

Arjuna Pradhan Vs. the State

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Court : Orissa

Decided On : Jul-14-1992

Reported in : 1992CriLJ3614

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Jail Criminal Appeal No. 160 of 1988

Appellant : Arjuna Pradhan

Respondent : The State

Advocate for Def. : J. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : R.K. Mohanty, Adv.

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. In this appeal from Dhenkanal district jail Arjuna Pradhan (here-inafter referred to as the 'accused') calls in question the legality of his conviction under Section 302 of the Penal Code, 1860 (in short, the 'I.P.C.') and sentence of imprisonment

for life as awarded by the learned Sessions Judge, Dhenkanal. The accused faced trial on the accusation that he killed his mother Jamuna Pradhan (hereinafter referred to as the 'deceased') on 17-4-86.

2. The prosecution case, in short, is that the two brothers namely Khageswar Pradhan and Bisha Pradhan (P.Ws. 1 and 3 respectively) are sons of one Babu Pradhan. All of them lived in the same premises though Khageswar and Bisha lived separately from their father after partition. On the date of occurrence after taking the night meal, Khageswar slept on the verandah while his wife Kadila (P. W. 2) and his son slept in the house. Babu and the deceased slept on the same verandah intervened by a wall. The accused slept on the court-yard 3 to 4 cubits away from the verandah. P. W. 2 got up in the night and saw that the accused was running away after killing the deceased with an axe. She shouted for help. On hearing the shout, Khageswar got up and rushed to catch hold of the accused but could not catch hold of him. Bisha also got up. A chase was given by both Khaga and Bisha and they went to village Kantanali along with others. They asked one Bikram Master who told them that the accused had not come there and they returned to the village and kept a watch over the dead body of the deceased. The next morning they discovered that the deceased was sleeping in a buffalo shed, and brought him and asked him in presence of the villagers as to why he killed his mother. The accused confessed to have killed his mother as he wanted to kill her. Khageswar went to the Police Station at Pallahara and lodged a first information report on the basis of the first information report, investigation was undertaken and charge sheet was submitted.

The plea of the accused was a complete denial of the occurrence.

3. The prosecution has examined 13 witnesses to further its case. The evidence of P.Ws. 1, 3, 4, 5 and 7 was pressed into service to prove the prosecution case. The extra-judicial confession made by the accused before these witnesses was highlighted and the conduct of the accused in running away was also stated to be of sequence to connect the accused with the crime. The fact that P.W. 2 has seen the accused running away from the place of the occurrence was also indicated to be of vital importance. A statement under Section 164 of the Criminal P.C. (for

short, the 'Code') was recorded by the learned S.D.J.M., Pallahara before whom the accused confessed to have killed the deceased. On consideration of the evidence of the witnesses and the confession of the accused made before the learned S.D.J.M., the learned Sessions Judge found the accused guilty and convicted him under Section 302, IPC. He was sentenced to undergo imprisonment for life.

4. Mr. R. K. Mohanty, learned counsel for the accused, submits that no reason has been indicated as to why the accused would make a confession before so many persons. It is also submitted that according to the evidence of P.Ws. 4 and 5 the extra judicial confession was made before P.W. 7 on being asked by the said witness. Therefore, it cannot be treated as a confession to have been made by the accused before all of them. He has also highlighted that P.W. 2 has stated about the presence of Bani at the spot. According to him, non-examination of Bani, the daughter of Bisha and his father Babu Pradhan raises a suspicion as to the acceptability of the prosecution version. According to him, no explanation has been offered as to why these two witnesses who were sleeping in close proximity to the deceased have not been examined. The learned counsel for the State submits that the circumstances of the case clearly indicate that the accused was guilty.

5. The fact that none had seen the actual killing is not disputed. Therefore, it has to be seen as to how far the circumstantial evidence is sufficient to fasten the guilt on the accused. The extra judicial confession is stated to have been made before the two brothers (P.Ws. 1 and 3) and three co-villagers (P.Ws. 4, 5 and 7). P.W. 7 is a teacher on whose query the confession is stated to have been made. This witness has categorically stated that he was working as a teacher for about 27 years and has no animosity whatsoever with the accused. It is not shown to us as to why he would resort to falsehood and implicate the accused. He has no axe to grind with the accused. On the contrary being a teacher he is supposed to be a respectable person. His evidence to the effect that on his query the accused made a confession to have killed his mother is also corroborated by the evidence of P.Ws. 4 and 5, the two co-villagers who had also no reason to speak falsehood. No material has been placed before us to show that P.Ws. 4, 5 and 7 were

inimically disposed towards the accused. That being the position, their evidence is unshaken and is believable and the learned Sessions Judge has rightly acted upon it. The accused has stated to have killed his mother in his statement under Section 164 of the Code recorded by the learned S.D.J.M. The extra judicial confession is not a weak piece of evidence. On the contrary, if it is credible and the court finds that the confession was made voluntarily, it can form the basis of conviction. One thing has to be kept in mind while considering the extra-judicial confession. It has to be seen whether the person before whom such a confession was made is known to the person making confession, that is, the confession is not made before a stranger. Normally a person would not make an implicatory statement before a stranger. If the person before whom the confession is made is a close relative of the person making confession, or has possibility of being in his confidence, the same can be a piece of evidence to be utilised against the accused. We find that three independent witnesses have spoken about the confession. They were co-villagers and not strangers. Therefore, in our considered opinion, the learned Sessions Judge has rightly believed it and has acted upon.

6. So far as non-examination of Babu and Bani is concerned, it is not shown to us as to how their evidence is relevant. It is true that they had slept in close proximity and were stated not to have heard the noise when the blows were inflicted on the neck. It may be that the blow was given in such a manner that there was no scope for omission of any sound. Non-examination of the witnesses would not normally throw a doubt in the acceptability of the evidence, unless it is shown that the evidence was material and the prosecution for the mala fide reasons had withheld the evidence of such witnesses. In the instant case, Babu is the father of P.Ws. 1 and 3 who are the brothers of the accused. When the brothers of the accused have been examined, exception cannot be taken for non-examination of Babu. It is also not shown to us as to how the evidence of Bani and Babu were of any material consequence. P.Ws. 1 to 3 were sleeping in a close proximity but they did not hear any sound. In addition, we may point out that the statement under Section 164 of the Code lends ample corroboration to the prosecution evidence.

7. On consideration of these materials, we find that the conviction and sentence as awarded are irreversible. The appeal fails and is dismissed.

D.M. Patnaik, J.

8. I agree.

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