

Dhanana Pratap, Vs. State

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Court : Orissa

Decided On : Sep-26-1985

Reported in : 1985(II)OLR593

Judge : B.K. Behera, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Jail Criminal Appeal Nos. 20 and 42 of 1983

Appellant : Dhanana Pratap, ;sk. Sudhani, ;yeddu Nukaraju and Yeddu Hemanthakumar

Respondent : State

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : K.C. Mohanty, Adv. (Through Legal Aid) (in Jail Criminal Appeal No. 20 of 1983) and ; S.S. Mohanty, (Amicus curiae) (in Jail Criminal Appeal No. 42 of 1983)

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. Charged under Section 302 read with Section 34 of the Indian Penal Code (for short, 'the Code') and ultimately convicted under Section 304. Part I of the Code and sentenced thereunder to undergo rigorous imprisonment for a period of seven years, the appellants in these two appeals, which have been heard together and will be governed by this common judgment, assail the finding recorded by the trial Court that after night-fall on November 16, 1981, they assaulted G Venkata Ravana (to be referred to hereinafter as 'the deceased') to death in furtherance of their common intention by dealing slaps and blows and by the process of strangulation inside a room of the Blood Bank building at Rayagada in the district of Koraput. The order of conviction has mainly been rested on the evidence of three witnesses to the occurrence, namely, Barili Uma (P. W. 1), Radha Pujari (P. W. 2) and Majhi Ramesh (P. W. 8) coupled with the medical evidence.

2. It is not disputed at the Bar that the deceased had died, a homicidal death. The learned counsel for the appellants have submitted that the evidence of P. Ws. 1, 2 and 8 has no intrinsic worth and ought not to have been accepted. The learned Standing Counsel has fairly submitted that it would be difficult to sustain the order of conviction on such evidence in the absence of any reasonable explanation coming from the side of P. Ws. 1, 2 and 8 with regard to the belated disclosure regarding the commission of such an act until their examination by the Investigating Officer on November 23, 1981.

3. It would be seen from the evidence and it has not seriously been disputed by the learned counsel appearing for the appellants that during the night of November 16, 1981, Barili Uma (P. W. 1) and Radha Pujari (P. W. 2) had been to Rama Talkies at Rayagada to see a picture where on the request of the appellant Hemantha, P. W. 2 had been purchasing some tickets for the appellant Hemantha, and his companions as there had been rush at the male counter. The evidence would also indicate that the appellant Nukaraju reached that place and questioned P. W. 1 as to why she had come with his brother Hemantha to the cinema hall and so saying, he took away his wearing belt and whirled it and dealt a slap on the person of P. W. 1, who, on her own showing, had, on occasions been going to the cinema hall with other male persons without informing her husband. Thereafter, as the evidence would disclose, the appellants left the scene and on the way,

proceeded towards the Blood Bank building with the deceased. P. Ws. 1, 2 and 8 had testified that they had seen the appellants assaulting the deceased although it was not in their evidence that the deceased died on the spot in their presence,

4. P. Ws. 1 and 2 had been working as maid servants at the relevant time. Their evidence is not to be discarded because of their position in the society then. Truthfulness is not the monopoly of a person of position or wealth. It may, however, be kept in mind that the investigating agency chose to have the statements of P. Ws. 1, 2 and 8 recorded in the course of investigation evidently because no implicit reliance could be placed on these three persons. As has been laid down by the Supreme Court in AIR 1974 S. C. 2165 Balak Ram and another v. State of U. P., referring to and relying on the principles laid down by the Supreme Court in AIR 1968 S. C. 1270 Ram Charan and Ors. v. The State of U. P. the evidence of persons whose statements have been recorded under Section 164 of the Code of Criminal Procedure is not to be thrown out merely on that ground, but their evidence requires very careful scrutiny before acceptance as they feel tied down to their previous statements made on oath and have but a theoretical freedom to depart from such statements as a prosecution for perjury can be the price for such freedom. The learned trial Judge did not keep this principle in his mind while appreciating the evidence of P. Ws. 1, 2 and 8.

