

Bansidhar Nandi Vs. State

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Court : Orissa

Decided On : Mar-31-1992

Reported in : 1992CriLJ3927

Judge : J.M. Mohapatra and ;B.N. Dash, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : Jail Criminal Appeal No. 285 of 1988

Appellant : Bansidhar Nandi

Respondent : State

Advocate for Def. : H.K. Jena, Addl. Govt. Adv.

Advocate for Pet/Ap. : S.C. Sahoo, Adv.

Disposition : Appeal allowed

Judgement :

J.M. Mohapatra, J.

1. The appeal is directed against the judgment and order dated 15-10-1988 of the learned First Additional Sessions Judge, Cuttack convicting the appellant under Section 302, I.P.C. and sentencing him to undergo R.I. for life.

2. The deceased was the wife of the appellant, and they were living in one house at the material time and were weavers of Pata cloth belonged to village Nuapatna, P.S. Tigiria, in the district of Cuttack. The occurrence took place in the night of 15/16-8-1987. It is alleged that the appellant during the day time of 15-8-1987 brought some meat and gave it to the deceased for preparing curry. But there being no spices, rice or oil, she refused to prepare meat curry, which enraged the appellant. The appellant then went out of the house and returned at about mid-day and when he wanted to have his meal, the deceased told him that meal could not be ready as there was no rice. At this the appellant became furious and threw away the meat he had purchased. Mid-day meal was ready at about 3 p.m. and at the request of the deceased the appellant took his food. Thereafter the appellant went for weaving and continued to remain at the loom. At about 9 O'clock in the night on the same day the appellant again asked the deceased to give him food. As the deceased did not respond, the appellant threatened to assault her by an axe. Thereafter on the persuasion of his sons the appellant took his meal, and thereafter roamed about in the compound of his house in a furious mood and then went to sleep in the room situated at the backyard of his house, while the deceased slept in the adjoining : room. Next morning the deceased was found lying dead in a pool of blood with injuries on her neck and adjoining part. The appellant was not found in the compound of the house and remained untraced. Thereafter information was lodged at Tigiria P. S. by P.W. 1, the son of the appellant. P.W. 13, the officer-in-charge of the P.S. recorded the F.I.R., registered a case against the a appellant, and investigated into the case. He proceeded to the spot, held inquest over the dead body of the deceased, sent the dead body for post mortem examination, examined witnesses, seized the blood stained Ketari M.O. III, blood stained earth and sample earth M.Os. IV and V, the saree of the deceased, M.O. VII and took steps to send those incriminating materials to Forensic Science Laboratory, Resuglarh for chemical and serological test. After completion of investigation he submitted charge-sheet against the appellant. The appellant being committed to the court of session, stood his trial for the offence of murder of his wife and was eventually found guilty of the offence and convicted thereunder and sentenced to life imprisonment.

3. The plea of the appellant is a total denial of his complicity in the crime.

4. In support of its case, prosecution has examined as many as 14 witnesses of whom P.Ws. 1, 6 and 12 are the sons of the deceased, P.W. 2 is the wife of P.W. 1, P.Ws. 3, 4 and 5 are the co-villagers deposing to the extra-judicial confession said to have been made by the appellant before them, P.W. 14 is the doctor conducting autopsy on the deed body of the deceased and P.W. 13 is the investigating officer, while the remaining witnesses are of formal character. There being no eyewitness to the alleged occurrence, prosecution case rests on the circumstantial evidence, namely, the prior strained relationship between the appellant and the deceased, the extra-judicial confession said to have been made by the appellant before P.Ws. 2, 3 and 5 and the corroborating medical evidence. The learned trial Judge on an appraisal of the evidence on record, the facts, circumstances and broad probabilities of the case has found the appellant to be the author of the crime, and convicted him accordingly.

5. Mr. Sahu the learned counsel for the appellant has strenuously urged that the extra-judicial confession of the appellant before P.Ws. 3, 4 and 5 is unworthy of acceptance for certain infirmities. It is also contended that the circumstantial evidence, such as, previous strained relationship between the appellant and the deceased and the sudden disappearance of the appellant after the death of the deceased are not enough to hold the appellant guilty of the crime. We were taken through the evidence on record and the impugned judgment.

6. There being no dispute that the death of the deceased was homicidal, we do not propose to discuss the medical evidence furnished by P.W. 14. It is however pertinent to mention that there was one severe external injury, namely, the incised wound of the size of 2 1/2' x 3/4' x 2' in the left supra clavicular fossa, caused by sharp cutting weapon which was the cause of death according to P.W. 14, and which injury according to him was possible by the Katari M.O, III.

