

Dhenka Munda Vs. State

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Court : Orissa

Decided On : Feb-26-1991

Reported in : 71(1991)CLT589; 1991(I)OLR318

Judge : B.L. Hansaria, C.J. and ;B.N. Dash, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 164 and 313; Indian Penal Code (IPC) - Sections 302

Appeal No. : Jail Criminal Appeal No. 120 of 1987

Appellant : Dhenka Munda

Respondent : State

Advocate for Def. : S.K. Das, Addl. Govt. Adv.

Advocate for Pet/Ap. : H.M. Dhal, Adv.

Disposition : Appeal allowed

Judgement :

B.N. Dash, J.

1. This appeal is directed against the order convicting the appellant under Sec 302, IPC, and sentencing him to undergo imprisonment for life.

2. The prosecution case in brief is that on 26-6-1986 the appellant Dhenka Munda returned to his house at Kalupara from Belpahar Refractories where he was working sometime after evening and after taking dinner with other inmates consisting of his second wife Chandni Oram (the deceased), his father and his first wife and her children retired to bed. While the first wife with her children slept in one room of the house, the father slept on the verandah and the appellant and the deceased slept in another room. It is alleged that since the appellant was suspecting the questionable character of the deceased there ensued a quarrel between them sometime in the mid-night where after the appellant dragged the deceased to the inner court-yard and then lifted her to the fuel-shed where he killed her by severing her head from the trunk with a Tabli (M. O. III). Thereafter, the appellant took the severed head and M. O. III to the Belpahar Police Station covering a distance of about 2 K. Ms. and produced them before the Sub-Inspector of Police saying- that he killed his second wife with that Tabli and that the severed head was of her. On those statements, Station Diary Entry No. 205 dated 27-6-1986 (Ext. 20) was made at 1.45 A. M. The Sub-Inspector drew up plain paper F. I. R. (Ext. 11) at 230 A. M. on his own information and then, on returning to the Police Station, drew up the formal F. I. R. (Ext 11/1) at 4 A. M of that night.

3. In course of investigation the wearing apparels of the appellant, namely, the Lungi (M. O IV) and the Banion (M. O, V) and the wearing apparels of the deceased namely, the Saree (M. O I) and the Saya (M. O. II) were seized. In the following morning, inquest was held separately over the head and trunk of the deceased in presence of witnesses. The trunk and severed head of the deceased were sent to the Sub-Divisional Hospital. Jharsuguda where Dr. Anadi Charan Mishra (PW 7) conducted the-autopsy. The wearing apparels of the appellant and the deceased and also the Tabli (M. O. III) were forwarded to the Director, Forensic Science Laboratory, Rasulgarh through the Sub-Divisional Judicial Magistrate, Jharsuguda for examination. The report of the Chemical Examiner is Ext. 18 and the Serologist's report is Ext. 19. Statements of the first wife and father of the appellant Under Section 164, Cr. P.C. were recorded (vide Ext. 2 and Ext. 21). After Completion of investigation, charge-sheet was submitted against the accused Under Section 302, IPC.

4. While admitting to have produced the severed head of the deceased and the Tabli (M. O. III) at the Belpahar Police Station, the appellant denied of having killed the deceased His specific defence was that after his stroll at night when he returned home he found the deceased to have been cut into two pieces and thereafter he carried the severed head and the Tabli to the Police Station for reporting the incident,

5. At the trial, the prosecution examined ten witnesses of whom PW 3 Kamala Munda and PW 9 Etua Munda are respectively the first wife and father of the appellant; PWs 1 and 5 were witnesses to the inquest that took place over the severed head at the Police Station; PW 4 is a witness to the seizure of the wearing apparels of the appellant and Tabli at the Police Station; PW 6 is the witness to the inquest over the trunk of the deceased that took place at the spot; PW2 is a witness who allegedly saw the appellant standing near the Belpahar Police Station holding a severed head of a human being and one blood stained Tabli; PW .8 is the Revenue Inspector who prepared the spot map Ext, 16; PW 7 and PW 10 are respectively the Medical Officer conducting autopsy and the Investigating Officer. Relying on the evidence of PWs 3, 5 and 9, the learned Sessions Judge found the appellant guilty of the charge and convicted and sentenced him, as already stated above. '

6. PW 3 and PW 9 were said to be the eye witnesses to the alleged occurrence but at the trial they did not support the prosecution case. However, from their evidence as also from the evidence of PW 5 the learned Sessions Judge brought out some circumstances and held, on the basis thereof, that the guilt of the accused had been proved beyond reasonable doubt. These circumstances are ;

(a) The deceased and the accused were last seen together in their bed room in the night of occurrence;

(b) The conduct of the accused in not waking up his father or first wife to tell about the murder of the deceased ;

(c) the conduct of the accused in producing the severed head of the deceased and the weapon of offence (Tabli) at the Police Station ; and

(d) the conduct of the accused at the police lock-up in keeping mum when asked by PW 5 as to why he killed his wife.

