

Manindra Majhi Vs. State

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Court : Kolkata

Decided On : Apr-24-2006

Reported in : 2006(3)CHN796

Judge : Alok Kumar Basu and ;Pranab Kumar Deb, JJ.

Acts : Evidence Act - Section 27; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 302 and 320

Appeal No. : C.R.A. No. 257 of 1988

Appellant : Manindra Majhi

Respondent : State

Advocate for Def. : Ranjit Kumar Ghosal, Adv.

Advocate for Pet/Ap. : Kishore Mukherjee, ;Ashok Biswas, ;Abhra Mukherjee, ;Mithu Mondal and ;Partha Pratim Das, Adv.

Disposition : Appeal allowed

Judgement :

Alok Kumar Basu, J.

1. The present appeal was of the year 1988 challenging the order of conviction and sentence recorded against the present appellant by the Id. Sessions Judge,

Purulia on 25th May, 1988 in connection with Sessions Trial No. 16 of 1987 corresponding to Sessions Case No. 104 of 1984.

2. We have heard both Mr. Mukherjee and Mr. Ghosal appearing for the appellant and the State-respondent respectively and after hearing the Id. Advocates of both the sides, we are inclined to dispose of this appeal by delivering the judgment in open Court.

3. The shadow of superstition over witch-hunting said to be prevalent in the 16th Century still today raises its ugly head in the remote villages of our country which is very much reflected in the prosecution case relating to the present appeal.

4. One Mejhan Majhi, wife of Sarkar Majhi, of village Mejhidah, Tola Rajekhanda under the P.S. Puncha in the district of Purulia was mercilessly murdered by severing her head from the body in the room of said Mejhan Majhi on 24th January, 1983. Receiving the information of murder of said Mejhan Majhi from her husband, Sarkar Majhi, Puncha Police Station started the present case and on completion of investigation submitted the chargesheet against one Upendra Majhi and the present appellant, Manindra Majhi, on the allegation that both of them had conspired to kill Mejhan Majhi, as according to their view, she was a witch causing damage to the life of their family members and out of that conspiracy, on the date of occurrence, both Upendra Majhi and the present appellant, Manindra Majhi, in furtherance of their common intention actually killed Mejhan Majhi by coming inside her room.

5. It is pertinent to mention that at the time of trial, Upendra Majhi was absconding and for that reason the Id. Sessions Judge, Purulia commenced the trial against the present appellant only and the charge was framed to the effect that the present appellant sharing common intention with Upendra Majhi killed Mejhan Majhi and in the alternative the present appellant shared a criminal conspiracy with Upendra Majhi in the commission of the murder of said Mejhan Majhi.

6. The present appellant denied the prosecution charge and pleaded his innocence and claimed for trial. The prosecution side during trial examined in all 13 witnesses including the FIR maker and the husband of the deceased woman,

her only son, some villagers, the IO, one police constable who was the witness to the seizure and the doctor who conducted the P.M. examination. Unfortunately, in this case most of the public witnesses including the husband and the son of the deceased woman became hostile to the prosecution.

7. From close reading of the judgment impugned in this appeal, it is found that the Id. Sessions Judge was very much aware of the record that all the important witnesses examined by the prosecution became hostile to the prosecution and those witnesses included the P.W. 1 and P.W.3. who were the only eye-witnesses to the occurrence.

8. The Id. Sessions Judge, however, relying on the cross-examination of the P.W. 1 done by the P.P.-in-Charge of the case and with reference to the P.M. report and the statement of the doctor conducting the P.M. report, came to the conclusion that the fact that Mejhan Majhi was brutally murdered by severing her head was undisputed and can never be challenged by the defence. The Id. Judge also relying on the cross-examination of P.W. 1 further observed that both the appellant and Upendra Majhi considered his wife, deceased Mejhan Majhi, as a witch for which they conspired to kill her.

9. The Id. Judge after relying on the statement of P.W. 1, given during cross-examination, therefore, found no difficulty to support the prosecution case that Mejhan Majhi was killed in her own room on the date as mentioned in the FIR and Upendra Majhi and Mahindra Majhi had a positive role in the brutal murder of Mejhan Majhi.

