

Lokanath Sahu Vs. State

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Court : Orissa

Decided On : Apr-30-2002

Reported in : 94(2002)CLT465

Judge : B. Panigrahi and ;P.K. Misra, JJ.

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

Appeal No. : Criminal Appeal No. 119 of 1994

Appellant : Lokanath Sahu

Respondent : State

Advocate for Def. : G.K. Mohanty, Addl. Govt. Adv.

Advocate for Pet/Ap. : S.C. Sahu & B.K. Rath

Disposition : Appeal dismissed

Judgement :

B. Panigrahi, J.

1. The sole accused in Sessions Trial No. 9/24 of 1993 of the Court of Addl. Sessions Judge, Bargarh prosecuted under Sections 302/201/498A of the Indian Penal Code (in short 'IPC') has assailed the order of conviction and sentence directing him to undergo imprisonment for life.

2. The factual matrix leading to this appeal is as follows :

Appellant Lokanath Sahu had married the deceased Kausalya in the year 1989. Out of their union of male and a female child were born to them of whom the female child aged about one year could not survive. Thus they were left with a male child about 3/4 years at the time of fateful incident. For some time they led a happy married life, but thereafter their relationship did not continue well. There was more often than not rancor and ill-feeling between them on account of non-fulfilment of the dowry demand by the appellant. From the prosecution story presented during trial, it further demonstrated that the deceased Kausalya was found to be remorse and dull on account of embittered relationship. It is stated by the prosecution during trial that the appellant was in search of an opportune moment to exterminate the deceased Kausalya and accordingly he chose the date 18.8.92 to take her to Padampur along with their 3 years old son Shivaji on the pretext of his treatment in the Subdivisional Hospital. On the fateful day there was unabated rain and accordingly he also chose an isolated place at Khaira --Dunguri hillock to commit the crime of murder of his wife. Her head was crushed by a stone and her deadbody was thrown into the rain water discharged drain by the side of the road of the hillock after removing her jewellery. The appellant circulated a canard that his wife was brutally killed by the dacoits, who also took her jewellery and snatched away Rs. 500/- from him. The father of the accused lodged an information on the next day, i.e. 19.8.92 at 11.30 A.M. by stating that few persons who were inimically disposed against the appellant had killed deceased Kausalya. During investigation it unmasked as to who was the real murderer. After examining the father and brother of the deceased the real picture came into being.

3. The appellant also took the plea before trial Court that his wife was killed by the dacoits and they robbed her jewellery and snatched away Rs. 500/- from him. The trial Court on an elaborate discussion of the evidence has, however, observed that the appellant was the culprit, who had done away with his wife . and feigned that the dacoits had robbed her wife and snatched away Rs. 500/- from him.

4. In order to appreciate the contention of the appellant it has to be first of all ascertained whether the deceased Kausalya met a homicidal or natural death.

Since the appellant has admitted that kausalya met a homicidal death, therefore, further dilation on this point appears to be academic. But, however, to arrive at such a conclusion the evidence of P.W. 7, who was the specialist in Surgery posted at Subdivisional Hospital at Sambalpur and conducted autopsy over the deadbody on 20.8.1992 is very significant. He found the following injuries :

'(i) The whole of the face was lacerated and distorted. Eye-lids and both eye balls were lacerated. Both lips were lacerated. The nose was absent. Mouth not identifiable. Forehead lacerated and both ears torn.

(ii) An abrasion, blackish 3' x 1' vertically situated over the inner and upper part of right thigh.

(iii) An abrasion, blackish 2' situated over the back part of both elbow.'

On dissection he found the following injuries :

'(i) Scalp of forehead was extensively lacerated.

(ii) The front part of the skull was fractured.

(iii) Both eye sockets were fractured.

(iv) The brain and covering meninges were lacerated.

(v) On dissection of bone and muscles communicated fracture of mandible was detected.

(vi) All the teeth were dislocated and some teeth were found in the forehead muscles.

(vii) There was comminuted fracture of maxilla and teeth attached to it were dislocated.

(viii) Tissues of the face, forehead, both lips, chin and cheek and lids of both eyes were extensively lacerated in such a manner that the face was not at all identifiable, which progressed the decomposition with maggot formation. Old clotted blood was found on the hair roots of the vertex of the head.

(ix) Vertical abrasion 1' x 1/4' blackish in discoloration situated over the back of middle phalanx of left middle finger.'

Thus it admits of no other inference than to hold that Kausalya met a homicidal death having been killed.

