

Marshal Baru. Vs. State of OrissaA.

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Court : Orissa

Decided On : Apr-09-2010

Judge : Pradip Mohanty; B.K.Nayak, Jj.

Acts : Indian Penal Code (IPC) - Section 302.

Appeal No. : JCRA NO. 29 OF 2000.

Appellant : Marshal Baru.

Respondent : State of OrissaA.

Advocate for Def. : Mr. Jyoti Prakash Pattnaik, Adv.

Advocate for Pet/Ap. : M/s.B.K.Ragada; L.N.Patel; N.K.Das, Adv.

Judgement :

1. This Jail Criminal Appeal is directed against the order dated 23.9.1999 passed by Sri B.K.Mishra, the learned Additional Sessions Judge, Jharsuguda in S.T. Case No. 282-47 of 1998-99 convicting the appellant under Section 302 and sentencing him to undergo R.I. for life.

2. The case of the prosecution is that the deceased Basanti Baru was the sister of the informant Abraham Das (P.W.1), who married to the accused-appellant, a resident of village Tingismal, in the year 1986, and out of their wedlock, they were blessed with two sons and one daughter. As the accused-appellant was working in mines, he was living with his deceased-wife and children in Bundia colony. On

27.3.1998, at about 5:00 PM, when P.W.1 got information that his sister Basanti Baru had died, he proceeded to the village Tingismal i.e. the house of his sister and found her sister lying dead. When P.W.1 made query as to how his sister died, the accused-appellant told him that his sister died of Cholera last night and after saying so, the accused-appellant escaped from his house. Thereafter, the appellant could not be traced in spite of search and P.W.1 having found some marks of injuries on the neck, chest and leg of the deceased and suspecting foul play on the death of deceased Basanti Baru, lodged an information before the S.I. of Police, Rampur Out Post. On receipt of such information, Rampur Out Post U.D. Case No.1 of 1998 was registered and inquiry was taken up. During inquiry, the Investigating Officer namely Nagarjuna Pradhan (P.W.10) visited village Tingismal and conducted inquest over the dead body and sent the same for Post Mortem examination where after the U.D. case was turned to a case of murder and ultimately after completion of the investigation, charge sheet was filed against the present accused-appellant u/s 302 I.P.C.

3. The plea of the accused is that of a complete denial of the allegations.

4. In order to prove its case, the prosecution has examined as many as ten witnesses including the doctor and the I.O and exhibited fourteen documents and the defence has examined none. The Trial Court framed charge against the present accused-appellant u/s 302 and 201 I.P.C and after conclusion of trial, while acquitting the appellant of the charge u/s 201 I.P.C, convicted him u/s. 302 I.P.C and sentenced him to undergo imprisonment for life basing on the circumstantial evidence.

5. Mr. Ragada, learned counsel appearing for the accused-appellant assails the impugned judgment mainly on the following grounds:

"1. The Trial Court, while appreciating the circumstantial evidence, must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence but in the instant case, the chain has not been completed;

2. There is no nexus of the accused with the murder and P.W.1 and the brother of the deceased, P.W.2 the sister of the deceased and P.W.3 the brother-in-law of the deceased, all are interested witnesses and they developed the story; and

3. P.W.6, who is another independent witness and wife of the co-worker has not supported the prosecution evidence and non-examination of materials witness that is the children of the accused are fatal to prosecution. The evidence of P.W.6 did not support the prosecution case."

6. Mr. Pattnaik, learned Additional Government Advocate vehemently contended that the evidence of P.Ws.1, 2 and 3 are very clear and on the ground of interested witnesses, the Court cannot throw away the entire evidence of the relation. It is the settled principle of law that in such event the Court should scrutinize or evaluate the evidence very carefully. Admittedly, there was a dispute and an agreement (Phaisalanama) was prepared and signed by both the husband and wife besides the other community people. The Phaisalanama also reveals that there was a torture by the husband/appellant to the wife-deceased and the medical evidence also does not support the defence case with regard to Cholera. The doctor (P.W.9) also opined that the cause of death of the deceased was mostly due to Asphyxia because of strangulation which was homicidal in nature and according to him, the injuries which he detected on the person of the deceased might have been caused within 24 to 36 hours of his examination. Therefore, the chain has been completed and there is no material to interfere in the said evidence.

