

Arjun Sahu Vs. State of Orissa

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Court : Orissa

Decided On : Mar-03-1987

Reported in : 1988CriLJ1086

Judge : B.K. Behera and; D.P. Mohapatra, JJ.

Appellant : Arjun Sahu

Respondent : State of Orissa

Judgement :

B.K. Behera, J.

1.The appellant stood charged under Section 302 of the Indian Penal Code (for short, 'the Code') with having committed the murder of his brother Lochan Sahu (hereinafter described as 'the deceased') by intentionally causing his death by means of a katari (M.O.I.) on Oct. 13, 1980, at Chamaradhipa in the district of Denkanal and under Section 201 of the Code for having caused the evidence of commission of murder to disappear in order to screen himself from legal punishment by washing the stains of blood on M.O.I.

2. The prosecution has mainly relied on the evidence of two witnesses to the occurrence, namely, P.Ws. 2 and 5 and that of P.Ws. 3, 4 and 6 with regard to the extrajudicial confession said to have been made by the appellant before them. As has been submitted by the learned Counsel for both the sides, some incriminating

articles, such as a katari (M.O.I.) and two pieces of clothes (MOs. II and III) had been seized in the course of investigation from the possession of the appellant, but the Chemical Examiner's report would show that no blood was detected in these articles. On a consideration of the evidence, the trial court has accepted the case of the prosecution with regard to the charge of murder while rejecting the evidence with regard to other charge. For his conviction under Section 302 of the Code, the appellant has been sentenced to undergo imprisonment for life.

3. Appearing on behalf of the appellant, Mr. Misra has contended that the evidence of P.Ws. 2 and 5 is not worthy of credence and that of P.Ws. 3, 4 and 6 is of no better character, and therefore, no order of conviction could be recorded. The learned Additional Government Advocate has supported the order of conviction as well founded.

4. It is not disputed that the deceased had died a homicidal death and this would be clear from the evidence of the doctor (P.W. 1) who had conducted the autopsy. There is no paucity of evidence that all was not well with the appellant and the deceased. They were on litigating terms and had water dispute. The moot question for consideration is as to whether the appellant was the author of the crime.

5. Coming first to the evidence of the two witnesses to the occurrence, namely P.W. 2 Kirtan Bhoi and P.W. 5 Suratha Sahu, it would be seen that P.W. 2 was not a co-villager of the appellant and the deceased. P.W. 5 was a close relation of the appellant and the deceased. Both of them have testified that the appellant had dealt strokes by means of a katari on the person of the deceased which had been seen by them from the places where they were at the relevant time. It is in evidence that P.W. 2 had not seen the appellant and the deceased on that day prior to the time of occurrence. On his own showing, he was at a distance of about 200 cubits from the place of assault with paddy crops which were of waist and neck height in between. It would be difficult in the circumstances in which P.W. 2 had been placed to identify the assailant or the victim from such a distance and to give particulars even about the seats (facts?) of assault, as has been done by him. As for P.W. 5, he was at a distance of about 300 cubits from the spot, as testified

by him. No doubt, he was a close relation of the alleged assailant and the deceased and his evidence was that he had seen the appellant earlier on that day, but it would be scientifically impossible to clearly identify the assailant and the deceased at a distance of about 300 cubits. In this connection, it would be useful to quote an extract from Gross's Criminal Investigation, Fifth Edition, at page 159 as to the distance in broad day light from which persons can identify:

It is appropriate here to call attention to what has been said about the distance at which we can recognise persons. Presuming the eyesight to be normal and the light good, one is able in broad day light to recognise:

(a) persons whom one knows very, well, at a distance of from fifty to ninety yards; when there are particular and very characteristic signs, 110 yards; in exceptional cases up to 165 yards.

(b) persons one does not know very well and has not often seen, from twenty-eight to thirty-three yards.

(c) people one has only seen once, sixteen yards.

Of course, these are approximate indications as stated therein. But giving a further allowance of some cubits in respect of both P.Ws. 2 and 5, it would not be possible for these two witnesses to clearly identify the assailant and the deceased from such distance.

