Binder Munda Vs. State

Binder Munda Vs. State

SooperKanoon Citation : sooperkanoon.com/533556

Court : Orissa

Decided On : Mar-31-1992

Reported in : 1992CriLJ3508; 1992(II)OLR63

Judge : J.M. Mahapatra and ;B.N. Dash, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : Jail Crl. Appeal No. 88 of 1988

Appellant : Binder Munda

Respondent : State

Advocate for Def. : H.K. Jena, Addl. Govt. Adv.

Advocate for Pet/Ap. : A. Routray, Adv.

Disposition : Appeal allowed

Judgement :

J.M. Mahapatra, J.

1. The appeal is directed against the judgment and order of the learned Sessions Judge, Sundargarh convicting the appellant Under Section 302 IPC and sentencing him to imprisonment for life.

2. The deceased is the son of the appellant through his first wife, on whose death the appellant married a second wife through whom two sons and one daughter were born and they are living in the same compound. It is alleged that there was some dissension between the appellant and the deceased, as the appellant did not pay the Pana money to the father of the wife of the deceased, promised to be given at the time of the marriage, which system was customary in the community to which the parties belonged. The occurrence took place in the night of 2-4 1987 inside the residential compound of the parties. It is alleged that the appellat assaulted the deceased by means of a Falsia causing severe injury on Ids neck resulting in his death. Information was lodged by PW 1, the younger brother of the deceased was also the son of the appellant at Koida P.S. in Sundargarh district. PW. 6, the Officer-in-charge; Koida P.S. recorded the F.I.R. Ext. 7 registered a case against the appellant and took up investigation. In course of investigation he held inquest over the deadbody of the deceased, sent the dead- body for post - mortem examination, made seizure of the weapon of offence, MO I and wearing apparel of the appellant and the deceased, took steps for despatch of the incriminating articles for scientific test and on completion of investigation submitted charge-sheet against the appellant. The appellant being committed to the Court of Session stood his trial for the offence of murder of the deceased and was eventually found guilty of the offence of murder and convicted and sentenced there- under.

3. The plea of the appellant at the trial was one of total denial of his complicity in the crime.

4. In support of its case prosecution has examined as many as six witnesses, of whom PW 1 is the Assistant Surgeon, Bonei Sub- divisional Hospital who had conducted post mortem examination on the deadbody of the deceased; PWs. 2, 3 and 5 have been examined as eye-witnesses to the incident; PW 4 is a witness to the seizure and PW6 is the I.O. Prosecution case rests on the ocular testimony of three eye- witnesses referred to above, seizure of the Falsia, MO I at the instance of the appellant and the matching of the blood group in the Dhoti, MO II seized from the appellant 'and the wearing apparel of the deceased, MOs. Ill to V. The learned trial Judge though did not rely on the ocular testimony of the three

witnesses, PWs. 2, 3 and 6 who had turned hostile at the trial and had disowned any knowledge about the incident and as to how the deceased died or who assaulted him, has based the conviction of the appellant on the circumstantial evidence, namely, seizure of Falsia, MO I at the instance of the appellant and the matching of the blood group in the wearing apparel of the appellant and the deceased as revealed from the report of the Serologist and the Chemical examiner.

5. There is no controversy that the death of the deceased was homicidal and as such we need not go into the medical evidence. Suffice it to say that the Medical Officer, PW 1 found to incised injuries on the left side of the neck, which, according to him, were fatal in nature and which caused his death. As the learned trial Judge has not relied on the ocular testimony of PWs. 2, 3 and 5 and rightly in our opinion, for their having turned hostile and not disclosing anything at the trial about the authorship of the crime, we need not dilate on the- evidence of these witnesses. It is, however elicited from PWs. 2 and 4 in cross- examination that the appellant and the deceased were pulling on well at the material time. We are now left to consider whether the learned trial Judge was justified in basing the conviction of the appellant solely on the circumstantial evidence referred to earlier.

