

Dharani Pradhan Vs. State

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Court : Orissa

Decided On : Oct-29-1996

Reported in : 1998(1)ALT(Cri)1; 84(1997)CLT736; 1997CriLJ2973

Judge : A. Pasayat and ;R.K. Dash, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 201

Appeal No. : Jail Criminal Appeal No. 34 of 1992

Appellant : Dharani Pradhan

Respondent : State

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

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

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. In this appeal appellant Dharani Pradhan (hereinafter referred to as 'the accused') calls in question legality of his conviction and imposition of sentence for offences punishable Under Sections 302 and 201, Indian Penal Code (in short 'IPC'). Learned Additional Sessions Judge, Sambalpur found him guilty and

sentenced to undergo imprisonment for life for the offence punishable Under Section 302, IPC and one year for the other offence.

2. Accused faced trial for allegedly having committed murder of one Kuntala Pradhan (hereinafter referred to as 'the deceased'), who happened to be sister of the accused. Law was set into motion by Sankar Be.hera (P.W. 1) who filed the First Information Report (Ext. 1) inter alia indicating that Madan Chhatria found dead body of the deceased at an isolated spot. On hearing this several persons ran to the spot, and FIR was lodged on 29-10-1990 at about 6 p. m. Investigation was handed over to the Circle Inspector by the Sub-Inspector of Police who had initially investigated into the case. Circle Inspector of Police re-examined the witnesses, arrested the accused, who confessed to have committed the murder of his sister and to have concealed the weapon of assault near a bushy jungle. He lead the police officials who seized the weapon of assault. Accused confessed to have committed the murder before Bibhuti Bhusan Dhal (P.W. 4), Bijaya Kumar Naik (P.W. 5) and Mohini Mohan Sahu (P.W. 7).

3. In order to establish its accusation, prosecution examined 20 witnesses. Accused denied the allegations and pleaded innocence.

4. Learned trial Judge found five circumstances against the accused to hold him guilty. They are (1) the confession before P.Ws. 4, 5 and 7, (2) recovery of the weapon of assault on the basis of information derived from confession of the accused, (3) seizure of incriminating materials, (4) medical evidence and (5) motive to commit the crime.

5. In support of the appeal, Mr. R.K . Bose appearing on behalf of the accused-appellant submits that the alleged confession was made before the police and, therefore is inadmissible in evidence. Recovery of the materials alleged to have been made was done after considerable lack of time from an open space which is freely accessible. Motive cannot be a ground' to hold a person guilty.

Mr. R.K. Mohanty, learned Additional Government Advocate supported the judgment of conviction and sentence.

6. 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 or 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 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 one proposed to be proved. Mahajan, J. (as the Hon'ble Judge was then) in Hanumant v. State of Madhya Pradesh AIR 1952 SC 343 : 953 Cri LJ 129 in this regard quoted a passage containing the warning administered by Baron Alderson to the Jury in *Reg v. Hodge* (1938)2 Lew CC 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 over reach 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. Extra-judicial confession which forms the foundation for conviction in the case at hand has to be discarded as the same was made in presence of police as would be evident from a reading of the evidence of P.Ws. 4 and 4. Therefore, the so called

extra-judicial confession is of no assistance to the prosecution. It is true that the extra-judicial confession, if found credible and cogent and believable can form the sole basis of conviction. But the confession in presence of police is of no evidentiary value and does not constitute legal evidence.

8. So far as the alleged recovery, is concerned, P.W. 4 has admitted that the place wherefrom alleged weapon of assault (M.O.II) was seized, as an open place, freely accessible to all. That rules out acceptability of the evidence. The residual material is medical evidence. The same nowhere connects the accused to the crime. So far as the motive is concerned, it is trite law that however strong the motive may be, that alone cannot be sufficient to fasten guilt on an accused.

9. The inevitable conclusion is that prosecution has failed to fasten guilt to the accused. Conviction and sentence, therefore, cannot stand, and are accordingly set aside. The accused be set at liberty forthwith unless he is required to be in custody in connection with any other case.

R.K. Dash, J.

10. I agree.