7. The fact that the deceased was killed by severance of her head from her trunk with the help of the Tabli (M O. III) in the fuel-shed of the appellant's house and therefore her death was homicidal has not been disputed by Mr. H. M. Dhal, the learned counsel for the appellant and, in our opinion, rightly so. His contention, however, is that excepting the third circumstance i. e., production of the severed head and the weapon of offence at the Police Station by the appellant, the other circumstances have not been proved and, therefore, the order of conviction and sentence passed by the learned Sessions Judge is not sustainable in law.

8. In dealing with cases based on circumstantial evidence, it must be borne in mind that there is always the danger of conjecture or suspicion taking the place of legal proof. Where the evidence is of a -circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first place be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused, Further, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. Otherwise stated, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. (See Hanumant Govind Nar gundkar and Anr. v. State of Madhya Pradesh, AIR 1952 SC 343) and. (S. P. Bhatnagar and Anr. v. State of Maharashtra, AIR 1979 SC 826).

In Gambhir v. State of Maharashtra reported in AIR 1982 SC 1157, their Lordships have observed and held :

'.....The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established ; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused ; (3) the circumstances,

taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

All these decisions of the Apex Court have been followed by this Court in many cases including Chudiamal Jain and Anr. v. State of Orissa, reported in 57(1984) CLT 81.

9. Keeping the aforesaid cardinal principles relating to appreciation and probative value of circumstantial evidence, we have to find out as to whether the finding of guilt recorded by the trial Court on such evidence has been legal, reasonable and proper.

10. As already stated above, the circumstances relied upon by the learned Sessions judge have been brought out only from the evidence of PWs 3, 5 and 9. So the evidence of these three witnesses need careful scrutiny.

PW 3 the first wife of the appellant, has deposed that the accused and the deceased had no difference of any sort and that after the appellant returned from his duty at 8 p. m, the deceased served him food in the night in question. Her evidence in cross-examination is as follows :

'In the occurrence evening, I the deceased, my father-in-law and the accused all returned me at about 7 p. m.' where after we prepared bur dinner. All of us took food together. After dinner the accused went but for a stroll as usual with him. Everyday he used to return from his stroll around mid-night In 'the night' of occurrence I, my father-in-law and the deceased returned to bed after the accused went out for stroll, At about mid-night the accused returned from his stroll and shouted that the deceased had been killed. But I did not come out of fear. Prior to that I have not heard any shout' of anybody regarding assault to the deceased. I have' not heard when the deceased shouted about assault and cried for help.

Anybody can enter into our house unobstructed since there is no door leaf fitted to the doors. Police put me to threats of arrest on their arrival in my house.'

11. PW 9 the father of the appellant has deposed that on the night in question he consumed liquor and retired to bed on the inner verandah at about 5 p.m. A portion of his evidence in cross-examination may be usefully quoted ;

'... I have no vision in my right eye. Even I have hazy vision in my left eye There was heavy rainfall in the occurrence night and the whole surrounding was pitch dark. After I retired for bed in the occurrence night the accused left for Gumadera. I slept under the influence of liquor after the accused left home. I did not wake up till the arrival of police and do not know what transpired during that night.'

12 At this stage, it may be pointed out that although PW 3 and PW 9 unequivocally deposed that after the dinner the appellant left the house for a night-stroll, no attempt was made by the prosecution to show that such evidence is unreliable. The further evidence of PW 3 that after the night-stroll, the appellant returned home around mid-night has also remained unshattered.

