissa* : 1980 CriLJ408 and *Rabi Chandra v. State of Orissa* : 1980 CriLJ1257 .

7. In the instant case, the son-in-law had allegedly killed the deceased. The appellant and the deceased were very well-known to each other and therefore, the deceased could easily have identified the appellant as his assailant. After the appellant dealt the knife blow, the deceased must have immediately woken up and noticed his assailant close to him. Although it was a dark night, as noticed by the learned Sessions Judge while accepting the evidence of P. W. 1, and rightly so, about the identification of the appellant who had been running away after the deceased named him as his assailant, the deceased, who had been sleeping on the outer verandah, could have properly identified the appellant by the twilight of the stars and from the contours of the appellant who was no other person than his son-in-law. There was no evidence that either the deceased or p. w. 1 had defective eyesight. There may, no doubt, be instances when what are supposed to be the clearest intimations of the senses, may be fallacious and deceptive and. some cases may occur of mistaken personal identity. But in the instant case, the appellant was the son-in-law of the deceased and P.W. 1 and therefore, they could have easily identified him from his appearance and from his gait and contours.

8. The learned Advocate appearing on behalf of the appellant has submitted that as according to the medical evidence, death must have been instantaneous, the deceased could not have made a dying declaration in the manner deposed to by P. W. 1. We see no force in this contention, while according to the doctor (P. W. 11). death must have been instantaneous, it could not be said from this that the deceased would not be in a position to speak anything after the assault on him and before his death, it had not been brought out from the evidence of the doctor that the condition of deceased after the assault on his chest must have been such that he would not be in a position to speak at all. As a matter of fact, as the evidence of P. W. 1 would show, the deceased not only named the appellant as his assailant, but he asked for some gruel which he took and then died.

9. Immediately after the incident, P. W. 1 informed her co-villagers, namely, Kulamani Mishra (P. W. 3), Surendra Patra the Grama Rakshi (P. W. 4), Bela Dei (P. W. 6), the wife of the appellant, Baidhar Sahu (P. W. 7) and Hadibandhu Sahu (P. W. 9) that the appellant stabbed her husband and ran away. Even if the evidence of P. W. 4 is discarded on the ground that he had not made a statement in this regard to the Investigating Officer, there was the clear and cogent evidence of the other four witnesses and one of them is no other person than the wife of the appellant. In the first information report lodged by P. W. 1 soon thereafter at the police station, she had stated about the dying declaration made by her deceased husband naming the appellant as his assailant and about her seeing the appellant running away. This would lend assurance to and corroborate her evidence in the court. As the evidence would show, P. W. 1 shouted for help saying that Budhia (appellant) ran away after stabbing the deceased.

10. Agreeing with the views recorded by the learned Sessions Judge, we find that the evidence of P. W. 1 with regard to the dying declaration made by the deceased and about her seeing the appellant running away is clear and credible and can safely be relied on.

11. There was the evidence of P. W. 5 Shyam Sundar Singh that after he heard P. W. 1 shouting to come for help he got up and as soon as he went out of his house, he found the appellant who slipped in front of his house and stumbled against a stone and fell down in front of his door and then immediately got up and ran away. He had claimed in his evidence that at the time of the incident, the moon was still in the sky and it was a day in the bright fortnight. As noticed by the learned Judge, this statement of P. W. 5 was not correct as it was the Nabami day in the dark fortnight of the month of Kartik and the learned Judge has accepted the evidence of P. W. 1 that it was a dark night, it could be that in order to make his evidence believable, P. W. 5 had blurted out a statement that it was a moonlit night. If the appellant had stumbled against a stone and fell down, it was likely, although not necessarily, that he might have received some injuries on his person as a result of fall. There was no evidence that he had sustained any injury. What is important and which the learned Judge did not bear in mind was that there was no evidence of any of the co-villagers that P. W. 5 had informed them during the night that he

had seen the appellant running away. Even P. W. 1 had not spoken about it. On his own showing and as stated by him in his cross-examination, after the villagers came, he told them as to what he had heard regarding the incident. Even he has not deposed that he had told them about what he had seen, viz.. the act of the appellant running away. Although he had denied to have strained relationship with the appellant and that he had objected to the marriage of the appellant with P. W. 6. P. W. 1 had admitted in her cross-examination that P. W. 5 did not desire that P. W. 6 should be given in marriage to the appellant and that P. W. 5 had also been criticising them as to why P. W. 6 was given in marriage to the appellant. regard being had to the strained relationship and the fact that P. W. 5 had not informed the co-villagers about what he had seen, his evidence does not deserve credence and in our view, the evidence of P. W. 5 in this regard should not have been accepted by the trial court.

