

Gagan Behari Panda Vs. Suresh Chandra Pradhan and ors.

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Court : Orissa

Decided On : Jul-24-2000

Reported in : 2000(II)OLR307

Judge : P.K. Tripathy, J.

Acts : Indian Penal Code (IPC) - Sections 34, 304B and 498(A); ;Evidence Act - Sections 25

Appeal No. : Criminal Revision No. 669 of 1994

Appellant : Gagan Behari Panda

Respondent : Suresh Chandra Pradhan and ors.

Advocate for Def. : Mardaraj Mohan Senapati for O. Ps. 1 and 2 and ;Addl. Stg. Counsel for O.P. No. 3

Advocate for Pet/Ap. : Md. Irsad, P.K. Rath, D.N. Subudhi, M. Pradhan and K. Pattnaik

Disposition : Petition dismissed

Judgement :

P.K. Tripathy, J.

1. Heard further argument. Hearing is concluded and the judgment is as follows :

This revision has been preferred challenging order of acquittal of the opposite party members in Sessions Trial Case No. 101 of 1992 of the Court of 1st Addl. Sessions Judge, Cuttack. Both the opposite party members were charged for the offences punishable Under Sections. 304B, 498A read with Section 34, IPC for the death of Nayana (hereinafter referred to as the deceased). She was the wife of the accused/opposite party No. 1. The accused/opposite party No. 2 is the 'Bhauja' (sister-in-law) of accused/opposite party No. 1.

2. Prosecution alleged was that under a false representation that he is well-placed in service accused No. 1 got married to the deceased. After marriage, the deceased could discover that not only accused No. 1 was a jobless person but also having illicit relationship with accused No. 2. When she protested to such extra-marital relationship there was ill-treatment and cruelty on her. Accused No. 1 asked her to bring a dowry of Rs. 20,000/- for starting business and to stay separately. The deceased could not comply to that proposal because of poverty in her parents house and because of that dispute she was left in her parents' house. 15 to 20 days preceding her death she was taken back by the accused No. 1 and on 7.5.1991, the informant who is the brother of the deceased received information that deceased had taken to hospital, When the informant reached the hospital, he found her dead followed with an inquiry in a U.D. Case (unnatural death case) but the next day i.e., on 8.5.1991, he lodged the FIR alleging that deceased was poisoned and killed. On completion of investigation, charge-sheet was filed and accused persons faced the trial for the aforesaid offences.

3. During the course of trial, prosecution examined five witnesses and the defence examined one. Prosecution relied upon Inquest Report (Ext. 2), Dead Body Challan (Ext.3), Post mortem Report (Ext. I) and the FIR (Ext. 4). No document was tendered in evidence by the accused persons.

4. Learned Addl. Sessions Judge vide the impugned judgment dated 27.8.1994 acquitted the accused persons of the said charges on the ground of non-availability of clinching evidence relating to ill-treatment and cruelty on account of dowry demand and absence of evidence relating to administration of poison to the deceased. Incidentally, learned trial Judge also took note of the contention of the

defence relating to the conduct of the informant that though he passed by the side of two police stations and gave a statement before the police officer conducting enquiry in the U.D. Case yet he did not lodge the FIR till 8.5.1991. Learned trial Judge also took note of the fact that there are glaring contradictions in the evidence of P.Ws. 2 and 4 relating to demand and payment of dowry and ill-treatment yet prosecution did not examine the Investigating Officer as a result of which the confronted 161, Cr.P.C. statement of such witnesses could not be confronted to the I. O. which resulted in prejudice to the accused persons. Accordingly, learned Addl. Sessions Judge passed the order of acquittal.

5. In challenging the impugned judgment of acquittal learned counsel for the informant/petitioner argues that the order of acquittal is wholly misconceived and unjustified. Though written note of argument is filed but at the time of advancing argument learned counsel for the petitioner canvasses the following points :

(i) The trial Court should not have declined to examine the material witnesses particularly charge-sheet witness No. 7, Bhikari Patra, No. 8 Jasoda Dei and No. 6 Digambar Pradhan. Their non-examination is made the case of the prosecution incomplete to prove the guilt of the accused persons relating to the poisoning;

(ii) the inaction of the trial Court to call for the U.D. Case record and the original viscera report has resulted in miscarriage of justice; and

(iii) if the trial Court found it relevant and necessary, he should have taken steps to secure the attendance of the Investigating Officer and should not have drawn adverse inference against the prosecution for the non-examination of the Investigating Officer.

