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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.13 of 2012

Bhima Dash

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates appeared in this case:

For the Appellant

:

Mr. Nrusingha Nanda
Mahapatra, Advocate

For the Respondent

:

Mr. J. Katikia
Addl. Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

JUDGMENT

29.07.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the judgment dated 6th April, 2011 passed by the Sessions Judge, Ganjam-Gajapati, Berhampur in Sessions Trial No.427 of 2009, convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. The case of the prosecution is that on 22nd June, 2009 at around 11.30 pm, the Appellant entered into the house of his father (Ganesh Dash) at village Lochapada Bada Sahi, picked up a quarrel with him and began assaulting him. The younger son of

Ganesh Dash and the brother of the Appellant, Raj Sekhar Dash intervened following which the Appellant got incensed and stabbed the deceased Raj Sekhar Dash with a knife, as a result of which he sustained serious injuries on his chest and other part of his body. The deceased was immediately shifted to the MKCG Medical College & Hospital, Berhampur, but was declared brought dead by the doctor.

3. The case of the prosecution further is that while in custody, the accused led the police and witnesses to the place of concealment of the weapon of offence and helped it get recovered. On completion of the investigation, a charge-sheet was led against the Appellant. The Appellant pleaded not guilty and claimed trial.

4. The prosecution examined eight witnesses whereas none was examined by the defence.

5. The trial Court approached the entire case as one of circumstantial evidence, without any eye witness. The following circumstances were culled out by the trial Court as forming a continuous chain and having been proved by the prosecution:

(i) The Appellant was last seen with the deceased and this was proved by the evidence of Ganesh Dash (P.W.2) (the father of the Appellant) and Urmila Dash (P.W.3) (the mother);

(ii) P.W.4, who was the post-occurrence witness, reached the spot on receiving information from his father and saw the deceased lying with injuries and took him to the hospital in his motorcycle with the help of P.W.2;

(iii) In terms of the disclosure made by the Appellant while in custody, he led the police to get the weapon of the offence i.e. the knife recovered from underneath a stone in the Agana (courtyard of his house). This was witnessed by Mohan Patra and Anantaram Behera;

(iv) The evidence of Dr.Geeta Sahu (P.W.1), who conducted the autopsy on the deceased, found five external injuries and six internal injuries. She opined that injuries 1 and 2 could have been produced by a hard and blunt force impact and injuries 3 to 5 by a sharp and pointed weapon. One of the external injuries was a punctured lacerated wound of oval shape of size 1 cm x 0.75 cm in the left chest cavity deep just below xiphisternum. The medical evidence proved that the death was homicidal;

6. According to the trial Court, all of the above circumstances formed a continuous chain and were proved by the prosecution beyond reasonable doubt.

7. The conclusion was that it pointed out the guilt of the accused and to no one else. On that basis, the trial Court found the Appellant guilty of the offence punishable under Section 302 IPC and sentenced him in the manner indicated hereinbefore.

8. Mr. Nrusingha Nanda Mahapatra, learned counsel appearing for the Appellant makes the following submissions:

a. The versions of P.Ws.2, 3 and 8 were exaggerated and unreliable;

b. The FIR mentioned that the deceased died after being injured by the Appellant by a barber's razor whereas what was recovered as a weapon of offence was a knife, which is very different. The medical evidence only showed that injuries could have been caused by a knife. Reliance was placed on the decision of the Supreme Court of India in ***Mohar Singh v. State of Punjab, AIR 1981 SC 1578*** to contend that the ocular evidence was inconsistent with the medical evidence with regard to the weapon of offence;

c. None of the neighbours, who arrived at the place of occurrence hearing the shout of P.W.2, was examined by the prosecution. The last seen theory was falsified by the fact that during the assault on the deceased, both the father (P.W.2) as well as the Appellant were present;

d. The knife was recovered from the Bari of the house, which was an open place accessible to all. Also, the witnesses to the seizure were not examined by the prosecution. There were improvements made from the versions in the FIR both by P.Ws.2 and 3 to suit the case of the prosecution and made their evidence unreliable. Reliance was placed on the decision in ***Mahendra Singh v. State of Rajasthan AIR 1989 SC 982***.

