

Simon Toppo Vs. State of Orissa

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Court : Orissa

Decided On : Jan-30-2009

Reported in : 2009CriLJ2592

Judge : P.K. Tripathy and; R.N. Biswal, JJ.

Appellant : Simon Toppo

Respondent : State of Orissa

Disposition : Appeal dismissed

Judgement :

1. This appeal is directed against the judgment and order dated 12-6-1998 passed by the learned Sessions Judge, Sundargarh in S.T. No. 245 of 1995, wherein he convicted the accused-appellant for the offence under Section 302/201 of IPC and sentenced him thereunder to undergo imprisonment for life and rigorous imprisonment for 5 years respectively.

2. Succinctly stated, the prosecution case is that P.Ws. 6, 7 deceased Anita Bada, an unmarried girl the accused-appellant and some others were engaged as labourers for about two months to dig the well of P.W. 9. In course of such engagement, intimacy developed between the accused-appellant and the deceased leading to their physical relationship and pregnancy of the deceased. When the pregnancy could be known, on 23-7-1995 the deceased requested P.Ws. 6 and 7 to escort her to the house of accused-appellant situated in village

Bheluadihi. Accordingly, when all the three were going to that village, on the way, they met the accused-appellant and disclosed before him that the deceased was in the family way. The accused-appellant requested them to wait there till he returned from his house and so saying went to his house and returned back after some time. Then they went to a nearby cashew nut field, where leaving the deceased in the company of accused-appellant, P.Ws. 6 and 7 left for their home. Since the deceased did not return, on the next date, her parents enquired regarding the whereabouts of the deceased from P.Ws. 6 and 7, who disclosed that they left her with the accused-appellant in a cashew nut field on the previous date. The parents of the deceased reported the matter to P.W. 1, the ward member of their village. On 25-7-1995, P.W. 1 along with P.W. 2, (mother of the deceased) and P.Ws. 6 and 7 went to the house of the accused-appellant and enquired from him regarding the whereabouts of the deceased. He admitted that the deceased was conceived through him and on the relevant date, i.e. 23-7-1995, he gave her Rs. 20/- to get the pregnancy terminated at Rajgangpur and made her board a bus bound for Rajgangpur, assuring her that he was following the bus on a cycle. He went on a cycle to Rajgangpur, searched for the deceased and having failed in tracing her out, left for his village. On 27-7-1995, P.W. 2 described the dead body of the deceased floating in Chingriharia Nala and informed this fact to P.W. 1. Having known this, P.W. 1 went to Lanjiberna outpost and submitted a written report before the A.S.I. (P.W. 15) who registered U.D. case No. 5/95 and enquired into the matter. In course of enquiry, he visited the spot, got the dead body fished out from the Nala, held inquest over it, prepared the inquest report and sent the dead body to Brajrajnagar Government Hospital for autopsy. On conclusion of enquiry, when prima facie it was found out that the accused-appellant murdered the deceased, he lodged a written report on his own information on 30-7-1995 vide Ext. 7 before P.W. 16, Inspector-in-Charge of Rajgangpur Police Station which was treated as FIR. Accordingly, P.W. 16 registered P.S. Case No. 96/95 for the offence under Sections 302/201 of IPC and investigated into the case. In course of investigation, he examined P.W. 15, perused the case record of U.D. Case No. 5/95, tested the witnesses already examined by P.W. 15, examined some more witnesses, visited the spot and prepared the spot map under Ext. 8, arrested the accused-appellant and

forwarded him to Court, collected the postmortem examination report from the doctor and after completion of investigation, finding a prima facie case against the accused-appellant, submitted charge-sheet against him under Sections 302/201 of IPC. The case having been committed to the Sessions Judge, Sundargarh, was registered as S.T. Case No. 245/1995. On denial of the charge, the accused-appellant faced trial for the offence under Sections 302/201 of IPC.

3. To bring home the charge levelled against the accused-appellant, prosecution examined 16 witnesses as against none by the defence. Admittedly, there was no eyewitness to the occurrence. So, the case mainly rested on circumstantial evidence. After assessing the evidence on record, the trial Court held that the circumstantial evidence brought against the accused-appellant was sufficient to hold him guilty for the offence under Sections 302/201 of IPC and accordingly convicted and sentenced him thereunder as stated earlier. The present appeal has been preferred against the said judgment and order of conviction.

4. Learned Counsel for the accused-appellant submitted that none of the circumstances relied on by the prosecution was cogent, clinching, and reliable. Moreover, the circumstances taken together could not provide a complete chain unerringly pointing to the guilt of the accused-appellant and none else. So, the order of conviction and sentence ought to be set aside.

5. In view of the submission of learned Counsel for the accused-appellant, now we would examine the circumstances basing on which the order of conviction was passed.

6. The trial Court relied on the following circumstances:

(i) Homicidal death of the deceased.

(ii) The accused-appellant admitted that the deceased was conceived through him and that he was trembling while so saying.

(iii) The deceased was last seen in the company of the accused-appellant and the latter could not account for her disappearance.

(iv) The dead body of the deceased was found floating in a Nala near the place where, the accused and the deceased were last seen together.

(v) The financial condition of the family of the accused-appellant was far better than the financial condition of the family of the deceased.

(vi) The accused-appellant and the deceased belong to two different castes.

