(2002) 05 OHC CK 0009

Orissa High Court

Case No: Jail Criminal Appeal No. 287 of 1994

Pakulu Nag		APPELLANT
	Vs	
State of Orissa		RESPONDENT

Date of Decision: May 15, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 302

Citation: (2003) 24 OCR 362 : (2002) 2 OLR 179

Hon'ble Judges: P.K. Misra, J; B. Panigrahi, J

Bench: Division Bench

Advocate: Srinibas Mohanty, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

B. Panigrahi, J.

This appeal assails the order dated 22.7.1994 passed by the learned Sessions Judge, Koraput-Jeypore, camp at Malkangiri in Sessions Case No. 414 of 1993, whereby the Appellant was convicted u/s 302 of the Indian Penal Code, in short, "IPC", for committing murder of his father Budura Nag and sentenced to undergo imprisonment for life.

2. The essential facts leading to this appeal are as follows:

On 15/16th June, 1992 night the Appellant Pukulu Nag and his father Budura Nag were in the house. Dayamani Nag (P.W.3) the daughter of Budura Nag had been to cater night food to them and found them together. On the following morning, when she again went to the house of the Appellant for providing tooth stick to her father, she noticed him dead. The Appellant confessed before her that in the preceding

night he had killed his father and cut him into three pieces. She wailed loudly which attracted the attention of the villagers. The Appellant subsequently made extra judicial confession before the other co-villagers namely, P.W.2 the Ward Member of the village, and P.W.4, Gurunath Khora, P.W.2 reported the matter to the police who registered a case and took up investigation in course of which the appeallant was arrested, inquest was held over the dead-body and it was sent for post mortem examination, the wearing apparels of the deceased as well as the Appellant and the blood stained earth and sample earth were seized. The weapon of offence were also seized u/s 27 of the Evidence Act. The seized articles were sent for chemical analysis and serological test. On completion of investigation, chargesheet was placed against the Appellant.

3. The Appellant''s plea in the trial Court was one of complete denial of the incident. He also took the plea of alibi stating that he was absent in the house and after having come to know about his father''s death, subsequently came to the house. His further plea was that his father had been killed by one Durga. The defence did not choose to examine any witnesses in its support.

4. The prosecution in order to establish the charge against the Appellant had examined 7 witnesses, out of whom P. Ws.1, 5, 6 and 7 are the official witnesses, whereas P.W.2 was the informant and P. Ws.3 and 4 were the witnesses to the extra-judicial confession alleged to have been made by the Appellant.

5. There is no eye-witness to the occurrence and the entire prosecution case rests on circumstantial evidence. The trial Court while convicting the Appellant had placed reliance on the following circumstances:

(i) The Appellant was last seen with the deceased.

(ii) He made an extra-judicial confession before his elder sister, P.W.3 at the first instance and subsequently before P.W.4.

(iii) While in police custody, he also led to the recovery of weapon of the offence i.e. the axe (M.O.I.) which was seized by the police on his production.

(iv) The wearing lungi and towel of the Appellant were stained with human blood of AB group which tallied with the blood group contained in the wearing dhoti of the deceased.

(v) The Chemical Analyst found stains of human blood on the axe (M.O.I.) but the origin could not be confirmed due to deterioration.

(vi) The death was homicidal in nature.

(v) The false plea of alibi taken by the Appellant.

6. P.W.1 the Medical Officer of Primary Health Centre, Malkangiri, who examined the dead-body, found the following external injuries:

(I) Head was separated from the body from the root level of the neck;

(II) Both feet were separated. The cut margins were sharp;

(III) One open wound over the left side of back of the abdomen and thorax of size 10" x 6" x 4"

7. On dissection P.W.1 found the following internal injuries.

(a) All the internal structures, namely trachea, oesophagus, spinal-cord, muscles, vessels of neck were cut sharply corresponding to external injury No. I;

(b) All internal structures, namely bones, muscles of both the feet were cut corresponding to external injury No. IV:

(c) All internal structures, namely, lungs, spleen, intestine, liver were stained with blood corresponding to external injury No. III;

8. P.W.1 opined that these injuries were ante mortem in nature and were sufficient to cause instantaneous death of the deceased. Death was due to haemorrhagic and neurogenic shock resulting from the injuries. He also opined that Injury No. I by itself was sufficient to cause instantaneous death. There has been no dispute that the deceased met a homicidal death.