7. Perused the L.C.R.. P.W.1 is brother of the deceased and the informant and deposed in Court that on 27.3.1998 at about 5:00 PM, he got information from one Prasant who happens to be brother of the accused that his sister Basanti has expired of Diarrhoea on 26.3.1998 and on getting such information, he proceeded to Village Tingismal and found his sister lying on a cot. He found black marks on the neck of Basanti and dried blood from her nostrils. At that time, his sister namely Premfull and Salami, who were with him, had further checked the body of the deceased and found injuries on the chest and private parts and legs of the deceased. Suspecting that there has been some foul play, he proceeded to

Rampur Out Post and lodged a report in writing about the death of his sister and on the basis on his report, U.D. Case No.1 of 1998 was registered which was subsequently registered a case u/s 302 I.P.C. Thereafter on 28.3.1998 at about 9.30 A.M., the I.O. came to the spot and conducted the inquest over the dead body of Basanti and prepared the inquest report in presence of P.W.1 and sent the dead body for Post Mortem examination. The inquest report has been marked as Ext.1 and the signature of P.W.1 on Ext.1 has been marked as Ext.1/1. P.W.1 also stated in his evidence that prior to the occurrence because of family dispute, the deceased had on several occasions came to his house and alleged that the appellant- accused being drunk used to torture her and also used to drive her out of the house. For that purpose, several meetings of their community people were conducted and after settling the dispute, his sister used to be sent back to her in-laws house. The last meeting was held on 11.12.1996 and phaisalanama was prepared and both the accused-appellant and the deceased had put their signature along with fifteen other community people. The phaisalanama has been marked as Ext.3 and the signature of the deceased and the appellant has been marked as Ext.3/1 and Ext.3/2 respectively. P.W.1, in his cross- examination, has stated that on 27.3.98 at about 5.00 PM, while he was coming from his house to his tailoring shop, on his way, Prasant Baru met him and told that his sister died of Diarrhoea and at that time non else was present there. From that spot, he straight away proceeded to the village of the accused and reached the village of the accused at about 8:00 PM and found the dead body of his sister was lying on a cot inside the house of the accused-appellant and his five sisters namely Rutamani, Hazir, Salami, Premfulla & Sumati were there along with two other ladies of the village of accused. When P.W.1 arrived, the accused was not there in his house. On getting information from his sister Rutamani that they found injuries on different parts of the body of his sister and having found black marks on the neck of his sister and dried blood from her nostrils, he proceeded to Rampur Out Post along with one Peter of Brajarajnagar for lodging information. Nothing has been elicited in cross-examination of P.W.1.

8. P.W.2, who is the sister of the deceased has also stated that on 25.3.98, the deceased had come to her house at about 9:30 AM and reported that she apprehends danger to her life and the accused might kill her being drunk. The

accused always was assaulting her. Prior to that, because of the assault and torture of the accused, there were several meetings of our community people and the accused was advised not to torture the deceased. After the meeting held in the year 1996, the accused, without paying any heed to the community people, had assaulted Basanti for which she had sustained fracture of her right hand. On hearing the cries of Basanti on 25.3.98, she advised her to report the matter to the community people before whom the accused had undertaken not to assault. Thereafter, Basanti went back to her house. When she arrived at the house of the accused at Tingismal, she found the dead body of the deceased lying on a cot inside the house being covered with a white cloth. When she removed the white cloth, she found one black mark on her neck, a cut injury on her left eye, bleeding from right ear, nose and bruises and other injuries of assault on her both arms, chest, abdomen, thighs, other injuries on her private parts and cut injuries on her right legs. She specifically stated that when she saw the accused, she confronted him as to how Basanti sustained injuries on her persons, the accused without giving any explanation about the existence of those injuries, immediately fled away from his house. Thereafter, she and other sisters narrated the incident to P.W.1, who lodged the report before the Rampur Out Post. Nothing has been elicited from her in the cross-examination by the defence.