5. Admittedly there has been no eye witness to the occurrence and the prosecution case rests on circumstantial evidence. The circumstances appearing against the appellant shall be proved to establish that all the links in the chain of events must be complete so as to exclude every other hypothesis compatible with the innocence of the appellant.

6. It is fairly well settled position of law that in a case of circumstantial evidence the cumulative effect of all the circumstances proved must be such so as to negative the innocence of the accused and to bring home the charge beyond all reasonable doubt. The circumstances which can be said to have been firmly established by an unimpeachable evidence are as follows :

(i) That the appellant has taken his wife Kausalya, deceased, to Padmapur Subdivisional Hospital for the treatment of their son.

(ii) While returning from the hospital there was heavy down pour.

(iii) The appellant chose a forest track while returning from hospital to accomplish his object.

(iv) Their relationship was not cordial.

(v) The deadbody was on the rain water discharge gutter, but not on the track.

(vi) There was no injury either on the chest or on the throat of the appellant.

(vii) The appellant had never claimed to have sustained injury on his little finger as well as dorsum.

(viii) The FIR lodged by the father of the appellant did not disclose that there was any commission of dacoity on the way while returning from the hospital.

(ix) Had the deceased Kausalya been attacked by the dacoits they must not have used a stone, instead they might have attacked her by some knife or other weapon of offence.

(x) There was no reason why the dacoits smothered her head from both sides after removal of ornaments.

(xi) It was against normal human conduct not to give any protection to his wife when she was attacked by the dacoits.

(xii) There was no information sent to the parents of the deceased Kausafya following the incident.

(xiii) The appellant feigned to have been attacked by the dacoits, but he himself was the assailant of the deceased.

7. From the evidence of P.Ws. 1 and 2 it has been proved that the deceased was found in the company of the appellant on the outskirts of the village Khaira. From the evidence of P.W. 3 it has transpired that he had seen the deadbody of Kausalya lying on the hillock near village Khaira. Subsequently the inquest was held over the deadbody of Kausalya and in the report he was a signatory. P.W. 4 is the son of the appellant. Since he was a boy of tender age, therefore, the learned Sessions Judge did not feel it safe to rely on his evidence. Moreover, he did not reply to the question put by the prosecution. Since it was raining severely, therefore, the possibility of collecting stains of blood either at the spot or from the nail-clippings of the appellant was quite remote. From the evidence of P.W. 6, the father of Kausalya, it has appeared that there was no love-lost between the deceased and the appellant. There was always bickering and misunderstanding in their matrimonial life inasmuch as the appellant was demanding Rs. 5000/- over and above the other presentation given at the time of marriage. Even P.W. 6 persuaded the appellant to behave properly to the deceased, but no change did occur thereafter. Therefore, a panch was convened and he agreed before the Panch not to further demand any money from the deceased family. The trial Court did not place any reliance on the post-card alleged to have been sent by the deceased. Therefore, we did not find any reason again to reiterate the same in our

judgment. P.W. 8 was the brother of the deceased, who corroborated the evidence of P.W. 6, It is, however, established from their evidence that the appellant did not inform them immediately after such ghastly incident took place. It was against the normal human conduct to keep secret about the incident without sending any information to the parents of deceased Kausalya. P.W. 9 was an independent witness. His statement was recorded on the following day of the incident. Therefore, the trial Court found his evidence to be unimpeachable and beyond reproach. P.Ws. 10 to 12 are the police officers who carried on the investigation and submitted the charge-sheet against the appellant. P.W. 11, who was the I.O., in this case had deposed that on the date of occurrence, i.e. 18.8.92 and on the next day, i.e. 19.8.92 there was continuous rain. The deadbody was traced from a nearby channel meant for discharge of rain water. There were stones around that place. But from the statement of the appellant under Section 313, Cr.P.C. it was claimed that the incident had taken place on the hillock road where the appellant was allegedly assaulted. If that be so, then how could the deadbody be thrown in a nearby channel. If the motive of the dacoits was to remove the articles they could not have used some other weapon than a stone. It is further significant to note that it is unusual for the dacoits to smother the head with an intention to kill even after removal of the ornaments. From the medical report it has further established that the stone was used to cause injury on the front as well as back side of the head. After the deceased became unconscious and fell down on the ground, thereafter, there was no reason to again inflict injuries on the back side of the head. The injuries caused to the deceased can suggest nothing other than to commit her murder, but not for committing robbery. The description-of the ornaments has not been disclosed either in the FIR or in the statement under Section 313, Cr.P.C. Therefore, this plea was taken deliberately and designedly to make it appear that she was put to robbery while coming back through the hillock.

