

Chakradhar Sahu Vs. the State

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Court : Orissa

Decided On : Jul-23-1991

Reported in : 1991CriLJ3248

Judge : D.P. Mohapatra and ;J.M. Mahapatra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 164

Appeal No. : Jail Criminal Appeal No. 102 of 1987

Appellant : Chakradhar Sahu

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : K.K. Panda, Adv.

Disposition : Appeal dismissed

Judgement :

J.M. Mahapatra, J.

1. The appeal is directed against the judgment and order dated 15-5-87 of the learned Sessions Judge, Kalahandi convicting the appellant under Section 302, I.P.C. and sentencing him to imprisonment for life.

2. Put briefly, the facts of the case are these. The appellant and the deceased belonged to the same village Dumermunda, P.S. Lanjigarh in the district of Kalahandi, and there was bad blood between both the families on account of purchase of certain lands by the father of the appellant from the father of the deceased. The appellant and his family were in cultivating possession of the said land. The deceased had never cultivated that land, but he was, however, threatening the appellant with dire consequences for his possessing the land in question. On the material date, 18-6-86 at about 10 a.m., the deceased came to the disputed land and found that the land was being cultivated by Hrushikesh, the elder brother of the appellant with the help of some labourers. He rebuked the labourers as to why they were ploughing the land. This led to exchange of words between the deceased and Hrushikesh. While the deceased and Hrushikesh were having exchange of hot words, the appellant reached the place and all of a sudden dealt several blows on the deceased on his head and neck by means of an axe he was carrying, as a result of which the deceased sustained severe bleeding injuries, and sometime after succumbed to the injuries. P.W. 1 came to know about the incident, proceeded to the spot and found the deceased lying dead on the forest road with several injuries on his neck, right cheek and left cheek. He reported the matter verbally to the Officer-in-Charge Langigarh P.S. (P.W. 16) who had camped at Khajuriguda. P.W. 16 reduced the oral report to writing as per Ext. 3. He sent the original report to Lanjigarh P.S. for registration of the case, where P.W. 14 the A.S.I, of police registered the case and drew up formal F.I.R. (Ext. 3/2). The Officer-in-charge (P.W. 16) of the P.S. immediately proceeded to the spot, held inquest over the dead body of the deceased and made some seizures, examined witnesses, despatched the dead body for postmortem examination and took various other steps in the investigation of the case. He also arrested the appellant from Bhawanipatna-Lanjigarh Bus at about 10.30 p.m. and forwarded him in custody to Court. He made a prayer for recording the confessional statement of the appellant, and P.W. 15, Judicial Magistrate, First Class, Madanpur-Rampur stationed at Bhawanipatna recorded the confessional statement of the appellant as per Ext. 13 on 21-8-85. On completion of investigation, P.W. 16 submitted charge sheet against the appellant. The appellant being committed to the Court of Session stood his trial for the offence of murder of

the deceased, and was convicted and sentenced to life imprisonment as indicated earlier.

3. The plea of the appellant at the trial is one of total denial. He has also denied to have made the confessional statement before the Judicial Magistrate, First Class (P.W. 15).

4. In order to prove its case, prosecution has examined as many as 16 witnesses of whom P.W. 1, the brother of the deceased is the informant, P.Ws. 2 to 5 eye-witnesses to the incident, P.W. 11 the medical officer, Lanjigarh hospital who conducted autopsy on the dead body of the deceased, P.W. 15, Judicial Magistrate, First Class, who recorded the confessional statement of the appellant. P.W. 16 is the Investigating Officer of the case, while other witnesses P.Ws. 6 to 10, 12, 13 and 14 are formal witnesses, some of them being witnesses to seizure and inquest. Prosecution case rests on the ocular testimony of the eye-witnesses P.Ws. 2 to 5 and the confessional statement of the appellant made before the Magistrate, P.W. 15. Learned trial Judge has accepted the prosecution case relying on the ocular testimony of eyewitnesses P.Ws. 2 to 5, the evidence leading to discovery of the weapon of offence and the confessional statement of the appellant. He has analysed the ocular testimony of the eyewitnesses P.Ws. 2 to 5 and found that they are reliable witnesses, not being interested with the prosecution or inimical to the appellant. From the direct evidence of P.Ws. 2 to 5, the learned Judge found that it was the appellant and none else who dealt the fatal blows on the deceased. He has also elaborately discussed the evidence as to the judicial confession of the appellant recorded by P.W. 15 and found the same to be acceptable. As to the evidence leading to the discovery of weapon of offence, learned trial Judge, however found that the evidence of the seizure witnesses P.Ws. 9 and 10 and that of the Investigating Officer, P.W. 16 do not spell out that the evidence could be treated as one under Section 27 of the Evidence Act. He, therefore, did not accept this item of evidence as incriminating. Relying, however, on the ocular testimony of the eyewitnesses P.Ws. 2 to 5 and the judicial confession of the appellant, though retracted at the trial stage, the learned trial Judge, found the appellant guilty of the offence of the commission of the murder of the deceased.

