

Prasanta Kumar Chhotray Vs. State of Orissa

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Court : Orissa

Decided On : Jun-19-2008

Reported in : 2008CriLJ4268

Judge : P.K. Tripathy and; N. Prusty, JJ.

Appellant : Prasanta Kumar Chhotray

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. G. S. Pani

Disposition : Appeal dismissed

Judgement :

1. Heard argument from the parties, hearing is concluded and the judgment is as follows:
2. Order of conviction under Section 302/201, I.P.C. and sentence of imprisonment for life imposed against the accused/ appellant by learned Second Additional Sessions Judge, Puri in S. T. Case No. 1/384 of 1998-97 is under challenge.
3. Sarat Chandra Chhotray (hereinafter referred to as 'deceased') and Prasanta Kumar Chhotray (hereinafter referred to as 'accused') are two amongst four brothers. The occurrence took place in the night of 3-6-1997. By then deceased was serving as a Teacher in the district of Koraput and was trying for his transfer

to Bhubaneswar. He had come to his native place during the summer vacation and was staying at Puri together with the accused and other inmates. On 3-6-1997 deceased together with the accused went to Bhubaneswar to pursue the matter relating to transfer. They went in a Yamaha motor-cycle bearing Registration No. OSF-4325. On the following day, i.e., on 4-6-1997, local police was intimated by the Grama Rakhi (PW 4) about a headless dead body lying near a bridge between Kumbharapada and Nadakhanda. Investigation was taken up, and in course of the investigation accused was found to be the prime suspect and he was arrested by police. While in police custody, accused led the investigating agency in presence of the witnesses to give discovery of the blood-stained wearing apparels of the deceased, which was seized under the Seizure List-Ext. 11/1. Similarly, on leading to such discovery, a 'Katari' was discovered and seized under Seizure List, Ext. 1/1. On 5-6-1997, after returning to the house, accused had given about Rs. 10,000/- to the wife of the deceased (P. W. 5), which was seized under Seizure List-Ext. 12/1. That money had been taken by the deceased while going with the accused to Bhubaneswar. On the query made by P.W. 5 and other family members about the whereabouts of the deceased, accused had stated to them that in the evening of 3-6-1997 deceased returned to Puri in that Yamaha motor-cycle. In course of the investigation it was found that accused sold that motor-cycle to P.W. 15 on 5-6-1997 and delivered possession on receipt of Rs. 1,000/- (one thousand) out of the settled sale price of Rs. 15,000/- (fifteen thousand). After making the aforesaid purchase, P.W. 15 gave that motor-cycle in the garage of P.W. 17, wherefrom it was seized. The stains in the motor-cycle were suspected to be blood stain and the scraping thereof were collected and seized under Seizure List, Ext. 22. The missing head of the dead body of the deceased could be traced out on 5-6-1997 morning after a thorough search of the nearby areas. The head was tallied with the trunk and found matching to that and thereafter the dead body was shown to the family members of the deceased including the accused and all of them identified the dead body to be that of the deceased Sarat Chandra Chhotray. On police requisition post-mortem examination was conducted on the dead body of the deceased (both trunk and head) by Dr. Sarbeswar Acharya (PW 8), who proved the post-mortem Report, Ext. 7. In course of the investigation other incidental steps were taken for seizure of other articles like blood stained earth,

sample earth, etc., examination of witnesses, requisition of services of the Executive Magistrate for inquest, etc. On completion of the investigation, charge sheet was submitted against the accused. On the basis 'of the materials on record, charge was framed under Section 302, I.P.C. for committing murder of the deceased at about 9.30 p.m. on 3-6-1997. Charge under Section 201, I.P.C. was framed against him for throwing the severed head of the deceased into water with a view to screen himself (by the accused) and charge under Section 379, I.P.C. was framed for dishonestly removing cash of about Rs. 10,000/- from the possession of the deceased.

4. Accused took the plea of complete denial.

5. In furtherance of the charge, prosecution examined two witnesses and exhibited series of documents marked Exts. 1 to 26 and relied on the wearing apparels, weapon of offence and the Yamaha motorcycle, vide M. Os. I to XI. No defence evidence was adduced by the accused.

6. Admittedly there was no eye-witness to the occurrence and the case of the prosecution totally rests on circumstantial evidence. Learned Additional Sessions Judge, taking note of all such evidence (as indicated above), recorded that the chain of circumstance made out from the discovery under Section 27 of the Evidence Act together with the report from the State Forensic Science and Laboratory, Exts. 18 and 19, and the conduct of the accused all-throughout in course of that occurrence are sufficient enough to bring home the charge against him for the offence under Section 302/201, I.P.C. Accordingly, he convicted the accused thereunder, but acquitted him of the charge under Section 379, I.P.C., since the money was returned to P.W. 5. For the aforesaid conviction, trial Court sentenced the accused to imprisonment for life and no separate sentence was passed for his conviction under Section 201, I.P.C.