12. There was the clear and cogent evidence of the doctor (P. W. 11) which would show that death in the instant case was homicidal in nature and as a matter of fact, this aspect has not been challenged before us on behalf of the appellant. As his evidence would show, the entire iron portion of the knife (M.O. IV) up to the iron ring at the base had pierced inside the chest of the dead body and the length of the blade up to the iron ring of the base was 15.5 Cms. and the handle portion including the iron ring was 9.5 Cms., This would give an indication as to how deep was the slabbing. It was this doctor who had extracted the knife (M.O. IV) from the dead body and the Investigating Officer seized it in his presence. There was the evidence of P. Ws. 1 and 6 that this knife (M.O. IV) belonged to the appellant. P. W. 1 had, however, admitted in her cross-examination that she had not seen this knife before the death of her husband. Her evidence with regard to the ownership of M.O. IV may not safely be accepted. But there is no reason to discard the evidence of p. w. 6. the wife of the appellant, in this regard. Her definite evidence is that M.O. IV belonged to the appellant and the appellant had been using this knife for the purpose of making bows and arrows and for other purposes. She had identified M.O. IV as that knife belonging to the appellant. In her cross-examination, she had stated thus: I have not seen the knife like M.O. IV in the houses of others. I cannot say the particular type of knife in the houses of others. There are marks of identification in the knife. There is blood mark in the knife (on

seeing M.O. IV. the witness only says that there is blood mark in the knife and she cannot say as to what other identifying marks are there in the knife).

Even if M. O IV had no special marks of identification, P. W. 6 was competent to depose about its ownership as the appellant was using M.O. IV for making bows and arrows and for other purposes. Small and even nice points of difference distinguishing one thing from others of the same kind may merely by frequent sight of them and without any special attention to them make an impression of the mind. Such identification may still be relied upon although a witness would not be able to formulate reasons for the identification as it is based upon general untranslatable impressions of the mind. It would not be correct to discredit evidence of identification on the sole ground that reasons are not formulated by the witnesses while identifying articles. A witness may be able to identify an article by frequently seeing, handling or using it although there is no special mark of identification. Whether or not the evidence of a witness as to identification of an article is to be accepted is a question of fact to be decided on the facts and in the circumstances of each case. Evidence of identification of an article by a person competent to identify it is not to be rejected merely on the ground that the witness has not been able to formulate the reasons for identifying it which, as we have indicated above, may have been based upon the general untranslatable impression of the mind. We have been impressed by the evidence of P. W. 6 with regard to the identification of M.O. IV which had stuck to the chest of the deceased as belonging to the appellant. M.O. IV was found to contain human blood on chemical and serological tests. Although with the other items of evidence already discussed, this would be a clinching piece of evidence connecting the appellant with the crime of the murder of the deceased.

13. There was, in addition, the evidence of the Investigating Officer (P. W-12) supported by that of P. W. 3 that at the instance of the appellant, a napkin (M.O. I) was recovered from inside a bush in the reserved forest to the west of village Godarasul. On chemical and serological tests, human blood was found in M.O. I. The learned Sessions Judge rightly did not accept the evidence of P. W. 1 that the appellant was wearing this napkin at the time he was found running away as P. W. 1 could properly identify the appellant, but she was not likely to have clearly

marked the colour of the napkin during the night. We do agree with the finding of the trial court that it had not been established by the prosecution that the appellant was wearing M.O. I at the time of stabbing the deceased.

14. Having carefully considered the evidence, we are of the view that the appellant stabbed the deceased on his chest and took to his heels. As the medical evidence would clearly show, the injuries noticed by the Doctor were sufficient in the ordinary course of nature to cause death. The appellant had used a dangerous weapon and had pierced deep into the chest of the deceased by stabbing him by means of M.O. IV on a vital part and his act would show that he had the intention of causing the death of the deceased and that with that intention, he had caused injuries by stabbing by means of M.O. IV sufficient in the ordinary course of nature to cause death. The act of the appellant would, therefore, amount to murder and he has rightly been convicted and, sentenced under Section 302 of the Penal Code.

15. In the result the appeal fails and the same is dismissed. The order of conviction and sentence passed against the appellant is- maintained.

P.K. Mohanti, J.

16. I concur.

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