5. Before dealing with the ocular testimony of the eye-witnesses and the confessional statement of the appellant, we propose to take up the medical evidence of P.W. 11, who held post mortem examination on the dead body of the deceased. The doctor found the following five injuries on the person of the deceased:

1. Cut injury of size 2' x 1' x 1/4' on left side neck 1' below left ear.
2. Gut injury of size 2 1/2' x 3/4' x 1/2' on right side of neck extending from tragus of right ear posteriorly downwards, cutting the cartilage of pinna of ear.
3. Cut injury of size 3' x 1/4' x 1/2' on right side back of neck just above middle of neck.
4. Cut injury of size 2 1/2' x 1' x 1' on left shoulder 3' medial to left shoulder joint.
5. Cut injury cutting the whole of the neck excluding a portion of skin of posterior side of neck 1' above the sternoclavicular joint anteriorly on sixth cervical vertebra by which important structures like common carotid arteries, Trachea, oesophagus vagus nerbs, thyroid gland, spinal cord six cervical vertebra, are cut.

According to the doctor, Injury No. 5 was grievous, while other injuries were simple and that injury No. 5 was sufficient to cause the death of a person. All the injuries according to him were ante-mortem in nature and possibly by a heavy sharp cutting weapon like axe, M.O. VIII. In cross-examination it is elicited from the doctor that the blade of the axe M.O. was 2' and that by a single blow with M.O. VIII injury No. 5 cannot be caused. He was of the opinion that by multiple strokes injury No. 5 can be caused by M.O. VIII, but he has not mentioned in his report that he found multiple irregular margins in injury No. 5. According to him, no blood stain was also noticed on the axe M.O. VIII. He has denied the defence suggestion that injuries Nos. 1 to 4 were not possible by axe M.O. VIII. The medical evidence of the doctor P.W. 11, as discussed above thus leaves no room for doubt that the death of the deceased was homicidal. Learned counsel for the appellant has not disputed this position during the hearing of the appeal.

6. Coming to the ocular testimony of the eye-witnesses P.Ws. 2 to 5, we find that P.W. 2 has deposed in his evidence to have seen the appellant dealing one axe blow near right side head, on the ear of the deceased and that while the second blow was attempted he left the spot out of fear. According to P.Ws. 3 and 4, who worked as labourers of Hurshikesh, the brother of the appellant, for cultivation of their land, the appellant dealt two axe blows on the right side head near the ear, and they also left the place out of fear, and did not see any other assault. P.W. 5, an independent witness of the village, has stated that while he was on his field and uprooting seedlings, he heard exchange of words between the deceased and Hrushikesh, and on hearing this he looked back and found the deceased lying on the ground and the appellant dealing axe blows on the deceased. He has not said as to how many blows the appellant dealt on the deceased. All these four eye-witnesses, P.Ws. 2, 3, 4 and 5 have been cross-examined at some length. Nothing substantial has been elicited in their cross-examination to discredit their testimony. Of course P.Ws. 2, 3 and 4 do not claim to have seen five blows being dealt by the appellant on the deceased, but the evidence of P.W. 5 is clear that he found more than one blow being dealt on the deceased by the appellant. It also transpires from the evidence of P.Ws. 2, 3 and 4 that in their previous statement before the Investigating Officer as also before the Magistrate, recorded under Section 164, Cr. P.C. that they did not state the specific number of blows that were dealt by the appellant on the deceased, but they categorically stated about the appellant's dealing axe blows to the deceased. We have carefully scrutinised the evidence of the four witnesses, P.Ws. 2 to 5 and we do not find any reason to disbelieve their testimony as to the complicity of the appellant in the crime. The evidence of these four witnesses, read as a whole, is very clear and categorical that it was the appellant and none else who dealt axe blows on the deceased resulting in his death. As to the seat of injuries on the person of the deceased as noticed by the doctor, P.W. 11, we also find corroboration from the testimony of the eye-witnesses P.Ws. 2 to 5. On the aforesaid analysis, we find no reason to disagree with the finding of the learned trial Judge that the ocular testimony of the four witnesses would suffice to hold that the appellant was the author of the crime.