9. The last seen theory as narrated in the impugned judgment has been based on the evidence of P.W.3, who was the Appellant''s elder sister. From her evidence, it is transpired that she had served food in the night and had found the Appellant and the deceased together. On the following morning when she came to the house of the Appellant with tooth sticks, to her utter dismay, she noticed her father lying dead and his body was cut into three pieces. The Appellant was sitting wearing a lungi in an unperturbed condition and his clothes were fully drenched with blood. By an act of contrition he admitted before P.W.3 to have killed his father. P.W.3 made an outcry hearing which P.W.2 immediately rushed to the spot followed by P.W.4. The Appellant also repeated the same statement before P.W.4. It is true that only on the basis of last seen theory, no culpability of the accused can be established where there will be time-lag. But in this case, the statement of P.W.3 goes to establish that she catered food to her father at 9 P.M. and in the following morning at 6 A.M. she noticed that the Appellant was present in the house and her father had been slain. The Appellant had taken a false plea in his statement recorded u/s 313, Code of Criminal Procedure that one Durga had killed his father, which has no foundation at all. The last seen theory coupled with the false plea taken by the Appellant excludes the guilt of any person other than the appellant.

10. The lungi and towel which were used by the Appellant were also seized and sent for chemical examination. The blood group of the deceased was AB, which tallied with the blood stains appearing on the clothes used by the Appellant stains of human blood were also found on the weapon of offence though its origin could not

be ascertained due to deterioration. The Appellant was unable to explain the blood stains on his clothes and also on the weapon of offence. The testimony of P.W.3 is consistent and corroborated by the other witnesses examined by the prosecution. P.W.3 is none other than the own sister of the Appellant. Therefore, the seizure of blood stained clothes from the possession of the Appellant establishes an additional link with regard to his complicity. In this connection, we rely on the judgment of the Supreme Court in the case of Lakhwinder Singh Vs. State of Punjab, .

11. The trial Court based its findings on circumstantial evidence. It is the settled position of law that while appreciating the case of the prosecution depending upon circumstantial evidence, the circumstance from which the conclusion of guilt is to be drawn, should be fully established. It may be noted here that the circumstances concerned "must be" or "should be" and not "may be" established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. There must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused (See Sharad Birdhichand Sarda Vs. State of Maharashtra,).

12. Keeping the above aspects in mind, we find that the deceased was in the company of the Appellant at 9 P.M. in the night when P.W.3 catered food to them. On the following morning at 6 A.M. when P.W.3 went to provide tooth stick to her father, she noticed that the body of her father had been cut into three pieces and the Appellant was sitting unfettered and his clothes were drenched with blood.

13. The prosecution in order to prove the guilt of the accused has further placed before the trial Court that he made extra-judicial confession not only before P.W.3 his own sister, but also another co-villager P.W.4. It is true that no conviction can be made only on the basis of extra judicial confession unless it receives corroboration from other facts. In order to examine the probative value of the extra judicial confession, we find that P.W.3 is none other than the Appellant''s own sister. He reposed confidence in her and admitted that he had killed his own father. It was spontaneous, natural and credible. The extra-judicial confession as voluntary without any duress and coercion, even before the arrival of the police. The extra-judicial confession said to have been made by the Appellant before P.W.3 also receives corroboration from the evidence of P.W.4, one of the co-villagers. Therefore, we place implicit reliance on the extra judicial confession made by the Appellant.

14. Within hours of the occurrence, the Appellant was arrested. While in police custody, he disclosed the fact that he had concealed the weapon of offence, namely, the Tangia (M.O.I.) on the thatch of the roof, which was seized in presence of the

witnesses. P.W.6 has stated that such Tangia (axe) was stained with blood. While sending the other incriminating materials, the Tangia was also sent to the Chemical Analyst through the learned S.D.J.M., Malkangiri and the Chemical Analyst opined that it contained human blood although the blood group could not be ascertained/detected, due to deterioration.

15. It is true that learned State Counsel has significantly failed to establish the motive of the Appellant as to why he committed murder of his own father. But, in an offence like murder, motive is not relevant. In most of the cases, motive is known to the killer and nobody else. It is difficult to come to a positive finding as to why it weighed with the Appellant to commit such crime. But that by itself will not be a ground to presume the innocence of the Appellant, particularly when there are other evidence placed on record to suggest that he was responsible for causing such dastardly act. In this connection, reliance can be placed on the judgment of the Supreme Court in the case of Mulakh Raj, etc. Vs. Satish Kumar and others, wherein it has been observed as follows:

Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. x x x

16. For the foregoing discussions, we uphold the conviction of the Appellant u/s 302, IPC. It is noticed that the Appellant had committed the brutal murder of his own father by cutting his body into three pieces. It is a cold blooded, atrocious, ruthless and horrendous act. Therefore, we do not see any reason to interfere with the sentence passed by the trial Court.

17. In the result, the appeal is dismissed and the conviction and sentence passed against the Appellant are confirmed.

P.K. Misra, J.

18. I agree.