To a question put by the Court, she gave the answer that four to five days after 28.3.98, they had gone to Bundia Colony to ascertain from the neighbourers about the truth as to how her sister Basanti died and she could know from the neighbourers that since they were sleeping in their respective houses with coolers working and since in the morning the dead body of Basanti had been removed to Tingismal, therefore, they had no occasion to know about the actual cause of the death except hearing from the accused that she died of Cholera. Her previous statement was confronted to by the defence that he admitted that she told the I.O. that the deceased came to her on 25.3.98 and the deceased had told her that she apprehends danger to her life.

9. P.W.3 is the brother-in-law of the deceased who supported the version of P.W.2 and also put his signature. Nothing has been elicited from his cross-examination. P.W.4 is the brother of the accused who deposed that he got information about the

death of the deceased of Cholera and proceeded to the house of the accused and saw the dead body of the deceased and thereafter, he was sent to Chhatargada for informing the brother of Basanti about her death. This witness was declared hostile and nothing has been elicited from him in cross-examination.

P.W.5 is a community people, who deposed that on getting information about the death of the deceased, he proceeded to the house of the accused and found her dead body was lying on a cot and there was one black mark on her neck. He also deposed about the ill-treatment meted and to the deceased by her husband and admitted about the fact that a community meeting was held and a faisalanama (Ext.3) was prepared and he had signed on it (Ext.3/3).

P.W.6 is an independent witness and wife of a co-worker, who was working as an Electrician in Rampur Colliery. She deposed that on the day of occurrence, deceased Basanti came to her house for watching the T.V. programme in Oriya "AJIRA ORISSA" and after seeing the T.V. programme in course of chit-chat, the deceased disclosed that she would be going next day morning to see her ailing mother, who was suffering from blood pressure. Thereafter, since the children of the deceased returned from their tuition, Basanti proceeded to her house along with them. She also deposed that her husband was occupying the ground floor whereas the accused was living with his wife Basanti in the upper floor. On the next morning at about 9:30 AM, they got the information that Basanti had died and her husband (accused/appellant) told them that on previous day night, Basanti had two loose motion and died. Thereafter, the P.P. declared her hostile. In her cross-examination, she admitted that the deceased was living quite happily with the accused/appellant.

P.W.7 is another independent witness, who was declared hostile.

P.W.8, who was the driver, deposed that he had removed the dead body of the wife of the accused in a Truck of MCL from Bundia colony to village Tingismal. In his cross-examination, he deposed that as per the direction of the Engineer of Bundia Mines, he had removed the dead body of Basanti at about 11:00 A.M and the accused and his children had accompanied the dead body in the Truck.

10. P.W.9 is the doctor, who had conducted the post mortem examination over the body of the deceased and found the following external injuries: "1. Abrasion 1 1/2" X 1" over the right posterior side of the knee joint;
2. Bruise over left side lower abdomen and right side abdomen;
3. Bruises over both axilla;
4. Bruise over xyphisternum;
5. Legature mark was found over the neck which had completely encircled the neck horizontally below the thyroid prominence;
6. Knot mark was present over the right side neck;
7. Abrasion and echimosis were found around the edge of ligature mark;
8. Fracture of the thyroid cartilage; and
9. Fracture with dislocation of Cervical vertebrae at C-4 level present."

The doctor had opined that the cause of death was mostly due to Asphyxia due to strangulation and was homicidal in nature. He had deposed that police had sent one melted plastic and one iron rod for his examination and he opined that ligature mark could not be possible by iron rod, which was sent to him for examination. He further deposed that on examination of melted plastic, it was not possible to opine that the melted plastic relates to a rope or not. In his re-examination, he has stated that he had conducted the post mortem examination over the body of the deceased and found bleeding from the mouth and nose of the deceased and her heart, lungs, liver, kidney and brain were intact and congested. Nothing has been elicited from his cross-examination.