5. P. Ws. 1 and 2 have stated in their evidence that on being threatened by the appellant Nukaraju to accompany them to the Blood Bank building, they accompanied the appellants and the deceased. There was no evidence to show that the appellants had any sinister sexual design to take these two girls with them during that night. If the intention of the appellants was to beat or kill the deceased, it was highly unlikely that they would ask P. Ws. 1 and 2 to accompany them and create evidence against themselves. The testimony of these two witnesses that they had been threatened to accompany the appellants could not be accepted as this had not been stated by them while their statements under Section 164 of the Code of Criminal Procedure were recorded by a Magistrate in the course of investigation. The evidence of P. W. 8 that on his way back from a petrol pump on a motor cycle being accompanied by another, he saw the suspicious movements of the appellants, stopped on the way and witnessed the occurrence had not been

supported by the other person accompanying him as he had not been examined at the trial.

6. There was evidence to indicate that a street light was burning nearby. But it was not quite clear from the evidence that that light had spread into the room where the occurrence had taken place. Evidence had been led by the prosecution through P. Ws. 1, 2 and 8 that two of the appellants had been for using torchlights at themselves for which they could be identified. Such a theory would not appeal to reason, as persons committing an offence would not be focusing torchlights at themselves so that they could be identified by others who might be present near the scene.

7. Some broken bangle pieces (M. O. II) said to be belonging to P. W. 2 had been recovered and seized on the spot in the course of investigation. The evidence of P. Ws. 1 and 2 that during the occurrence, some glass bangles on the person of P. W. 2 got broken as her hand hit against the door frame could not safely be accepted as there was no evidence that P. W. 2 had sustained any injury on her person.

8. It is in evidence that P. Ws. 1, 2 and 8 had been examined in the course of investigation on November 23, 1981. No reasonable explanation has been given by P. Ws. 1 and 2 as to why they did not disclose the occurrence to anyone immediately or soon thereafter. There was no evidence that they had been threatened by the appellants for which they remained silent and did not disclose the occurrence to anyone. As stated by P. W. 1, she did not reveal about what she had claimed to have seen to her mother, brother or to anyone else after going back to her house.

There was no reason as to why P. W. 2 would be afraid of the appellants and would not disclose the occurrence to anyone. The assertion of P. W. 8 that on the day following the night of occurrence, he left for Waltair and returned seven days thereafter had not found support in any other evidence. In any view of the matter, he could have disclosed the occurrence before leaving for Waltair if in fact, he had witnessed it. He had admitted that he had no dispute with any of the appellants and they had never threatened him. According to him, one of the brothers of the

appellants Nukaraju and Hernantha was a doctor and two of their uncles were Advocates and they had been residing in his street. But, on his own showing, he had not informed them anything about the occurrence nor had he disclosed to anyone near the cinema hall or in his house.

9. If a person has witnessed a murderous assault and has not disclosed the occurrence, he cannot be deemed to be an accomplice in the eye of law, but his evidence is to be very closely scrutinised. See (AIR S. C. 379, 1956, Vemireddy Satyanarayan Reddy and Ors. v. State of Hyderabad). The Supreme Court has held that the evidence of witnesses who claim to have seen a murder, but have not disclosed the occurrence soon thereafter and have not offered any reasonable explanation should not be accepted. In this connection, reference may be made to the cases reported in AIR 1971 S. C. 1461. Duvvur Dasaradharamareddy v. The State of Andhra Pradesh, AIR 1974 S. C. 775 Babali v. State of Orissa, AIR 1976 S. C. 24:88 State of Orissa v. Mr. Brahmananda Nanda, AIR 1980 S. C. 1750: Bhagwan and another v. State of Madhya Pradesh and 1983 SCC (Cri.) 444 : (1983) 2 SCC 327: Sonia Behera v. State of Orissa.

10. Judged in the light of the principles laid down by the Supreme Court in the decisions referred to above, it would be extremely unsafe and hazardous to accept the evidence of P. Ws. 1, 2 and 8 and base a conviction thereon.

11. For the foregoing reasons, I am of the view that the learned trial Judge went wrong in accepting the evidence of P. Ws. 1, 2 and 8 and holding that the appellants had assaulted the deceased to death.

12. In the result, the appeals are allowed and the orders of conviction and sentences passed against the appellants in both the appeals are set aside. The appellants be set at liberty forthwith.