7. We now proceed to discuss the main plank of of the prosecution evidence, namely, extra-judicial confession P.Ws. 3, 4 and 5 are the co-villagers before whom the appellant is said to have made extra-judicial confession. The version of all these three witnesses, P.Ws. 3, 4 and 5 is somewhat parrot-like repetition of the same fact, and it appears from their evidence that the appellant went to their

house a little before the day break, knocked at their doors to wake them up. On their waking up and asking the appellant as to why he had come, the appellant suddenly gave out that he had killed his wife. P.Ws. 3 and 4 after hearing from the appellant bolted the door from inside, whereafter the appellant left their houses. It was P. W. 5 who at the request of the appellant purchased some pata thread worth Rs. 10/-. The appellant was not related to any of the three witnesses, and there does not appear to be any particular relationship of the appellant with these three witnesses. P.W. 3 has stated in cross-examination that he did not enquire from the appellant about the killing of his wife, nor was anybody present when the appellant made the statements. P.W. 3 also did not disclose the fact to anybody till he deposed in Court. P.W. 4 stated in cross-examination that the appellant though one of his distant agnatic relation was not in visiting terms to his house. His further evidence is that he did not disclose the fact to any one till the date of deposition in Court. P.W. 5 has stated in cross-examination that the appellant was not related to him and for the first time he came to his house to sell the patta thread. He has further stated that ! although ordinarily he does not purchase patta thread in the night, he purchased the same from the appellant for Rs. 10/-. His further evidence is that he has not disclosed the fact to any man till today. The further fact elicited from him is that he had known the appellant from his childhood, and that the appellant made the confession inside his house when his brother and mother were also present. From the foregoing discussions, we find that the appellant had practically no relationship with P.Ws. 3, 4 and 5, and as such it appears to be highly unlikely that he would go to them for confessing his guilt. It is well-known that a person committing a crime would admit his guilt only when he is repentant for his misdeed and when he has a feeling that by making a confession his mental tension on account of his misdeed would be lightened. This the offender would invariably like to make before such persons with whom he has some sort of relationship and certain amount of confidence, and not before persons with whom he had not even visiting relationship. Making confession before acquaintances and the persons not related in any manner is very seldom acceptable to courts of law. It is also held by high authorities that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason or the motive for confession and the choice of person on whom confidence is

reposed while making such confession. All these safeguards have been provided to ensure that as a matter of fact confession has been made and to rule out the possibility of concoction to implicate the offender. A judicial confession is recorded by a Magistrate and as such the court has before it materials to know that confession has been actually made and recorded. About the acceptance of the retracted judicial confession the considerations are different. But in a case of extra-judicial confession evidence is furnished only through oral testimony before whom such a confession is said to have been made. Considering the evidence of P.Ws. 3, 4 and 5 on the touch-stone of the aforesaid principles, we find that the evidence as to extra-judicial confession is not acceptable. We are therefore of the considered view that the evidence of extra-judicial confession said to have been made by the appellant before P.Ws. 3, 4 and 5 should not have been relied upon by the learned trial Judge.

8. The other item of evidence, such as, previous strained relationship between the appellant and the deceased is not fool-proof material from which the motive for the offence can be spelt out. As a matter of fact one of the sons P.W. 1 has stated in his evidence that the appellant and the deceased were not pulling on well since about 3 years prior to the occurrence. It also transpires from the evidence of P.Ws. 1, 2, 6 and 12, the close relations of the parties that the appellant was a Ganja addict and was taking Ganja 3 to 4 times a day. The parties belonged to weavers community. Being a Ganja addict the appellant might be running short of funds to purchase Ganja, and it is not unusual to visualise that he would be quarrelling with his wife frequently for money to purchase Ganja. In the aforesaid background we are of the considered view that the previous strained relationship as stated by the prosecution cannot be said to be a motive for the crime.

9. The next circumstance relied upon by the learned trial Judge is the sudden disappearance of the appellant from his house in the morning of the date of occurrence. From the evidence of the I.O. P.W. 13, it appears that the appellant was arrested by him on 19-8-87. If the appellant wanted to abscond he could not possibly have been arrested for quite sometime, and not so early as 3 or 4 days after the death of the deceased. On the admitted background of the facts of the case about the nature and character of the appellant, his addiction to Ganja, his

quarrelsome habits with his wife, the fact of his leaving the house and remaining away for 3 to 4 days, by itself cannot be a circumstance to show that being guilty conscious, he left his house. Considering the aforesaid facts and circumstances of the case, we do not find the disappearance of the appellant from his house in the morning of 16-8-87 to be a circumstance to support the prosecution case.

10. In the light of the foregoing discussions, and giving our most anxious considerations to the facts, circumstances and broad probabilities of the case, we are not inclined to hold that the appellant was the author of the crime. While, therefore disagreeing with the finding of the learned trial Judge, we hold that the prosecution has failed to bring home the guilt of the appellant beyond all reasonable doubt.

11. In the result, the appeal is allowed, and the conviction and sentence of the appellant are set aside. The appellant be set at liberty forthwith.

B.N. Dash, J.

I agree.

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