9. Mr. J. Katikia, learned Additional Government Advocate for the State, on the other hand, submitted that the circumstances culled out by the trial Court formed a continuous chain and each of the links was substantiated by the prosecution by cogent

evidence. The circumstances led to only one conclusion viz., the guilt of the Appellant and no one else. Mr. Katikia pointed out that apart from the medical evidence, the forensic report of the RFSL, Berhampur showed that the knife which was recovered contained human blood of 'A' group. The shirt of the accused and the napkin of the deceased i.e. Exhibit-E and Exhibit-G were also shown to have human blood and the napkin had human 'A' blood. This was also another link in the chain of circumstances, which proved the guilt of the Appellant.

10. The above submissions have been considered.

11. This is a case based on circumstantial evidence. The law in relation to circumstantial evidence is fairly well established. In ***Ram Avtar v. State 1985 Supp SCC 410*** the Supreme Court explained that:

“2...circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g., where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated.”

12. In ***State of Tamil Nadu v. Rajendran (1999) 8 SCC 679*** the Supreme Court held:

“6.... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused.”

13. In ***Trimukh Maroti Kalan v. State of Maharashtra (2006) 10 SCC 681***, the Supreme Court held:

“12...The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

14. In ***Brajesh Mavi v. The State (2012) 7 SCC 45*** the Supreme Court explained:

“27...From the several decisions of this court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is accused and nobody else who had committed the crime.”

15. As regards the theory of last seen, the evidence of both P.Ws.2 and 3 point to the fact that the accused came in an inebriated state to the house of his father (P.W.2) and picked up a quarrel demanding money. He was holding an axe at that time. The accused asked for Rs.5,000/-. The father had no money except Rs.20/- and gave him that amount. The accused then insisted on the father paying him Rs.5000/- and the father assured him that he would arrange for it the next morning. The Appellant did not pay heed and raised the axe. At that time, the deceased intervened to take the axe away from his hand. What P.W. 2 stated next is important: “the accused was very much angry. Out of fear myself and the deceased ran from the spot in different directions. I repaired into the Narasingh Temple.” It is, therefore, clear that before the death of the deceased, his father (P.W.2) saw him last in the company of the Appellant. Since they ran in different directions, there was no occasion for P.W.2 to know what happened immediately thereafter except that the deceased had snatched the axe from the hand of the accused. Thereafter, when P.W.2 returned to the house, he found the deceased lying dead on the Bari side of the house with the stab injuries on his chest, neck and left arm. His wife (P.W.3) then told him that after the departure of P.W.2, the accused had attacked the deceased and killed him.

16. The above evidence of P.W. 2 has remained unshaken in the cross-examination. The statements elicited from him in the cross-examination are that the accused was heavily drunk and that the dead body was lying near the latrine in the cemented floor. P.W. 2

denied the suggestion that the deceased had died due to a fall on the Bari side. He also denied the suggestion that he had lodged a false case against the accused, his own son, as he did not pull on well with him. The cross-examination has therefore not managed to shake the credibility of P.W.2 one bit. On the last seen evidence, therefore, P.W.2 is a reliable witness for the prosecution.

17. Turning next to the evidence of P.W.3., she states how the Appellant gave her three kicks and when the deceased protested against him attacking his parents “the accused chased him. The deceased picked up one axe, which was kept by the accused inside the house and went outside to throw the axe. The accused chased him towards the Bari side. Then I followed them.” This also ties with the version of P.W.2 when he says that out of fear P.W.2 as well as the deceased ran away in different directions. It also corroborates the version of P.W.2 finding the dead body on the Bari side. Importantly, P.W.3 found the deceased lying on the floor and the accused repeatedly saying “Pilla Utha, Pilla Utha”. She also volunteered “we all the family members used to call the deceased as ‘Pilla’. Further, when she asked the accused what he had done, the accused remained silent. There was only one line in the cross-examination “the accused and his father carried the dead body from the Bari to the house.”

18. With both P.W.s 2 and 3 remaining unshaken in the cross-examination, the defence was not able to make a dent on their credibility or reliability. No suggestion that a barber’s razor was

used by the accused, was put to these witnesses. The Court is unable to agree with the contention of the learned counsel for the Appellant that these two witnesses – P.W.2 and P.W.3 - are inconsistent in their description of the weapon of offence. In this context, the Investigating Officer (IO) (P.W.8) was again not given a suggestion that the weapon of offence was a barber's razor as mentioned in the FIR whereas an axe was mentioned in the testimonies of P.Ws. 2 and 3.

