
(2000) 06 OHC CK 0023
In the Orissa High Court
Case No : Criminal Appeal No. 207 of 1992

Bishikeshan Nag	Vs	APPELLANT
The State of Orissa		RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2000) 2 OLR 170

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : N.C. Pati, C.K. Swain, A.K. Sahoo, A.K. Mishra and A.K. Mohapatra, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The appellant stands convicted u/s 302, IPC and sentenced to imprisonment for life. He has also been convicted u/s 394, IPC and sentenced to undergo R.I. for ten years. The sentences are to run concurrently.

2. The prosecution case as emerged from the evidence on record is as follows :

Prasanna Kumar Mishra (hereinafter referred to as "deceased") at the material time was working as Sub-Divisional Officer, Lift Irrigation, Loisingha. The appellant was working as a cook in his house. In the intervening night of 23rd and 24th of March, 1991 the appellant committed murder of the deceased by assaulting him with an iron pestle. Valuables like gold and silver ornaments and cash of about Rs. 80,000/- were missing from the house of the deceased which were recovered later from the house of the appellant's sister. The appellant himself led to recovery of the weapon of offence (iron pestle).

3. The appellant pleaded not guilty and denied his complicity.

4. In order to bring home the charge; the prosecution examined 16 witnesses.

There is no eye-witness to the occurrence. The learned Sessions Judge held that the appellant committed the murder for the sole purpose to rob him of his cash and ornaments. The finding of guilt has been recorded on the basis of the circumstantial evidence. They are as follows :

- (1) The appellant was working as a cook in the house of the deceased.
- (2) The appellant gave information to the police leading to recovery of the iron pestle.
- (3) The stolen articles were recovered from the house of the appellant's sister.
- (4) The appellant being a poor man was not unlikely to have dreamt of becoming rich-over-night by committing the crime.

5. The doctor (P.W.I) who conducted post mortem examination of the deceased found lacerated wound on the right scalp. On dissection he noticed fracture of the right parietal bone with laceration of brain tissues underneath. He also found bruise on the frontal parietal exinence and on dissection noticed fracture of the bone with laceration of bone tissues beneath it. According to him, the deceased died due to haemorrhage and shock as a result of brain injuries. On examination of iron pestle (M.O.I) he opined that the injuries found on the dead body could be inflicted by it. The evidence of the doctor, therefore, leaves no doubt that the deceased had homicidal death.

6. As already mentioned, the conviction of the appellant is founded solely on the basis of circumstantial evidence. In order to sustain conviction, the circumstantial evidence must satisfy the following three conditions:

- "(i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (ii) the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else and it should also be incapable of explanation on any other hypothesis that of the guilt of the accused."

In a case pending upon circumstances, there is always a danger that the suspicion may take the place of legal proof. Such suspicion however strong cannot be allowed to take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

7. Keeping the aforesaid principle in view, let us examine the evidence on record. P.W.2 Sarat Kumar Mishra was working as Junior Clerk, in the Irrigation Office at Loisingha. On the basis of the F.I.R. lodged by him, police took up investigation.

He stated that at about 9 a.m. of 24th of March, 1991 Rakesh Mishra, son of the deceased came and informed him that some one had killed his father. On receiving such information, he went to the house of the deceased and found him lying dead in a pool of blood. It may be noted that Rakesh Mishra was not examined by the prosecution. In the cross-examination, P.W.2 stated that Rakesh used to stay always with his deceased father at Loisingha. From the evidence of P.W.2 it appears that the deceased's first wife died in July, 1989 and he married for the second time in January, 1991 and since the date of her marriage the second wife has been staying at Raigarh in Madhya Pradesh. The deceased, through his first wife, has three sons and a daughter. In his cross-examination it was brought out that he (P.W.2) was a front door neighbour of the deceased and there were three night watchmen called Purandar, Sadananda and Padman who guarded the colony throughout night and the house of the deceased was guarded in the night more vigilantly. At this stage we may consider the evidence of Dinesh Kumar Mishra (P.W. 12), son of the deceased. He stated that the appellant was working as a cook in their house. On 24.3.1991 morning by 6 a.m. he (P.W. 12) and his younger brother Rakesh (not examined) reached home at Loisingha on their way back from Cuttack. They pressed the calling bell. As none responded, they entered into the house through the back door and went to bed. Their bed room was separate from that of the deceased. He (P.W. 12) woke up about 9 a.m. The appellant and another servant Tikunu asked him to wake up his father as they had to discuss some matter with him. Accordingly, he went into the bed room of the deceased by pushing the door which was not bolted from inside. He found the room ransacked. He called his father, who did not respond, when he lifted the blanket, he found him dead in a pool of blood. In the cross-examination he stated that Tikunu, their field servant, wanted to talk with his father. So, he was asked both by the appellant and Tikunu to wake him up. In the early morning the milkman Amar Pradhan came and milked the cow. Sadananda Kalet also came in the early morning and took their dogs for easing them. From this evidence it is clear that early in the morning when he came from Cuttack to his house at Loisingha, he had no knowledge of his father's death. He could know about it only when the appellant and Tikunu asked him to wake up his father. P. W. 11, Deepak Kumar Mishra is another son of the deceased. He stated that he was in the Sambalpur University hostel on the fateful night and on receipt of information he came to Loisingha. He identified the gold ornaments in the T.I. parade held by the Magistrate. His evidence no way implicates the appellant in the commission of the crime.