6. The first item of circumstantial evidence is seizure of Falsia, M. O. I. at the instance of the appellant. The evidence in this regard is furnished by PW 6, the I. O. and the seizure witness, PW 4. The learned trial Judge has accepted the testimony of these witnesses to hold *.hat it is an important item of evidence to fasten the appellant with criminal liability. Mr. Routray appearing for the appellant has strongly urged that there is discrepancy in the evidence of PWs. 4 and 6 intst se as to the place of discovery of the weapon of offence, and since the parties and their families were all joint and living in one compound, the recovery of M. O. 1 at the instance of the appellant cannot conclusively go to prove that it was used by the appellant for the offence. In view of the contentions raised it is necessary to refer to the testimony of PWs. 4 and 6. PW 4 has deposed that the appellant on his arrest gave out of having kept M. O. I. and that M. O. I. was kept on a Bhadi in his house, and further that the appellant brought out the Falsia, M. O. I from that Bhadi and produced it before the police, who seized the same. In cross-

examination, it is elicited that the appellant himself brought out the Falsia from the Bhadi. He has also stated that he cannot say about the contents of the seizure list prepared by I. O. on which he signed. The I. O. PW 6 has deposed that the appellant while in custody gave information that he had concealed the Falsia in his bed-room and led him to the bed-room and brought out the Falsia M. O. I. from behind the 'Puala Bhadi' and produced before him. According to him, the M. O. I had contained stains of blood, although PW 4 does not whisper a word about it. From the foregoing discussions, it would be clear that although according to PW 4, the M. O. I was kept on the 'Bhadi' of his house, according to PW 6, it was kept behind the 'Puala Bhadi'. The presence of blood on M. O. I. was also not deposed to by PW 4. Apart from what is discussed above, the prosecution evidence coming through the mouths of PWs 2, 3 and 5 would go to show that the appellant, his second wife, the children through his second wife, the deceased, PW 2 the brother of the deceased and other members of the family were all staying in one compound in the same house. In such state of affairs, we are not inclined to accept the evidence of PWs 4 and 6 to conclude that the appellant brought out the M. O. I. from inside the room of the house under his exclusive occupation. May be that he knew about the place where M. O. I was kept, but it cannot be conclusively held that the appellant had himself kept the weapon of offence in the room under his exclusive possession. For the foregoing reasons, we are not inclined to accept the finding of the learned trial Judge that the seizure of M. O.I is a piece of incriminating evidence against the appellant. The Serological report that M. O. I does not contain blood group 'A' which was found in other items is a circumstance which goes in favour of the appellant.

7. The next item of evidence relied upon by the learned trial Judge is matching of blood group in the wearing apparel of the appellant, namely, Dhoti, M. O. II and the wearing apparel of the deceased like Lungi, underwear and banian, M. Os. Ill to V. Apart from the fact that matching of the blood group by itself cannot be a conclusive proof to fasten the appellant with culpability, it would be noticed, as contended on behalf of the appellant, relying on two Bench decisions of this Court in the case of Nimai Murmu v. The State, 1985(1) OLR281,59 (1985) CLT 488 and in the case of Lakshmi Jani v. State 60 (1986) CLT 346 that the I. O. did not keep the individual material objects in sealed packets while sending these items for

chemical examination. No doubt the forwarding letter Ext. 14 would go to show that the entire parcel containing the items was sealed, but there is nothing to show that the individual seven items contained inside the parcel was each contained in a separate packet and was sealed. It is held in 60 (1985) CLT 346 (supra) as follows :

'.....It is necessary and desirable that the police officer recovering articles with suspected stains of blood should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the articles were sent to the Chemical Examiner for analysis. If such precautions are not taken, the Court may not place the same reliance on the discovery of blood stains, on the seized articles as it would have done if necessary precautions had been taken.'

In both the decisions aforecited such infirmity is being noticed and the conviction of the appellant was set aside.

8. Doubtless, this is a case resting entirely on circumstantial evidence. The guidelines as to when the circumstantial evidence would sustain a criminal charge have been set out in the case of Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1934 SC 1622 wherein five golden principles termed as 'Panchashil' by the Apex Court have been enumerated as under;

(i) Circumstances from which the conclusion of guilt is to be drawn should be fully established,

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused and should not be explainable on any other hypothesis except that the accused is guilty.

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) 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 must show that in all human probability, the act must have been done by the accused.

Judged in the light of these principles the circumstantial evidence on which reliance was placed by the prosecution was far short of the mark. The evidence on the basis of which conviction has been based in this case is, therefore, not acceptable.

9. In the light of the foregoing discussions, we would hold that the learned trial Judge has not properly appreciated the legal perspective for judging the facts elicited in evidence to find the appellant guilty of the offence of murder. We would in conclusion hold that prosecution has utterly failed to prove its case against the appellant beyond all reasonable doubt. The appellant is, therefore, entitled to acquittal.

10. In the result, the appeal is allowed and the order of conviction and sentence passed against the appellant is set aside. The appellant be set at liberty forthwith.

B.N. Dash, J.

I agree.