11. P.W.10 is the Sub-Inspector of Police and the I.O. of the case, who registered the U.D. case and took up the investigation. He also conducted the inquest over the dead body of the deceased and found injuries on the left eye, nose, right ear and on different parts of the body. Thereafter, he sent the dead body for post mortem examination. He, having found prima facie materials against the accused

u/s 302 IPC, drew up the plain paper F.I.R. at the spot and sent the same to the Inspector-in-Charge, Brajarajnagar P.S. for registration of the case. He seized the wearing apparels of the deceased namely, one yellow colour saree stained with blood, sky colour blouse stained with blood, one white blood stained bra, one blood stained saya of yellow colour, one 'ANTA SUTA', one silver chain having black moties, one ANGUTHA RUPA ring, broken bangles and broken "LAKHA CHUDI" and one command certificate and prepared the seizure list (Ext.4). The I.O. deposed that he arrested the accused/appellant on 28.3.98 at about 4:00 PM. He further stated that while the accused was in police custody, he had confessed the guilt to have committed the murder of his deceased wife by strangulating with a plastic rope and assaulting by means of iron rod and after committing the murder, he burnt the plastic rope and concealed the said rope in the bushy jungle behind his quarter and also confessed about the concealment of iron rod in his hours. The accused after making such disclosure statement, led him and witnesses to give recovery of the plastic rope from the bushes behind his house and gave recovery of the burnt plastic rope from the bushes behind his house and he seized the same under Ext.5. He also seized the faisalanama. After completion of the investigation, he submitted charge-sheet against the accused/appellant u/s 302,201 IPC. But, in his cross-examination, he has admitted that during the U.D. case inquiry, though witnesses stated about the assault on Basanti by the appellant prior to the occurrence, they did not speak about the community meeting and about the faisalanama. Nothing has been elicited from him in the cross-examination.

12. Perused the L.C.R. There is no eye witness to the occurrence and the case is based upon the circumstantial evidence. In the case of State of U.P. V. Ashok Kumar Srivastava, AIR 1992 SC 840, the apex Court has held that while appreciating circumstantial evidence, the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect

of all the facts so established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. Mr. Ragada, learned counsel for the appellant has placed reliance on the decision of this Court in the case of Gokulananda Dubey V. State of Orissa; 2008 (1) OLR 556.

13. This Court evaluate the evidence of witnesses by applying the ratio decided in the case of State of U.P. (Supra). In case of circumstantial evidence, the Court must take great care in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. In the said decision, it has been held that circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. P.Ws.1, 2 and 3 are the post occurrence witnesses. The brother and the sister of the deceased who stated that the assault to the deceased was before one year and about the community meeting. They further stated that there were some injuries which is partly corroborated by the doctor, who conducted autopsy. P.W.5 also put his signature on the faisalanama which was executed in the year 1996. P.W.6 is the wife of a co-worker, who stated that the deceased returned from her house in the night after her children returned from tuition. She heard about the death of the deceased from her husband and also stated about the loose motion. She has admitted in her cross-examination that the deceased was living quite happily with the accused/appellant. From her deposition, it is crystal clear that there was a previous quarrel before one year of the occurrence and the matter was settled in a community meeting in presence of the community people and thereafter, no complaint was made by the deceased with regard to the assault or ill-treatment by her husband. P.W.6 who is an independent witnesses also specifically stated that the deceased and the appellant were living quite happily. There is no dispute that the children were present in the fateful night along with the accused and the deceased. No attempt has been made by the prosecution to examine those witnesses who were school going children and no explanation has been given by the prosecution for withholding those children. Prosecution has not proved the nexus with the seizure of M.O.I and II rather the doctor opined that it was not possible to detect as to whether the melted plastic relates to a rope or not. Therefore, it cannot be assumed that M.O.I and II were used as the weapon of

offence and there is no evidence that the appellant was present in the house in the fateful night along with the deceased and children.

14. Evaluating all the circumstantial evidence on record and taking into consideration the ratio decided in the case of State of U.P. (Supra) we are of the opinion that the chain has not been completed and there is no iota of evidence to connect the present appellant with the crime. The jail criminal appeal is allowed and the appellant is acquitted under benefit of doubt.

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