7. Coming to the evidence of the retracted judicial confession, we find from the evidence of the Judicial Magistrate, First Class (P.W. 15) as also from the

confessional statement, Ext. 13 that before recording of the confession all precautions and safeguards were taken by P.W. 15 to ensure that the confession was voluntary and free from any inducement, threat or promise. We therefore find no reason as to why the confessional statement should not be accepted as a piece of evidence against the appellant. Learned counsel for the appellant relying on two decisions of the Supreme Court and a Bench decision of this Court, namely, AIR 1978 SC 1248 : (1978 Cri LJ 1251), (Shankaria v. State of Rajasthan), AIR 1978 SC 1544 : (1978 Cri LJ 1614), (Davendra Prasad Tiwari v. State of Uttar Pradesh), and (1985) 59 Cut LT 391 (Sukri Janiani v. The State), has sought to contend that the confessional statement was not voluntary and free from police influence. As to the police influence, he has drawn our attention to the confessional statement, Ext. 13, wherein at the first page in paragraph 2 it is recorded that the accused was placed in charge of police constable Kanti Dani. To satisfy ourselves the implication of this writing, we perused the evidence of the Magistrate, P.W. 15, who had recorded the statement. P.W. 15 has deposed in his evidence that the appellant was first produced before him on 20-8-86, on which date he gave due warning and remanded him to jail custody for cool reflection. On the next day, 21-8-86, the appellant was again produced, and he gave requisite warnings as he had enumerated in his report, Ext. 13. He has specifically stated that no police officer was present at the time of recording of the statement of the appellant, and that only his court peon was guarding the appellant. In cross-examination, however, it is elicited that the Court constable Kanti Dani whose name finds place in the statement, Ext. 13, had produced the appellant in the Court. The evidence of P.W. 15, read in its proper context, does not therefore, indicate that the constable Kanti Dani was present when the statement of appellant was being recorded by him. The Court constables are usually in charge of the under trial prisoners who are produced in Court and who are taken out from the Court either to the police custody or to jail custody. In the printed form meant for recording the confessional statement under Section 164, Cr. P.C. it is mentioned in para (2) as follows:--

'(2) The accused is placed in charge of police constable Kanti Dani, No. 16. I have satisfied myself that there is no Police Officer in the Court or any place whence the proceedings can be seen or heard except the above named Kanti Dani who has not been concerned in the investigation of the crime or in the arrest or prosecution

of the accused.'

No doubt from the language used in the printed form it would appear that Kanti Dani was present inside the Court hall at the time of the recording of the statement, but the Magistrate recording the confession has clearly stated that Kanti Dani only produced the accused in Court, and that at the time of the recording of the statement no police officer was present, and that only the Court peon was guarding the accused. Considering the evidence of the Magistrate, which is undoubtedly a substantive piece of evidence, and which in our view clarifies the position stated in paragraph 2 of the printed form meant for recording the confessional statement, we do not agree with the contention raised that the police constable was physically present inside the Court hall at the material time. On the side of the appellant no specific suggestion has been put to the Magistrate about the presence of Kanti Dani or of any other police officer inside the Court room at the time of recording of the statement. On the aforesaid analysis, we are unable to hold that the statement was recorded in presence of any police officer. From the various questions put to the appellant before recording of the statement as also from the certificate appended at the bottom of the statement to record the satisfaction of the Magistrate to show the reason for his belief as to why the statement was voluntary, we are satisfied that the statement of the appellant was really voluntary. At least from one of the questions put by the Magistrate, this position appears to be rather clear. To the question put by the Magistrate as to why the appellant decided to make the statement, the appellant replied that he wanted to speak out the truth. Considering the sum-total of the materials on record, we are therefore of the view that the confessional statement of the appellant recorded under Section 164, Cr. P.C. was really voluntary and free from police influence. It cannot therefore be said to have suffered from any infirmity.