6. If the evidence of these two witnesses is found to have no intrinsic worth for which it cannot be relied on, their evidence cannot be stamped with truth if some other persons testify that these two witnesses had stated to them to have seen the assault on the person of the deceased by the appellant.

7. For the foregoing reasons, no implicit reliance can be placed on the testimony of P.Ws. 2 and 5.

8. P.Ws. 3, 4 and 6 have testified that while going to the spot, they had seen the appellant coming with a katari which was stained with blood and on being asked as to who was lying on the field, the appellant replied that he had cut away his

brother because of water dispute. The prosecution has also sought to establish that when a number of persons including the alleged witnesses to the occurrence, and P.Ws. 3, 4 and 6 and the first-informant (P.W. 9) gathered on the spot, the appellant again came to the place, whirled the katari and gave out that he would also kill other persons.

9. Coming to the second part of the evidence referred to above which finds a place in the first information report lodged by P.W. 9, it would not appeal to commonsense, much less to reason, that a culprit would come to the scene after a number of persons have gathered and would blurt out that he had killed his brother and would kill others to create evidence against himself. It is pertinent to note that P.W. 9 had not stated specifically about this in his evidence.

10. As to the first extrajudicial confessions said to have been made before P.Ws. 3, 4 and 6 when they had been going to the spot, it is noticed that P.W. 3 had not stated about this in his statement to the Investigating Officer. On this ground alone, his evidence must have to be discarded as this would amount to a material contradiction within the meaning of the Explanation to Section 162 of the Criminal P.C. in the context. P.W. 4 was farm servant and P.W. 6 was a labourer. No material has been placed by the prosecution to indicate as to what could be the reason or motive for the appellant to make an extrajudicial confession before them. There is nothing to show that P.Ws. 4 and 6 were persons in whom the appellant could repose confidence.

11. Evidence with regard to an extra-judicial confession, in order to be acted upon, must stand the test of reproduction of exact words and it must be shown by the prosecution as to what was the reason or motive for an accused to make an extra-judicial confession and as to whether the accused would repose confidence in the person before whom such a confession is made. See : 1972 CriLJ1260 , Rahim Beg v. State of Uttar Pradesh and : 1983 CriLJ149 , Heramba Brahma v. State of Assam. Judged in the light of these principles, the evidence of P.Ws. 4 and 6 fails far short of the mark.

12. Another noticeable and highly suspicious feature of which no due notice has been taken by the trial court is that this part of the story of the prosecution is

conspicuous by its absence in the first information report lodged by P.W. 9 who had gone to the spot and who was a member of the gathering which included P.Ws. 2 to 6, If an extra-judicial confession had been made by the appellant before P.Ws. 3, 4 and 6 and they had seen the appellant with a blood-stained Katari, in the normal and natural course of human conduct, they would have informed the persons present as to what they had seen and what they had heard from the appellant and P.W. 9 would have knowledge about it on the spot and before he went and made the report at the police station P.W. 9 would normally have mentioned in his report about this. No doubt, the contents of a first information report are not substantive evidence and can strictly speaking, corroborate or contradict its maker. But omissions of material facts therein would be relevant under Section 11 of the Evidence Act in judging the probabilities of the case of the prosecution. In this connection, reference may be made to the well-known decision of the Supreme Court in : 1975 CriLJ870 , Ram Kumar Pandev. State of Madhya Pradesh.

13. For the a fore said reasons, no reliance can be placed on the evidence of P.Ws. 3, 4 and 6 with regard to the extra-judicial confessions alleged to have been made by the appellant.

14. There is no other evidence pointing to the appellant's guilt. He is, therefore, entitled to an acquittal.

15. The appeal succeeds and is allowed. The order of conviction recorded against the appellant under Section 302 of the Indian Penal Code and the sentence passed against him are set aside. The appellant be set at liberty forthwith.

D.P. Mohapatra, J.

16. I agree.