
(2009) 08 OHC CK 0003
In the Orissa High Court
Case No : Criminal Appeal No. 148 of 2005

Bulu Swain

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 302, 304B, 494, 498A

Citation : (2010) CLT 65 (Suppl CrI) : (2010) OLR 65 (Suppl CrI) : (2009) 2 OLR 636 Supp

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Advocate : S.D. Das, L. Samantaray, H.S. Satapathy, B.K. Sinha, D.R. Bhakta, N. Bisoi, M. Panda, D. Mohanty, A.N. Sahu and A. Mishra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This appeal is directed against the judgment dated 04.03.2005, passed by the Ad hoc Additional Sessions Judge, Fast Track, Aska, Ganjam, in Sessions Case No. 61 of 2004/Sessions Case No. 39 of 2004 GDC, holding the accused-Appellant guilty u/s 302 IPC and convicting him thereunder.

2. The prosecution case, in brief, is that the informant, Uri Jena had given her second daughter, Gitanjali in marriage with Bulu Swain (accused) about nine years back. Gitanjali remained with the accused for five years and due to physical assault, she had been residing in the house of the informant with her children since last four years. Her (informant) third daughter Jhuna (deceased) had eloped with accused Bulu Swain four years back to Rourkela and they remained there as husband and wife for two years. After two years, they came back to the village and accused Bulu Swain kept the deceased Jhuna in his house and they both lived as husband and wife. On several occasions, the accused used to assault the deceased on flimsy matter, asking her to leave his house and

threatening her that he would marry Anr. girl. On 11.08.2003, accused Bulu Swain assaulted deceased Jhuna. At about 1. 30 P.M. deceased Jhuna came out of the house of the accused and fell down in front of the house. Hearing the incident, the informant, her daughter Gitanjali, husband Hadu and Ors. ran to the spot and saw that deceased Jhuna was lying half naked. The neighbours of the locality also gathered at the spot and on seeing the informant and Ors. , deceased Jhuna told her mother that her husband Bulu Swain had administered poison to her forcibly. This fact was told by deceased Jhuna repeatedly and thereafter the informant, her husband and Ors. shifted Jhuna to Gobara hospital, where she was declared dead by the doctor. The FIR further revealed that the informant and other members of the family were threatened by accused Bulu Swain that he would kill them if they reported the matter to the police and hence the delay in lodging the FIR. On the report of Uri Jena, the O.I.C. Gangpur Police Station registered a case under Sections 498-A/304-B/302 IPC and took up investigation. On completion of investigation, charge sheet was submitted against accused Bulu Swain under Sections 498-A/494/302 IPC.

3. In absence of any eye witness to the occurrence, the prosecution relied upon the circumstantial evidence to support the charges. The prosecution, in order to substantiate the charges, examined fourteen witnesses. The defence did not examine any witness.

4. P.W. 1 is the Doctor, who examined the accused on police requisition. His evidence disclosed that on 13.08.2003, he examined the accused and found one abraded bruise with elliptical shape on both sides over left petoral region (chest) and one abrasion on the left side of nose. The Doctor (P.W. 1) opined that both the injuries were simple in nature and the injury with regard to bruise on the chest may be caused due to teeth bite and the injury on the nose may be caused by nail mark. P.W. 3 Baburam. Gouda is an auto rickshaw driver who took the deceased in his auto rickshaw to Gobara Hospital. Kumari Swain (P.W. 4) is the mother of the accused, who stated that they own two houses at village Badaboresingi and that the accused Bulu Swain and his brother Bansi lived in one house and she along with her husband lived in the other house. P.W. 4 further stated that the wife of the accused Bulu Swain (Gitanjali) was residing with her parents along with her children since one year due to some misunderstanding with the accused.

5. The informant (P.W. 9), who is the mother of the deceased Jhuna, Gitanjali Swain (P.W. 10), who is the wife of accused Bulu and sister of deceased Jhuna and P.W. 13 Adhara Jena resiled from their earlier statements and were declared hostile and were cross-examined by the prosecution. P.W. 14 is the I.O., who had stated that the written FIR was lodged at the police station by the informant Uri Jena (P.W. 9). P.W. 12 is the father of the deceased Jhuna, who in his evidence had stated that about one year prior to the death of deceased Jhuna, both accused Bulu and deceased Jhuna had eloped and stayed at Rourkela, where the parents of the accused were working. P.W. 12 further stated in his evidence that

both the accused and the deceased stayed in Rourkela for six months as husband and wife, on the promise of the accused to marry deceased Jhuna. He further stated that the accused and the deceased had come back to village two months prior to the death of deceased Jhuna and resided in the house of accused Bulu Swain alone. He further deposed that he did not oppose their relationship as husband and wife. P.W. 13 is the neighbour of accused Bulu Swain, who categorically stated in his evidence that at the time of the occurrence, accused Bulu was alone residing in the house with his wife Jhuna.