10. The Id. Judge, therefore, took into consideration the testimony of the IO the P.W. 11, who had been at the place of occurrence on receipt of the FIR from the P.W. 1 and who conducted the inquest over the deadbody of Mejhan Majhi found in the room of the P. W. 1. The Id. Judge noticed from the testimony of the P.W. 11 that during investigation he found both Upendra Majhi and Manindra Majhi in the room of Upendra Majhi and both of them were arrested by him and soon after the arrest of Manindra Majhi, Manindra gave a statement leading to the recovery of an axe from the room of Upendra Majhi.

11. The Id. Judge relied on the testimony of the P.W.9, a police constable, who was present at the time of recording of the statement of Manindra Majhi by P.W. 11 and who was also present when Manindra Majhi brought out the axe from the room of Upendra Majhi.

12. The learned Sessions Judge thus relying on the statement of the P.W. 1 to get support regarding the factual aspect of the prosecution case mainly banked upon the statement of the P.W. 11 corroborated by the P.W. 9 and the recovery of the axe at the instance of Manindra Majhi to come to the conclusion that even if there was no positive evidence to hold Manindra guilty under Section 320/120B of the IPC, the prosecution successfully proved beyond any shadow of doubt that Manindra Majhi actively participated in the murder of Mejhan Majhi along with Upendra Majhi and his statement leading to the recovery of the axe which was used in the murder of the victim lady was sufficient to support this conclusion. The Id. Judge, therefore, recorded an order of conviction against the present appellant under Section 302/34 of the IPC and the appellant was accorded sentence to suffer RI for life.

13. Appearing for the appellant, Mr. Mukherjee, has at the outset ridiculed the very finding of the Id. Judge on the sole ground that the Id. Judge did not at all care for the legal evidence which is required to sustain an order of conviction in our system, of criminal justice. Mr. Mukherjee contends that it is an accepted legal proposition followed by decades that suspicion, however strong that might be, cannot be taken as a substitute for legal evidence and evidence which is admissible under the Indian Evidence Act can never be considered by a Presiding Judge while deciding the merit of a case and the Presiding Judge can sustain his order of conviction only on the basis of the legal evidence and not by acting on suspicion or by conjecture and surmise.

14. Mr. Mukherjee contends that recording of an order of acquittal in respect of criminal conspiracy itself shows that the Id. Judge was in strong doubt about the veracity of the prosecution case and he did not place any reliance on the contents of the FIR itself.

15. Mr. Mukherjee contends that in his examination-in-chief the P.W.1, the husband of the deceased lady, clearly stated during trial that Manindra Majhi never came when Upendra Majhi entered into the room and the P.W. 1 never uttered a word that he had ever seen Manindra Majhi to carry an axe.

16. Mr. Mukherjee contends that it is really unfortunate that although the P.W. 1 at the end of his cross-examination categorically stated that he made no statement before the IO as reproduced before him during his cross-examination by the Id. P.P. the Id. Sessions Judge accepted such statement as a valid piece of legal evidence and relied on such evidence to support his order of conviction which was totally against the accepted principle of law.

17. Mr. Mukherjee contends that apart from the statement of P.W. 1, the Id. Judge also placed his reliance on the statements of P.W. 11 and P.W. 9 to support the prosecution case that Manindra Majhi actually brought out the axe from the room of Upendra Majhi. He also contends that there is nothing on record to support the prosecution case that any axe was used in the murder of the deceased lady and there is nothing in evidence to support the prosecution case that Manindra carried an axe and in such a background even the axe was recovered pursuant to the statement of Manindra, no conviction order can be made acting on such an isolated piece of evidence, when the F.I.R. maker and the alleged eye-witness did not lend any support to the prosecution case.

18. Mr. Mukherjee contends that the statement given by the accused before the police officer is not admissible and only that part of the statement which actually resulted in recovery of an axe relating to the commission of the offence is relevant under Section 27 of the Indian Evidence Act and in this particular case when the accused in question cannot be related to the commission of the offence, the alleged statement of Manindra given before the IO, the P.W. 11, has got no legal value.

19. Mr. Mukherjee concludes that in the present case the Id. Judge practically had no evidence before him but only acting on conjecture and surmise, he sustained the order of conviction against the present appellant and the same is liable to be set aside in the interest of justice and fair trial and following the cardinal principle

of criminal justice system.