8. Mr. S. C. Sahu, learned Advocate appearing for the appellant has submitted that it was impossible to comprehend that a boulder weighing approximately 10 Kg. could have been lifted by a single man. Therefore, it must have been an attempt by at least 2 persons who committed the crime. From the evidence of I.O. we found that there were small or big boulders near the place of occurrence. There has been ample evidence that at the time of occurrence there was heavy

rain. Normally one can expect some blood stains on the stones lying nearby, but they could have been washed out by the rain water.

9. In this case the appellant has admitted to have been present near the place of occurrence till the assault took place on the deceased. There is no evidence to establish that the appellant intercepted the so-called dacoits at the time of commission of the offence. It is not expected from a prudent man to keep himself waiting and seeing that his wife would be a victim to be killed at the hands of the dacoits.

10. There was no injury either on the throat or chest of the appellant to suggest that those so-called dacoits at the time of commission of the offence also assaulted the appellant. P.W. 6, father of the victim, could not immediately give any statement because he was under tremendous shock on account of his daughter's death. But, however, his evidence was recorded on 25.8.92.

11. Mr. Sahu has brought to our notice that since the investigation carried on by the I.O. was perfunctory and the I.O. did not record the statement of the witnesses promptly after the incident, therefore, their testimony should be viewed with suspicion. In this regard there are umpteen of decisions which would suggest that the prosecution case cannot be thrown out merely on the ground that the Investigating Officer did not take prompt action to examine the witnesses. But we find the position of law laid down by the Hon'ble Supreme Court has become lucidly clear that if the circumstances proved by the prosecution was definite and unimpeachable in character, its case should not be viewed with suspicion only on the basis of some surmises and guess. To buttress our stand we hereby quote one of the recent judgment of the Supreme Court reported in (1999) 8 SCC 679 in the case of State of Tamil Nadu v. Rajendran wherein it has been held as follows :

'In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This proposition fully applies to the circumstances of the present case. On the circumstances enumerated above which have been established by the prosecution, we have no hesitation to come to

the conclusion that the charge of murder has been proved beyond reasonable doubt as against the accused-respondent and the High Court erroneously acquitted him of the said charge.'

The injuries on the appellant was superficial in nature. There was no injury either on the chest or throat of the appellant. Only a scar mark was noticed on the 7th rib. The tips of nail broken, middle and little fingers, left thumb vertically bruised. Therefore, all these injuries would rather suggest that the appellant must have lifted a stone and in the process those injuries could have been caused. It is true that there was no direct evidence with regard to demand of dowry, at the same time their matrimonial life was not smooth and there was always quarrel and misunderstanding between them. The appellant has taken a plea that he went to a nearby rice mill in the night of occurrence. Neither the mill owner nor any of his servants was examined. On the report lodged by the father of the accused the investigation was proceeded on a wrong premises, but when the I.O. subsequently gathered information about the participation of the appellant he unmasked the truth of the prosecution story.

12. Severe criticism has been made against the investigation. Even if there is faulty investigation, that by itself cannot be a ground in favour of the accused if the prosecution case has been proved by other available evidence. Since the appellant has claimed that a dacoity was committed and if the theory of dacoity is disbelieved, then, it can be safely concluded that the appellant alone was responsible for the commission of murder of his own wife. It is also not understood why the parents of deceased Kausalya were kept in dark till they heard from others. It is against the normal human conduct to keep the death of Kausalya secret till other formalities were accomplished. The falsity of defence plea of dacoity would be taken as an additional link in the chain of events to connect the appellant, with the crime.

13. From the conspectus of the facts and circumstances of the case as discussed above, we have least doubt to hold that the accused was solely responsible for the commission of murder and accordingly the learned trial Court had neither committed any factual or legal error in convicting him under Section 302, IPC.

14. The intention to commit murder cannot in all circumstances be proved by the prosecution. The accused who committed the crime must be knowing about such intention as to why he committed such dastardly act. We do not find sufficient evidence to hold the appellant guilty under Section 498-A, IPC. Accordingly he is acquitted of the charge.

15. In the result, the appeal is dismissed with modification as aforesaid. The conviction and sentence under Sections 302/201, IPC passed against the appellant are hereby confirmed. The conviction and sentence under Section 498-A are set aside and he is, accordingly acquitted of the charges.

P.K. Misra, J.

I agree.

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