19. It must be remembered that while P.W.2 and 3 noticed an axe in the hand of the accused when he first sought to attack P.W.2., the said axe was snatched away from him by the deceased. There is nothing to indicate that the accused may not have used a knife that he may have also been carrying to stab the deceased with. Consequently, the Court is of the view that the decision in *Mahendra Singh (supra)* on the unreliability of the witnesses does not have any application to the facts of the present case. The circumstance of last seen therefore stands sufficiently proved.

20. The circumstance which was an important one regarding recovery of the weapon of offence at the instance of the Appellant should be taken to have been proved. While it is true that the recovery witnesses have not been examined, this by itself does not disprove the case of the prosecution about the accused making the statement pursuant to which the recovery was effected. P.W.8, the IO, has spoken of the witnesses to the seizure and identified their signatures. Again, there is nothing in the cross-examination to discredit the testimony of P.W.8. The only suggestion given was

that the two witnesses to the recovery were “stock witnesses of the police Department” and this has been denied by P.W.8. Very few infirmities have been pointed out in the investigation, which do not seriously discredit the case of the prosecution.

21. P.W.8 in her deposition clearly states that the Appellant “led us to the place of concealment i.e. underneath a stone in the ‘agana’ (courtyard) of his house and gave recovery of the blood stained knife.” Therefore, the place where the knife was concealed was not an open place, visible to everyone, as contended by learned counsel for the Appellant. The Court is satisfied that this circumstance of recovery of the weapon of offence at the instance of the Appellant has been satisfactorily proved by the prosecution.

22. The next circumstance is the medical evidence. P.W.1, the doctor who performed the autopsy, noticed the following external injuries on the person of deceased:

“(1) One lacerated wound of size 2 cm x 0.5 cm x skin deep over the right side of chin.

(2) Multiple abraded contusion 3 numbers, of various shape and size over right of face.

(3) Cut laceration of size 3 cm x 1 cm x skin deep over the dorsum of left forearm.

(4) Cut wound of length 5 cm x and 0.5 cm breadth obliquely present over lateral aspect of left lower forearm 5 cm above the wrist.

(5) Punctured lacerated wound of oval shape of size 1 cm x 0.75 cm x left chest cavity deep just below xiphisternum.”

She also found the following internal injuries:

- “(1) Extravasation of surrounding tissues in the chest wall corresponding to external injury no.(5)
- (2) Clots adherent to the under surface of sternum.
- (3) Blood with clots in the thoracic cavity of about 2 litres.
- (4) Punctured of heart at right interiolateral wall affecting the upper part of right ventricle.
- (5) Stomach intact with 150 gram of identified rice particles.
- (6) All other internal organs are intact.”

23. P.W. 1 is clear that while injuries 1 and 2 could have been produced by hard and blunt force impact, injuries 3 to 5 were “by sharp and pointed weapon.” The significant weapon is the punctured lacerated wound of size 1 cm x 0.75 cm in the left chest cavity deep. This punctured wound resulted in the injury to the heart, which lead to the death. This is completely corroborated by the version of the prosecution that the accused had stabbed the deceased to death with the knife. There may be some discrepancy in the description by the eye-witness to the weapon of offence but what is important is that it was a sharp pointed weapon, which resulted in injuries and this was recovered from the accused. Therefore, the medical evidence also provides an important link in the chain of circumstance.

24. The Court has also perused the serological report, which shows that the knife contained human blood of 'A' group, which is also blood group of the deceased. The napkin with him had the same blood group as was the piece of cemented earth where the body was lying. Thus, the knife recovered at the instance of the accused provided an important link between him and the crime. With the medical evidence being an important circumstance, the Court does not see how the judgment in *Mohar Singh (supra)* is of any assistance to the Appellant. That was a case of inconsistency between ocular and medical evidence whereas here there is no such inconsistency.

25. The motive for the crime was the refusal by the father to give the accused what he had demanded. Clearly, because P.W.2 did not have the money at that point in time, the accused went into a fit of anger and the crime ensued.

26. Thus each link in the chain of circumstances in the instant case has been satisfactorily proved by the prosecution. The circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused. The circumstances are incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

27. For the aforementioned reasons, the Court is satisfied that the trial Court has not committed any error in convicting the

Appellant for the offence punishable under Section 302 IPC and sentencing him accordingly. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattnaik)
Judge

M. Panda.