20. Mr. Ghosal supporting the present judgment has taken us through the entire judgment of the Id. Judge to appraise us of the logic and reason which prompted the Id. Judge to record the order of conviction. Mr. Ghosal contends that the prosecution case as narrated by the P.W. 1 in his FIR was however denied by the P.W. for some reason or other but, that will not throw away the entire prosecution case which is otherwise acceptable from the surrounding facts and circumstances.

21. Mr. Ghosal contends that the IO, the P.W. 11, while holding the inquest report noticed the beheaded body of the wife of the P.W. 1 inside the room of the P.W. 1 and the doctor while conducting the P.M. examination supported that the body of the victim suffered several sharp-cutting injuries and the head was totally severed from the body. Mr. Ghosal contends that the inquest report and the P.M. report along with the FIE support the prosecution case that the victim lady was murdered inside her room.

22. Mr. Ghosal submits that at the time of investigation the present appellant was found in the room of Upendra Majhi and from the evidence- on-record it is available that Upendra gave a fatal blow to the victim woman and during investigation and while under the custody, Manindra Majhi, the present appellant, brought out the axe from a place within his special knowledge and this act of recovery of an instrument connected with the commission of the murder was sufficient for the Id. Judge to hold conclusively that the present appellant shared a common intention with Upendra Majhi and in furtherance of that common intention both of them committed the murder of the victim lady and accordingly there is nothing wrong in the order of conviction and sentence recorded against the appellant.

23. We have considered the submissions of both Mr. Mukherjee and Mr. Ghosal in the backdrop of the prosecution evidence.

24. We find from the record that unfortunately in this particular case the main witnesses who could have supported the prosecution case, became hostile and they were none less than the husband and the son of the unfortunate housewife

who was murdered brutally.

25. P. W. 1, the husband of the victim lady, totally denied the involvement of the present appellant in any manner and the P.W. 3, his son, went a step forward by stating that some unknown thieves entered into their house and committed the murder and both he and his father were absent at the relevant time. The other local people who were examined by the IO during investigation and who subsequently came before the Id. Trial Court did not support the prosecution case in any manner.

26. It is true that according to the statement of the IO, the P.W. 11, during his investigation when he found the present appellant in the room of Upendra Majhi, this appellant gave a statement and pursuant to that statement an axe was recovered and according to the IO, that axe was also used for commission of the murder of the victim lady and the Id. Judge wanted to connect the statement of the IO along with the recovery of axe to reach his own conclusion that the present appellant was also involved in the commission of the murder of the victim lady.

27. Having regard to the submissions made by Mr. Mukherjee in support of the present appeal and challenging the order of conviction and sentence, it will be our sincere endeavour to point out whether the Id. Judge was legally justified in convicting the present appellant relying on the evidence as we have already disclosed.

28. We have already mentioned that the P.W. 1 and P.W. 3, the husband and the son of the victim lady respectively, did not support the prosecution case regarding involvement of the present appellant in the commission of the murder and the P.W. 1 in very categorical term stated before the Court that Manindra Majhi never visited his house on that relevant date.

29. We fully support the contention of Mr. Mukherjee that there is no scope for the Id. Judge to place any reliance on the cross-examination of the P.W. 1 where he categorically stated that he made no statement to the IO which was referred to him by the P.P.-in-Charge.

30. When we find that there is no evidence to hold that Manindra Majhi ever carried any axe or he was ever present in the room, we really are at a loss how to connect the alleged recovery of the axe with the commission of the crime and thereby to connect Manindra Majhi with the commission of the murder as alleged by the prosecution.

31. Thus, after close scrutiny of the entire prosecution evidence, we are inclined to hold that the Id. Judge recorded his conviction against the present appellant simply on conjecture and surmise and acting mostly on inadmissible evidence and such a conviction order, therefore, cannot be supported either in fact or in law.

32. Accordingly, we find sufficient merit in the present appeal and we allow the same.

33. The appeal is, therefore, allowed and the order of conviction and sentence recorded against the appellant under Section 302/34 of the IPC is hereby set aside and the appellant stands acquitted of the charge under Section 302/34 of the IPC.

34. Since the appellant is on bail, he is discharged from his bail bond with immediate effect.

35. Send a copy of this judgment and order along with the LCR to the Id. Trial Court immediately for information and record.

36. Urgent xerox certified copy of this judgment and order, if applied for, be supplied to the appellant, immediately after complying with all the legal formalities.

Pranab Kumar Deb, J.

37. I agree.