13 PW 5 is a witness to the inquest over the severed head of the deceased at the . Police Station.' According to him, on 27-6-1986 at about 6 a. m. when he went to the Police Station to enquire about a vehicle which the police borrowed on the previous night, he found that the accused had been lodged in the police hazat and a severed head, of a female was lying at the Police Station, Having heard from the police that the appellant had brought the severed head of the deceased after killing his wife; He enquired from the accused as to why he killed his wife but the appellant kept mum

14. As regards the first circumstance, there is no direct evidence that the deceased and the accused were last seen together in their bed room immediately, prior to the alleged occurrence. The learned Sessions Judge has recorded a finding that the deceased and the, accused were last seen together in their bed room saying that PW 3 has deposed, that .she heard the deceased shouting for help from her bed room and prior to that she heard the accused shouting that somebody has killed the, deceased. On a careful examination of the evidence of

PW 3, we find that such assertion of the learned Sessions judge is not there on record. On the other hand, the evidence of PW 3, as quoted in paragraph-10 above, would go to indicate that she did not hear the deceased shouting about assault and crying for help before the return of the accused after a night stroll when he found the deceased to have been already killed. The evidence of PW 3, as quoted above, is pointedly to the effect that she as also her ' father-in- law and the deceased retired to their respective beds after the accused went out of the house for a night stroll and returned home around midnight to see the deceased lying dead. Such positive evidence of PW 3 has not been accepted by the learned Sessions Judge because according to him, PW 3 retired to bed after dinner, saw the accused and the deceased retiring to their bed room and thereafter she did not come out of the room till the arrival of police. The reason assigned by the learned Sessions Judge does not appeal to us because there was every possibility for PW 3 to see the accused leaving the house for a night stroll remaining in her bed room particularly when there was no door leaf fitted to her bed room. The positive evidence of PW 9 that after he retired to bed the accused left for Gumadera, which is in accord with the evidence of PW 3, has been disbelieved by the learned Sessions Judge in view of the evidence of PW 3, but what is that evidence of PW 3 on the basis of which he has disbelieved the evidence of PW 9 has not been stated. It is, thus, seen that the positive evidence of PW 3 and PW 9 that during the absence of the accused from the house for a night stroll which, as already stated above, has remained unshattered has been lightly brushed aside by the learned Sessions Judge and on a consideration of such evidence it is difficult to believe that the deceased and the accused were last seen together in their bed room immediately prior to the alleged occurrence. So according to us, the first circumstance has not at all been established This conclusion is all the more reinforced when it is found that the scene of occurrence is different from the bed room and that PW 3 and PW 9, who must not be happy for the marriage of the accused with the deceased, were very much there in the house.

15. As regards the second circumstance, there is no direct evidence either of PW 3 or of PW 9 that they were not woke up by the accused before leaving the house with the severed head and Tabli M. O. III). In the absence of such positive evidence, when PW 3, as quoted above, as stated unambiguously that on his

return from night stroll at about mid-night She heard the accused shouting that the deceased had been killed, we hold that PW 3 must have woke up and when her bed room was visible, to the accused at the time of his leaving the house with the severed head and the Tabli (M. Q. III), there was no occasion for him to wake her up. So far as PW 9 is concerned, he has himself deposed, as already quoted above, that he had consumed liquor before going to bed and could not know anything about the death of the deceased and that he woke up after the arrival of the police. This indicates that he was heavily drunk and therefore, the accused might not have considered prudent to wake him up. Accordingly, in our opinion, the second circumstance is of no avail to the prosecution and reliance thereon placed by the learned Sessions Judge is not correct.

16. The third circumstance is not only proved by the i. O but has also been admitted by the accused during his examination Under Section 313, Cr. P. C.

17. As for the last circumstance, the learned Sessions Judge has relied on the evidence of PW 5, as already quoted above, and in our opinion rightly to hold that the circumstance has been duly proved.

18. It is, thus, clear from the aforesaid discussion that the circumstances established against the appellant are (i) that he went to the police station with the severed head of the deceased and the Tabli (M. O. III) and (ii) that he kept mum when questioned by PW 5 as to,, why he killed his wife, The next question that arises for consideration is, whether these two circumstances unerringly connect the appellant with the commission of the crime. The answer, in our opinion, is definitely in the negative because in view of the positive evidence of PW 3 that the appellant had no difference of any sort with the deceased, it is quite likely that at the sight of the dead body of the deceased he might have been quite upset which explains the aforesaid, Circumstances. This conclusion is all the more fortified, when there is evidence on record to indicate that any outsider was in a position to enter into the house unobstructed leading to the reasonable hypothesis that any person other than the appellant might have also killed the deceased. That being so, the finding of guilt recorded by the learned Sessions Judge can never be said to be legal, reasonable and proper and the benefit of doubt should go to the

appellant.

19. In view of our aforesaid discussion, the appeal is bound to be allowed and accordingly, we allow the same, setting aside the order of conviction and sentence passed by the learned Sessions Judge and direct that the appellant be set at liberty forthwith.

B.L. Hansaria, C.J.

I agree.

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