

Adikanda Das Vs. State of Orissa

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Court : Orissa

Decided On : Aug-04-1987

Reported in : 1988CriLJ1884

Judge : B.K. Behera and; V. Gopalaswamy, JJ.

Appellant : Adikanda Das

Respondent : State of Orissa

Judgement :

B.K. Behera, J.

1. The order of conviction recorded against the appellant under Section 302 of the Penal Code (for short, 'the Code') sentencing him to undergo imprisonment for life, after acceptance of the case of the prosecution that during the night of April. 27/28, 1975, the appellant committed the murder of Musi Dei (hereinafter described as 'the deceased') by stabbing her on her chest, has been based on circumstantial evidence.

2. It admits of no doubt that the deceased had died a homicidal death. The question is as to whether the appellant was the author of the crime.

3. It has been contended on behalf of the appellant that the circumstances had not been established and even assuming that they had been, they would not be

sufficient to sustain the charge of murder.

4. In order that circumstances appearing in the evidence can sustain a charge, the following conditions must be fulfilled:

(a) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(b) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(c) The circumstances should be of a conclusive nature and tendency.

(d) They should exclude every possible hypothesis except the one to be proved.

(e) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability the act must have been done by the accused.

(See : 1984 CriLJ1738 , Sharad Birdhichand Sarda v. State of Maharashtra)

5. As found by the learned Sessions Judge, the appellant had no motive to commit the crime. Absence of proof of motive is of no consequence if the evidence against the accused is clear, cogent and reliable. But in a case depending on circumstantial evidence, the existence or absence of motive is an important factor to be taken into consideration and if it is found, as in the instant case, that the accused had no motive to commit the offence, the evidence bearing on his guilt has to be examined with great care before its acceptance.

6. The evidence of P.Ws. 5 and 6 who had been returning after witnessing a Jatra at about 2 A.M. and had washed themselves in a tank was that they had found the appellant also washing himself in that tank and going to his house. It is not understood as to how this would be a guilt-pointing circumstance against the appellant.

7. Evidence had been led by the prosecution through P.Ws. 2, 3 and 7 that they had heard the deceased saying that the appellant had been killing her. As would be noticed from their evidence, they had not uniformly stated as to what words had been uttered by the deceased. True it is that discrepancies are bound to occur in human testimony. If there are material discrepancies, the evidence is to be thrown out. If, on the other hand, the discrepancies are of an inconsequential nature, the evidence sought to be relied on by either side cannot be discarded merely for such minor discrepancies. The best evidence is that which is honestly discrepant. The evidence with regard to the utterances of the deceased, as deposed to by P.Ws. 2, 3 and 7, requires very close scrutiny. P.Ws. 2 and 3, two neighbours and P.W. 7, the son of the first-informant (P.W. 1), have not deposed that they had informed any one after the occurrence as to what they had heard. P.W. 7 has not testified that he had informed his father about it. Undoubtedly, the evidence of the aforesaid three witnesses was not of an unimpeachable character and should not have been relied on by the trial Court merely on the ground that as the trial had taken place some years after the occurrence, no notice should be taken of the discrepancies in the evidence.

8. Notice has been taken by the learned trial Judge of the fact that the appellant had taken a plea of alibi and had failed to establish it. According to the learned Judge, this would strengthen the case of the prosecution.

9. From the mere fact that an accused states that he was not present at the place of occurrence, it cannot be construed that he had taken a plea of alibi. That apart, while it is true that when a plea of alibi is taken, it is for the accused to establish such a plea not beyond reasonable doubt, but by the preponderance of probabilities, as has been laid down by the Supreme Court in : 1979 CriLJ892 , State of Haryana v. Prabhu, the prosecution case cannot be said to have been proved because of the failure of an accused to establish his plea of alibi. It may be kept in mind that only that conduct of an accused which destroys the presumption of his innocence can be considered against him.

10. The only other circumstance relied on by the prosecution was the fact of absconding of the appellant for some years. It is a settled principle of law that

absconding may lend weight to the other evidence establishing the guilt of an accused, but, by itself, is hardly any evidence of guilt. The conduct of an accused making himself scarce for some period is relevant under Section 8 of the Evidence Act and may be indicative to some extent of a guilty mind, but it would not be conclusive evidence of his guilt. Even innocent persons may, when suspected of grave crimes, attempt to evade arrest. Such is the instinct of self-preservation in an average human being. Absconding is a weak link in the chain of circumstances and is not conclusive either of guilt or a guilty conscience. Even assuming that the fact of absconding has been established by the prosecution, it cannot be held that the appellant was the author of the crime in the absence of evidence pointing to his guilt.

11. In view of the aforesaid infirmities in the evidence, the learned Additional Government Advocate has fairly submitted that the prosecution has failed to bring home the charge to the appellant. We would appreciate the fair stand: taken by him.

12. In the result, the appeal succeeds and is allowed. The order of conviction passed against the appellant under Section 302 of the I.P.C. and the sentence passed against him thereunder are set aside. The appellant be set at liberty forthwith.

Gopalaswamy, J.

13 I agree.