We may now deal with the evidence with regard to recovery and seizure of the iron pestle. P.W.3 was the watchman in the Irrigation Office at Loisingha. He stated that on being asked by the police, the appellant stated that he concealed the pestle inside the drain behind the house of the deceased, and volunteered to show the place. The appellant then brought out the pestle from the drain behind the house of the deceased. It was seized as per the seizure list (Ext.9). In the cross-examination he admitted that the police kept him, two other watchmen

and the appellant in the police station on suspicion for two days. The police brought all of them to the drain behind the deceased's quarters wherefrom the iron pestle was recovered. He admitted that the place where the iron pestle (M.O.I) was recovered as fenced by barbed wire and was easily accessible from outside. It is in his evidence that although near the house of the deceased there were employees of the Irrigation Department residing, none of them was called at the time of recovery of the iron pestle. P.W.3 himself was one of the suspects and was interrogated by the police by keeping him in the police custody for two days. The circumstances in which the iron pestle (M.O.I) was said to have been recovered are suspicious. Although employees of the Irrigation Department were available, the police did not cite any of them as seizure witnesses and set up a "Suspect" for the purpose. P.Ws. 4, 5 and 6 are formal witness and their evidence no way helps the prosecution. P.W.7 was a witness to the house search of P.W.9, appellant's sister's husband. He deposed that on search, police seized cash amounting to Rs. 86,327.50 and gold and silver ornaments from the house of P.W.9, which were kept in a bag. A slip of paper containing name of Smt. Sulochana Sarangi was recovered along with the cash and ornaments. This evidence of P.W.7 also no way connects the appellant with the commission of the crime. P.W.8 is Jagmohan. He returned hostile. In the cross-examination it was brought out that the maternal uncle's house of the deceased adjoins to his house. The deceased's sons P.Ws. 11 and 12 and Rakesh used to come to that house frequently. P.W.9 is the wife of P.W.8. She stated that P.W.8 is no way related to the appellant. She also turned hostile. P.W. 10 is a police constable and is a formal witness. P.W. 13 is the Judicial Magistrate of Bolangir who held T.I. parade in respect of gold and silver ornaments. P.Ws. 14, 15 and 16 are police officers who took part in the investigation.

8. From the aforesaid analysis of evidence we have no hesitation to hold that there is no iota of evidence to connect the appellant with the murder of the deceased or robbery of valuables from his house. There is nothing on record that in the fateful night the appellant and the deceased were seen last together. The prosecution evidence is totally silent in this regard. There is no evidence as to when the deceased went to bed. There is no material that at the time the deceased went to bed. The appellant was in the house. On the contrary, as stated by P.W. 12, son of the deceased, that in the morning of 24.3.1991 he along with his younger brother Rakesh reached home from Cuttack and entered into the house through the back door and went to bed. When he woke up at about 9 a.m., the appellant and another servant Tikunu asked him to wake up his father. If the appellant had committed the offence, in all probability he would have avoided to be present inside the house of the deceased. There is no evidence that the valuables recovered from the house of P.W.9 were taken by the appellant and kept with him (P.W.9). There is thus absolutely no circumstance from which inference of guilt can be drawn against the appellant.

9. For the reasons aforesaid, the prosecution has failed to establish its case against the appellant beyond reasonable doubt. Therefore, his conviction under

Sections 302 and 394, IPC and sentences imposed thereunder cannot be sustained in law and are hereby set aside. The appellant is accordingly acquitted of the charges.

In the result, the appeal is allowed. The appellant may be set at liberty forthwith if his detention is not required in any other case.

Ch. P.K. Misra, J.

10. I agree.