

Rangadhar Barik Vs. State

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Court : Orissa

Decided On : Jul-11-1995

Reported in : 1996CriLJ5; 1995(II)OLR257

Judge : A. Pasayat and ;P. Ray, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 104 of 1991

Appellant : Rangadhar Barik

Respondent : State

Advocate for Def. : R.P. Mohapatra, Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Mohapatra and G.S. Namtour

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. Rangadhar Barik (hereinafter referred to as the 'accused') having been found guilty for offence punishable under Section 302 of Indian, Penal Code, 1860 (in short, 'IPC') by learned Sessions Judge, Keonjhar in ST Case No. 5 of 1990 and sentenced to imprisonment for life has preferred this appeal for interference.

2. Filtering out unnecessary details, prosecution case is as follows :

On 19-9-1989 Bira Barik (PW 1) went to the house of Gunthu Palai (hereinafter referred to as the 'deceased') of village Murusuan. After death of Bira's father, his mother was staying with the deceased. He learnt from his mother that deceased had gone to another village and would not return in the night. He stayed in the house of deceased and early next morning one Ganga Barik came and told him that the deceased was lying dead on road near the newly constructed house of Dirju Barik. On being asked as to how he died Ganga Barik replied that accused had killed him by means of a Budia (a sharp cutting weapon) in the previous night. On hearing this Bira and his mother went to the place where the dead body was lying in a pool of blood. They noticed a number of injuries over the body. Certain other persons had assembled at the spot by the time they arrived. On being questioned, the accused confessed to have killed the deceased on account of some difference previously. The matter was reported at Nayakota Police Station, but in the absence of the Officer-in-charge and Asst. Sub-Inspector of Police Station Diary Entry was made by a constable. Subsequently on receipt of V. H. F. message, the Officer-in-charge returned to Police Station, perused Station Diary Entry and treated the same as FIR. During investigation, witnesses were examined and charge-sheet was submitted. The accused pleaded innocence and took plea of false implication.

3. Seven witnesses were examined to further the case of prosecution. PWs 1, 5 and 6 were stated to be some of the persons before whom accused confessed to have killed the deceased. Placing reliance on their evidence, learned trial Judge found the accused guilty convicted and sentenced him as aforesaid.

4. In support of appeal, Mr. A. K. Mohapatra learned counsel for appellant strenuously urged that the so-called extrajudicial confession has not been proved to the hilt and this being a case where prosecution rests on circumstances, a complete chain of circumstances with no missing links has to be established. It is also submitted that evidence of PWs 1, 5 and 6 should not have been accepted because of the admitted animosity between the parties. It is further submitted that there is variance in the evidence of PWs 1, 5 and 6 so far as nature of confession

is concerned. Mr. R. P. Mohapatra, learned Addl. Standing Counsel supported the judgment of conviction and sentence.

5. The prosecution rests its version on circumstances, which according to it unerringly proves guilt of accused. The essential ingredients to prove guilt of an accused person by circumstantial evidence are:

- (i) The circumstances from which the conclusion is drawn should be fully proved.
- (ii) The circumstances should be conclusive in nature.
- (iii) All the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence.
- (iv) The circumstances should be to a moral certainty exclude the possibility of guilt of any person other than the accused.

These ingredients were highlighted by apex Court in the State of U. P. V. Dr. Ravindra Mittal, AIR 1992 SC 2045. While appreciating circumstantial evidence. Court has to adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt.

6. In the case at hand prosecution has pressed into service extra-judicial confession allegedly made by accused before PWs 1, 5 and 6. In order to appreciate the submissions relating to acceptability of extra-judicial confession, it is necessary to refer to the evidence of PWs 1, 5 and 6 before whom accused had allegedly made extra-judicial confession. While dealing with a stand of extra-

judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra-judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely enigmatically to the accused. Where there is material to show animosity. Court has to proceed cautiously and find out whether confession would have been made. It is to be noted that value of evidence of confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the Court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstances of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra-judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repeat exact words and there may be many who are possessed of normal memory and cannot do so. It is for the Court to judge credibility of the witness's capacity and thereafter to decide whether his or her evidence has to be accepted or not. If Court believes witnesses before whom confession is made and is satisfied that confession was voluntary, basing on such evidence, conviction can be founded. This position was elaborately stated by a Division Bench of this Court, speaking through one of (Pasayat, J.) in *Turuku Busha Karkeria v. State* 75 (1993) CLT 781. View expressed by Apex Court in *Mulk Raj v. The State of U.P.* AIR 1975 SC 1320 is to similar effect.

7. Evidence of PWs 1, 5 and 6 is categorical to the effect that. accused confessed before them to have killed the deceased. We find from the evidence of PW 6 that not even a suggestion was given to him that there was no confession as claimed. Judged in the aforesaid background there can be no doubt that accused had made extra-judicial confession before PWs 1, 5 and 6 to have killed the deceased. A

faint attempt was made to show that there was no intention to kill. But the plea is without substance in view of post mortem report showing that there were as many as thirteen cut injuries on the body of the deceased. The Doctor had categorically stated that these injuries were possible by Budia (HO I). Conviction does not suffer from any infirmity, and there is no scope for variance of sentence.

The appeal fails and is dismissed.

P. Ray, J.

8. I agree.

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