

Khageswar Das Vs. State

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Court : Orissa

Decided On : Jan-17-1998

Reported in : 1999CriLJ1792

Judge : A. Pasayat and ;S.C. Datta, JJ.

Appeal No. : Jail Crl. Appeal No. 293 of 1994

Appellant : Khageswar Das

Respondent : State

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

Advocate for Pet/Ap. : Srutikanta Nayak, Adv.

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. In this appeal from Jail, Khageswar Das (hereinafter referred to as the 'accused') calls in question legality of judgment of conviction and sentence as passed by learned Addl. Sessions Judge, Bargarh.

2. Filtering out unnecessary details, prosecution version which led to trial of the case is essentially as follows :

Mitu Das (hereinafter referred to as 'deceased') was wife of the accused. She was living with him in her matrimonial home at Joda. On 18-8-1998, the accused took her from Joda to Bargarh in a bicycle. On the way, he throttled her to death in an isolated place locally known as 'Chasianmauli Nala' at about 2 p.m. and flung the dead body into the Nala. By evening the local Sarpanch (P. W. 4) found the dead body in the Nala and informed to the Bargarh Police Station. Investigation was undertaken and on completion thereof, charge-sheet was placed.

3. Nine witnesses were examined to further the prosecution version. The accused pleaded innocence. As there was no eye witness to the occurrence, prosecution relied upon certain circumstances to further its case. Circumstances were that the accused and deceased were seen together. Though P. W. 2 pressed into service to be an eye witness, he resiled from the statement during investigation and pleaded ignorance about the occurrence. P.'W. 1 stated that on the date of occurrence he had seen the accused in the company of the deceased going towards the Nala by walk and the accused was holding a bicycle. He has stated about accused mercilessly assaulting deceased by a stick. P. W. 2 identified the accused in a T. I. parade conducted by P. W. 9 Judicial Magistrate, First Class, Bargarh. The fact that the accused and the deceased were seen together a short time before recovery of the dead body, gets established by evidence of P. Ws. 1 and 2 though the latter resiled from earlier statement made during investigation to have seen the actual assault. Circumstances were found to be sufficient by learned trial Judge.

4. In support of appeal, learned counsel for accused submitted that this being a case of circumstantial evidence, prosecution ought to have established its case beyond a shadow of doubt ruling possibility of anybody other than the accused to be author of the crime. According to him, materials on record are insufficient to come to such a conclusion. Mr. R. K. Mohanty, learned Addl. Govt. Advocate however, supported the conclusion.

5. The circumstances indicated by learned trial Judge are as follows:

(i) At the noon of the fateful day, the P. W. 1 found the deceased going along the canal road near Kantanali and the accused following her riding a bicycle.

(ii) While overtaking the deceased, the accused alighted from the bicycle and mercilessly assaulted her by an 'Amari' stick.

(iii) On the intervention of P. W. 1, the accused rode the bicycle towards Bargarh carrying the deceased on its pillion.

(iv) Thereafter he was seen in the company of the deceased proceeding towards Chasianmauli Nala holding a bicycle and by evening the dead body of the deceased was found at the very Nala by P. W. 4.

(v) In the opinion of the P. W. 6 the doctor conducting autopsy the death of the deceased had occurred within 36 hours from the time of autopsy which was held at 11 a.m. on 19-3-93, which roughly corresponds to the alleged time of murder of the deceased, and

(vi) The accused has offered absolutely no explanation for any of these incriminating circumstances.

6. Duties of the Court while dealing with a case which is based on circumstantial evidence has been highlighted by the apex Court in a plethora of decisions. When the case of the prosecution is based on circumstantial evidence, it has to establish that there is no missing link in chain of circumstances, which is complete and unerringly point at the accused to be the author of the crime. In a case depending largely on the circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. Suspicion however, strong cannot take the place of legal proof. The Court has a duty to be watchful to ensure that conjectures of suspicion do not creep into substitute legal proof. Unless the various circumstances on the chain establish clearly and completely, and there is no scope even for entertaining a reasonable doubt about the innocence of the accused, conviction should not be made. It has to be borne in mind that in a case where evidence is of a circumstantial nature, the circumstances from which conclusion of guilt is to be drawn should be in the first instance, be fully established to be consistent only with the hypothesis of guilt of the accused. They should be of a conclusive nature and should be such as to exclude every hypothesis, but the case proposed to be proved. Mahajan, J. (as the Hon'ble

Judge was then in Hanumant v. State of Madhya Pradesh AIR 1952 SC 343 : 1953 Cri LJ 129 in this regard quoted a passage containing the warning administered by Baron Aladerson to the Jury in Reg v. Hodge (1938) 2 Law 227, which was as under :

The mind was apt to take a pleasure in adopting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting to take for granted some fact consistent with its previous theories and necessary to render them complete.

The passage was referred to in Shankarlal v. State of Maharashtra AIR 1981 SC 765 : 1981 Cri LJ 325 and Jaharlal v. State of Orissa AIR 1991 SC 1388 : 1991 Cri LJ 1809.

7. In the case at hand, P. W. 1 has not only seen the accused assaulting the deceased on the canal road immediately preceding her death, but also has identified the dead body of the woman to be that of the person to have been assaulting. Soon after P. W. 2 has seen them going towards Nala while accused who holding a bicycle. P.W.1 has stated that accused was beating his wife by means of an Amari stick at the canal road and soon thereafter P. W. 2 has seen going towards Nala by walk while accused was holding a bicycle. Accused was the husband of the deceased. He was found beating her publicly on the way at the canal road and soon after he was last seen in the company of the deceased at the scene of the occurrence by P. Ws. 1 and 2. A short time thereafter dead body was recovered. No explanation has been offered by the accused as to what transpired after the accused and deceased were last seen together. The position would have been different had the relationship not existed. In Nikaram v. State of H.P. AIR 1972 SC 2077 : 1972 Cri LJ 1317 the Apex Court observed that the accused alone was with his wife in the house when she was murdered and the fact that the relationship of the accused was strained would in the absence of any explanation by him, point to his guilt. Similar conclusion was arrived at by the Apex Court in Prabhakar Jasappa Kanguni v. State of Maharashtra AIR 1982 SC 1217 : 1982 Cri

LJ 1572. The cumulative effect of the circumstance highlighted by the prosecution leaves no manner of doubt that the accused was the author of crime. Conviction and sentence as awarded suffer from no infirmity to warrant interference.

8. The appeal fails and is dismissed.

S.C. Datta, J.

9. I agree.

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