7. Mr. G. S. Pani, learned Counsel for the appellant argues that notwithstanding availability of the above noted circumstantial evidence, still there remains a doubt about complicity of the accused with the alleged crime, inasmuch as the prosecution has not proved that M. O.-I is the weapon of offence, which was used to kill the deceased. He further argues that recovery of the 'Katari' was made from

the pond on the third day and the pond being accessible to the general public, recovery of M. O.-I cannot be regarded as incriminating against the accused or evidence in support of the prosecution. He further argues that there is no evidence worth the name about any misunderstanding or enmity between both the brothers so that the accused could have killed the deceased in such a ghastly manner, and under such circumstance benefit of doubt arising out of the situation should be extended to the accused and he may be acquitted.

8. Mr. A.K. Mishra, learned Standing Counsel on the other hand argues that appreciation of the evidence by the trial Court has proceeded on sound principle of law. The circumstances which are emerging through evidence adduced in the trial Court are more than sufficient to complete the chain of circumstances and to exhibit the apparent conduct of the accused in taking steps to screen himself by throwing the head of the dead body to water besides concealing the wearing apparels and weapon of offence. He argues that though M.O.-I was not sent to P.W. 8 for opinion report, but the unchallenged evidence of P.W. 20 relating to discovery of the weapon of offence at the instance of the accused stating that to be the weapon of offence, and the opinion of PW 8 about the nature of the weapon which could have been used in inflicting injuries are sufficient to concur with the findings of the trial Court without disturbing it and that there is no iota of doubt or mysterious circumstance existing on record so as to grant any benefit to the accused. Accordingly, he argues to dismiss the appeal.

9. We peruse the evidence and the findings recorded by the trial Court and consider the same together with the above-noted contention raised by the parties. It appears from the evidence of PW No. 8 that on police requisition he conducted post-mortem examination one after the other on the severed head and the headless trunk of the deceased and proved the reports (postmortem) Exts. 6 and 7. It further appears from his evidence that he found the head at the level of closely below the chin had been severed producing a cut lacerated injury of 6' x 4'. There were two incised wounds, one cutting the chin to left angle of underlying jaw bone and the other one over the right pinna. He also found four incised wounds on both the shoulders and left side of chest besides a stab wound on the left chest above nipple. In paragraph-6 of the impugned judgment, trial Court has taken care

to note the number of injuries, which were available both on the severed head and the trunk of the deceased. All such injuries were incised wounds, that mean cut injuries. P.W. 8 opined that such injuries are possible by blunt cutting object with sharp, broad and pointed end. M. O.-I has all such features. P.W. 8 unhesitantly opined that the deceased suffered homicidal death. That opinion of P.W. 8 remains undisputed. This becomes the first of the circumstances, which goes against the accused/appellant.

10. Admittedly, on 3-6-1997 accused and the deceased went together on the Yamaha motor-cycle. Accused returned to the house on 5-6-1997 and the deceased suffered homicidal death in the night of 3-6-1997. Accused stated to PW-5 and other family members that on 3-6-1997 itself the deceased returned to the house in that Yamaha motor-cycle (through the prosecution evidence as narrated above). When the identity of the dead body is proved to be of the deceased, that goes to show that the deceased suffered homicidal death in the night of 3-6-1997. To that effect is also the evidence of P.W. 1, who is neither an eye-witness to the occurrence nor has seen any part of the crime except hearing the sought 'MARIGALI' and coming out and seeing from a distance that a motor-cycle was going away. The motorcycle if was taken by the deceased as per the version of the accused and when the accused did not return to home either in the night of 3-6-1997 or throughout the day of 4-6-1997, then how could he get possession of the motor-cycle to be sold to P.W. 15 on 5-6-1997. That circumstance goes to indicate that the explanation offered by the accused to P.W. 5 and others is false one when he stated that deceased returned to the house in that Yamaha motor-cycle. This circumstance is also in furtherance of the chain of circumstances pointing to the guilt of the accused.

11. Accused gave discovery of the wearing apparels of the deceased stained with blood so also there were blood stains on the Yamaha motor-cycle and the scrapings were collected after seizure of the motor-cycle. Amongst other seized articles, these articles were tested in the State Forensic Science and Laboratory and the Chemical Analysis and the Serologists have concurrently opined in their reports (Exts. 18 and 19) that the aforesaid three articles were containing Group-B human blood. By the aforesaid evidence the circumstance indeed thickens against

the accused in furtherance of the charge under Section 302, I.P.C.

12. If the deceased returned in the night of 3-6-1997, there was no reason for the accused to possess the cash taken by the deceased and to return the same to P.W. 5 on 5-6-1997.

13. Therefore, all these aforesaid facts and circumstances one after the other rules out possibility of any other person to be responsible for the homicidal death of the deceased other than the accused.

14. As it has been time and again stated by the Apex Court and this Court that human mind is mysterious and therefore in a proved case of murder no benefit should go to the accused for want of proof of motive (see the case of Mulakh Raj v. Satish Kumar AIR 1998 SC 1175) (sic), therefore in this case lack of proof of the motive cannot be a reason to grant any benefit to the accused.

15. For the reasons recorded above, we concur with the findings and the conclusions recorded by the trial Court, and accordingly dismiss the Jail Criminal Appeal being devoid of merit.

16. Before parting with the case, we record our appreciation on the diligent and intelligent participation of Mr. Pani, learned advocate, in presenting the case on behalf of the appellant.