In his statement the appellant has stated that on the previous Monday at about 9.30 a.m. the appellant killed the deceased Nakula on the Dumermunda road by means of a Tangia and that he dealt five blows by means of the Tangia.

8. Coming to the authorities relied upon on behalf of the appellant (supra), we find that all the aforesaid decisions lay down the tests as to when a retracted

confession recorded under Section 164, Cr. P.C. can be acted upon by a Court. In both the decisions of the Supreme Court (*supra*), conviction of the appellant was based on the solitary item of evidence, namely, the judicial confession of the accused. Their Lordships in the earlier decisions have said that it is well settled that a confession is voluntary and truthfully made is an efficacious proof of guilt. The Courts have been enjoined upon to apply a double test namely, (1) whether the confession was perfectly voluntary, and (2) if so, whether it is true and trustworthy. Their Lordships have enjoined that if both the aforesaid tests are proved, the Court would be justified to pass the conviction of the accused. On the facts of the case, their Lordships upheld the conviction of the appellant on the finding that the confession of the appellant was true and voluntary. In the latter decision of the Apex Court, their Lordships did not accept the confessional statement to be voluntary for three infirmities found therein, namely,

- (1) there was no contemporaneous record to show that the appellant was actually kept in jail as ordered by Judicial Magistrate;
- (2) the Judicial Magistrate who recorded the confessional statement of the appellant did not question him as to why he was making the confession, and
- (3) there was also nothing in the statement of the said Magistrate to show that he told the appellant that he would not be remanded to the police lock up even if he did not confess his guilt.

Learned counsel for the appellant has sought to contend that as the confessional statement as per Ext. 13 suffers from the infirmities pointed out by their Lordships in the aforesaid decision, it cannot be said to be acceptable. On going through the record, we find that there is substantial compliance of these three conditions referred to by their Lordships. We would, therefore, find that the infirmities not being there in the statement of the appellant recorded by P. W. 15 as per Ext. 13, there is no reason as to why it should not be accepted as true and voluntary. We would like to add that the truth of the confessional statement has been amply borne out from the fact that P. Ws. 2 to 5, the eye-witnesses to the incident have amply corroborated that the appellant had dealt Tangi blows to the deceased. Coming to the third authority, namely, (1985) 59 Cut LT 391 (*supra*), we would

notice that it is clear distinguishable on facts, and as such it would not be of any assistance to the appellant. No doubt, there is no quarrel over the position of law laid down in the aforesaid decision, that is, with regard to the mode of recording of confessional statement as enjoined in Section 164, Cr. P.C. read with G.R. & C.O. (CrI.) Volume-I, Chapter VIII, Part-1. In the aforesaid case, however, there being certain glaring infirmities in the recording of the statement, no reliance was placed on the statement, and consequently it was not accepted as a piece of evidence against the accused.

9. In the light of our discussions in the foregoing paragraphs, we would hold, while agreeing with the learned trial Judge that the ocular testimony of the eye-witnesses P. Ws. 2 to 5 and the judicial confession of the appellant, though retracted, would go to prove the guilt of the appellant beyond all reasonable doubt. The learned trial Judge is, therefore, perfectly justified in holding the appellant guilty of the offence of murder of the deceased and convicting him under Section 302, I.P.C. and awarding him life sentence.

10. In the result, we find no merits in this appeal which is accordingly dismissed. The conviction and sentence of the appellant are hereby affirmed.

D.P. Mohapatra, J.

11. I agree.

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