7. As found from the evidence of doctor, P.W. 13, on 28-7-1995 he conducted autopsy over the dead body of deceased and found one black ecchymosis of size 1' x 1' on each of the cheek and one black ecchymosis of size 2' x 2' on either side of the neck. As per his opinion, the death of the deceased was asphyxia resulting from strangulation. During cross-examination nothing could be elicited from P.W. 13 to shake his credibility. There was also no serious challenge by the defence to the homicidal death of the deceased. So, it is proved beyond doubt that the deceased suffered a homicidal death.

8. For the sake of convenience, point Nos. (ii) and (iii) are dealt with together. It transpires from the evidence of P.Ws. 6 and 7 that they along with the accused-appellant and the deceased worked as labourer in the house of P.W. 9 for about 2 months to dig a well. During that time intimacy developed between the accused-appellant and the deceased culminating in physical relationship, for which, the deceased got conceived. On 23-7-1995, being requested by the deceased to leave her with the accused-appellant in village Bheluadihi, they escorted her to that village and seeing the accused-appellant at the outskirts of the village, they went to a cashew nut field and leaving the deceased in the company of the accused-appellant, left for their home. Nobody saw the deceased alive thereafter. Learned Counsel for the accused-appellant submitted that the postmortem report was silent with regard to the pregnancy of the deceased. So, the allegation that the deceased was impregnated through the accused-appellant fell to the ground. Once it is found that the deceased was not in the family way at the time of her death, the entire prosecution story should be thrown aside. Admittedly, post-mortem report is silent with regard to pregnancy of the deceased. As it appears, neither the prosecution nor the defence tried to bring this fact on record from the mouth of the doctor (P.W. 13). But, it is found from the evidence of P.W. 1 that the

accused-appellant admitted that the deceased was conceived through him. So, only because the postmortem report is silent with regard to pregnancy of the deceased, it cannot be said that she was not pregnant. Even if it is assumed that in fact she was not pregnant, in view of the confession of the accused-appellant that she was impregnated through him, the accused-appellant was at least under the impression that in fact the deceased was conceived through him. As found from the evidence of P.W. 5 on 27-7-1995, he descried the dead body of the deceased floating in Chingriharia Nala, wherefrom it got fished out by the police.

9. Learned Counsel for the accused-appellant submitted that as found from the evidence of P.Ws. 6 and 7, they left the deceased in the company of the accused-appellant on 23-7-1995. The dead body of the deceased having been found on 27-7-1995, there was no proximity between the time, the deceased and the accused-appellant were last seen together and the death of the deceased, as such the trial Court ought not have convicted the accused-appellant. As found from the evidence of doctor, (P.W. 13), the death of the deceased was 3 to 5 days before the date of conducting postmortem examination. The autopsy over the dead body of the deceased was conducted on 28-7-1995 and the deceased and the accused-appellant having been last seen together on 23-9-1995, it cannot be said that there was no proximity between the time, the accused-appellant and the deceased were last seen together and the death of the deceased.

10. As transpires from the evidence of P.Ws. 1 and 2, on 25-9-1995, when they went to the house of the accused-appellant and questioned him regarding the whereabouts of the deceased, is told that he gave two Government currency notes of 10 rupees denomination each to the deceased and advised her to get the pregnancy terminated at Rajgangpur. He further stated that he got the deceased boarded on a bus bound for Rajgangpur, assuring her that he was following the bus on his bicycle to Rajgangpur. As per his version he followed the bus to Rajgangpur, searched for the deceased and when he could not trace her out, left for his village. It is the specific evidence of P.W. 1 that when he was saying so, the accused-appellant was treambling and that his speech was incoherent. Even though the accused-appellant while giving statement under Section 313 of Cr.P.C. stated that he would give defence evidence, no witness was examined by him to

depose that he saw the accused-appellant, getting the deceased boarded on a bus bound for Rajgangpur or that anybody saw her at Rajgangpur. It appears improbable that the deceased went on a bus to Rajgangpur on 23-7-1995 and returned to the cashew nut field where she herself and the deceased were seen together to be murdered there. So, it can safely be held that the accused appellant and the deceased were last seen together in the cashew nut field and that the accused-appellant could not account for disappearance of the deceased and that he gave a false statement in this regard. It is also found from the evidence of P.W. 15 the I.O. that the Chingirijharia Nala was near the cashew nut field which has not been challenged by the defence.

10A. It appears from the evidence of P.W. 1 that the father and uncle of the accused-appellant were working in Mines and that their financial condition is better than the financial condition of the family of the deceased. She further stated that the accused-appellant and the deceased belonged to two different castes. There was no cross-examination on these points. So, it appears that when the deceased insisted the accused-appellant to marry her, he constricted her neck to death and to screen the evidence of murder threw the dead body in the Nala. The echimosis found on either side of the neck of deceased by P.W. 13 fortifies the same.

11. In the case of *Pohalya Motya Valvi v. State of Maharashtra* : AIR 1979 SC 1949 : 1979 Cri LJ 1310, which was based on circumstantial evidence, the Apex Court held as follows:

Briefly, the principles are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence; that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incriminating character. All the proved circumstances must provide, a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

12. In the present case, as stated earlier, each of the circumstances relied upon by the trial Court has been established by cogent, clinching and reliable evidence, all of which taken together provide a complete chain pointing to the guilt of the

accused-appellant and there is no missing link consistence with his innocence.

13. Therefore, under such facts and circumstances, we are not inclined to interfere with the judgment and order of conviction and sentence as passed by the trial Court, and, as such, the Criminal Appeal stands dismissed.

P.K. Tripathy, J.

14. I agree.

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