6. So far as the first and third points are concerned, he placed before the Court ratio in the case of Sri T. Krishna Rao v. Sri T.V. Satyanarayan, 65 (1988) CLT 82. No other point is canvassed nor any other citation is placed.

7. It is indeed the responsibility of the trial Court to see that justice is imparted in a criminal trial and the real culprit should not escape due to inaction and negligence of the prosecution. Basing on that principle in the above cited case, this Court has

held that non-examination of material witness by the prosecution should not be a ground for disbelieving the prosecution case and for recording an order of acquittal, and therefore, in that case the order of acquittal was set aside and the case was remanded for fresh disposal. In the present case, according to the petitioner, non-examination of the above named three charge-sheet witnesses (6 to 8) and the I.O. has become fatal to the prosecution. On being requested, learned counsel for the petitioner placed the statement Under Section 161, Cr.P.C. for the aforesaid charge-sheet witness Nos. 6 to 8. It transpires from their statements that on the date of occurrence, after taking milk when the deceased vomitted they suspected that poison might have been administered on her. They have not elaborated such statement any further. Such statement of these three witnesses in the absence of any connecting link or corroborative evidence could have been of no assistance to record any finding against the accused persons inasmuch as none of such witnesses stated that any of the accused persons had the occasion to administer that milk on the deceased or that she was forced to take that milk or that any of them mixed poison in such milk or that she was induced to take poison. Apart from that none of those witnesses have stated in their respective statements that after the deceased vomitted they went and asserted from her regarding the cause of her vomiting or that the deceased made any statement before any of them regarding anything relating to administration of milk or poison. In the absence of any such evidence the above noted statements of those witnesses is of no use and help to the prosecution to prove the alleged crime against the accused persons. Therefore, their examination or non-examination is of no consequence for proof of the charge against the accused persons.

8. Learned Addl. Sessions Judge indeed recorded that due to non-examination of the Investigating Officer the accused persons could not confront the statement which was confronted to the P.Ws. 2 and 4 at the time of recording of their evidence. In that respect, learned Addl. Sessions Judge though has drawn adverse inference against the prosecution but that is of little consequence inasmuch as the trial Court clearly and categorically recorded the exaggerations and contradictions which was found in the evidence of P.Ws. 2 to 4 relating to payment of dowry at the time of marriage, dispute between the wife and husband,

ill-treatment and cruelty on account of demand of dowry and the like matter. When on the basis of it the evidence of such witnesses suffers from contradictions and exaggerations which at best could have made out a case of dowry torture, even if the observations of the learned Addl. Sessions Judge shall be taken out from the zone of consideration then also the evidence on record, does not inspire confidence to warrant a conviction on the basis of such contradictory evidence. Under such circumstance, while considering legality and correctness of the order of acquittal, this Court finds no justification to interfere with the finding on fact on the basis of good reasoning relating to appreciation of evidence.

9. Learned counsel for the petitioner strenuously argues that the trial Court committed a blunder by not calling for and insisting for production of the file relating to the enquiry of the U.D. Case. On being asked as to what benefit it could have given to the prosecution, learned counsel for the petitioner states that since the accused No. 1 had accompanied the deceased to the hospital and had given a statement before the enquiring officer of the U.D. Case that statement could have been proved to be used against him. Learned counsel concedes that he does not know what is the contents in any such statement. Even if assuming for a moment that accused No. 1 made statement saying that his wife died due to poisoning or did not die due to poisoning, that does not make any difference unless the prosecution proves the charge against the accused. Apart from that, such statement of the accused in that U.D. inquiry if at all is an inculpatory confessional statement that cannot be used as evidence in view of the provision in Section 25, Evidence Act. Under such circumstance, the criticism of the petitioners to the non-production of the U.D. Case by the prosecution and non-obtaining of the same by the trial Court is not found to be fatal to the prosecution.

10. The foregoing discussions and the findings lead this Court to record that the contentions raised by the petitioners are of no merit to interfere with the order of acquittal. Accordingly, the revision is dismissed.

Before parting with this revision, this Court records the appreciation for the useful and able assistance rendered by Sri Jairaj Behera a learned advocate of the Bar who appeared in this case as *amicus curiae* and placed his submissions on

different dates.

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