6. The evidence of P.Ws. 4,6,9,10,12 and 13 revealed that much prior to the occurrence, Gitanjali (P.W. 10), first wife of the accused, was residing in her parent's house along with her children and that accused Bulu and deceased Jhuna were staying separately in the house of the accused. P.W. 12 had categorically stated that when he arrived at the house of the accused, police had already arrived and that deceased Jhuna died in the house of the accused. P.W. 13 has also stated that deceased Jhuna died in the house of the accused.

7. Learned Additional District Judge took into consideration the evidence of the witnesses and the chain of circumstances, such as, the accused having received tooth bite and nail injury on his body; the accused was present in the house when the witnesses reached his house; a poison bottle was recovered from the house of the accused; the said bottle contained insecticidal poison, which was found in the body of the deceased, as per viscera report; the accused being a strong built person, he could have administered poison forcibly; the accused not taking any initiative to take the deceased to the hospital for her treatment and that the death of the deceased took place within three hours, which suggests the heavy quantity of poison was administered and came to the conclusion that all those facts taken together go to show that it was the accused alone, who was the author of the crime. Accordingly, accused Bulu Swain was found guilty u/s 302 IPC for committing the murder of deceased Jhuna and was convicted thereunder.

8. Learned Counsel for the accused-Appellant submits that there being contradictions and inconsistencies in the evidence of the witnesses and the parents and sister of deceased Jhuna i.e. P.Ws.,10, and 12, having resiled from their statements made during investigation, there was no material available to connect the accused with the alleged crime. It is further submitted that the conviction of the accused solely on the basis of circumstantial evidence is not permissible, especially when the same are not cogent and credible and does not complete the chain. It is also submitted that no motive or any intention had been established by the prosecution for the accused to have committed the murder of deceased Jhuna and that "it may have been a case of suicide, Learned Additional Sessions Judge erred in ignoring such facts and possibilities, while proceeding to convict the accused purely on circumstantial evidence, which is based on presumptions, surmises and conjectures.

9. The principle of law is well established that where the evidence is of a

circumstantial nature, circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature. and they should be such as to exclude hypothesis than the one proposed to be proved. In other words, there must be chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human. probability, the act must have been done by the accused.

10. From the above, it is clear that in order to convict a person on circumstantial evidence, the circumstances relied upon. in support of the conviction must be fully established and the chain of evidence furnished by those circumstances, must be so far complete as not to leave any reasonable ground for a conclusion with the innocence "of the accused. In other word, a conviction on circumstantial evidence cannot be based unless and until all the inferences to be drawn from the whole history of the case, point so strongly to the commission of the crime by the accused that the defence plea appears on the face of it to be impossible or highly improbable.

11. Considering the factual background of the present case and the fact that accused Bulu Swain and deceased Jhuna were living as husband and wife in the house and Jhuna died in an unnatural situation, when she was in the company of the accused, it was for him, to offer an explanation. Lack of such explanation on the part of the accused-Appellant itself is a circumstantial evidence against him. Moreover, the presumption that in all probability it was the accused Bulu Swain, who was responsible for the unnatural death of his wife is borne out from the following circumstances:

- (a) Accused Bulu Swain eloped with the deceased Jhuna and remained as husband and wife alone in separate house;
- (b) Deceased Jhuna died in the house of the accused Bulu at about 1. 30 P.M. in broad day light and at that time, accused Bulu was also present in the house;
- (c) A small tin container with a label of endocel emitting smell of insecticide poison was seized from the house of the accused;
- (d) The chemical examination report (Ext.15) revealed that the insecticidal poison endosulfan in the tin container (bottle) seized by the I.O. from the house of the accused was present in the body of the deceased, as per the viscera report;
- (e) The medical evidence of the Doctor (P.W. 1) indicates that the accused had sustained injuries on his nose and chest, caused by human teeth and nail.
- (f) No steps were taken by the accused Bulu Swain to carry his wife Jhuna immediately to the hospital for her treatment and report the matter to the police; and

(g) No explanation by the accused Bulu Swain as to how the insecticidal poison (endocel) found in, his house was detected in the viscera of his deceased wife Jhuna and how he sustained injuries on his chest and nose, caused by human teeth and nail.

12. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

13. Coming to the plea of the accused-Appellant that in absence of any motive, the impugned order of conviction was not justified, we may observe that a motive is something which prompts a person to form an opinion or intention to do certain acts. But the mere absence of proof of motive does not render the evidence bearing on the guilt of the accused nugatory, as the motive is in the mind of (sic) perpetrator of the crime, who alone knows as to what circumstances prompted him to a certain course of action, leading to the commission of the crime.

14. In view of the facts and circumstances narrated above, we find no apparent error or any illegality in the impugned order of conviction, so as to warrant any interference in this appeal.

The Criminal Appeal is accordingly dismissed.

A.S. Naidu, J.

15. I agree.