
(2002) 02 OHC CK 0043

In the Orissa High Court

Case No : Jail Criminal Appeal No"s. 342 and 343 of 1994

Dhobulu Santa and Basu Santa

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Evidence Act, 1872 — Section 24, 27

Citation : (2002) 1 OLR 322

Hon'ble Judges : M. Papanna, J;B. Panigrahi, J

Bench : Division Bench

Advocate : Suraj Mohanty, A.K. Mohapatra, S.C. Choudhury and K.M. Panda, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Panigrahi, J.—These to appeals are directed against the judgment/order of conviction under Sections 302/34, I.P.C. passed by the learned Additional Sessions Judge, Jeypore, in S.C. No. 31 of 1993 (S.C. No. 12/92) sentencing the appellants to undergo imprisonment for life.

2. The skeletal picture of the prosecution story as revealed during the trial is as follows :

That on 23.9.1992, Wednesday, at about 8 a.m. deceased Sashi Bhusan Mandal came from his village with a cash of Rs. 2900/-, two gunny bags, one chadar, one lungi, one cloth bag and also one wrist watch of HMT make to purchase dry fish from Jeypore market. While going to Jeypore market, the deceased had to cross Chhatiguda through the plantation field of O.F.D.C. Ltd. near Bualibeda. It has been averred that he was moving by his Bicycle to catch bus for Jeypore from village Chhatiguda. He was supposed to return on the following Thursday. Since he did not return home his family members were in frantic search of him. On the following Saturday one Santosh Kumar-Sahu, who was a watcher of the Plantation area found a dead body lying inside the Plantation field covered with

the branches of tree. Accordingly, he informed the police at Umerkote P.S. upon which U. D. Case No. 38/92 was registered and accordingly enquired into, During the course of enquiry it was ascertained that the death was homicidal in nature. Therefore, P.W.10 drew up a plain paper F.I.R. marked Ext. 16 in the trial Court on the basis of which a case u/s 302, I.P.C. was registered. The wife and sons of the deceased identified the dead body. In course of further investigation, it was, however, revealed that both the appellants were involved in the commission of murder of Sashi Bhusan Mandal. Accordingly, charge sheet was laid against them u/s 302/34, I.P.C.

3. The plea of the appellants before the trial Court was one of complete denial and further they stated to have been falsely implicated in this case.

4. The trial Court on an analysis of the evidence of the witnesses was, however, inclined to hold that the appellants were guilty u/s 302/34, I.P.C. and therefore, sentenced them to undergo imprisonment for life.

5. The prosecution case fully rests on the circumstantial evidence. P.Ws. 1, 2, 3, 7, 8 and 9 are said to be the witnesses to the seizure. P.W. 1 is also a witness to the extra-judicial confession alleged to have been made by the accused Dhobulu Santa. The following are the circumstances which the learned trial Judge had taken into consideration while holding the appellants guilty:

(i) Seizure of Rs. 800/- from P.W.I who stated to have been given by the appellant Dhobulu Santa under seizure list Ext. 1;

(ii) The axe as well as handle were seized on the disclosure statement said to have been made by the appellant Dhobulu Santa; and

(iii) The wrist watch is alleged to have been seized on the disclosure statement of the other appellant Basu Santa.

But the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. In order to accept such evidence it must be plausible and must inspire confidence of the Court.

6. In this case, the deceased met a homicidal death is not in dispute. From the evidence of P.W.5 it has been further established that the injuries sustained by the deceased were ante mortem in nature and sufficient to cause death. The death was due to haemorrhage, shock and multiple injuries. Therefore, there could be no other conclusion than to hold that Sashi Bhusan Mandal met a homicidal death.

7. Coming to the evidence of recovery of Rs. 800/- from P.W. 1 it appears that the learned trial Judge did not incline to have implicit faith on the question of recovery of Rs. 800/- from appellant Basu Santa. There has been practically no legal evidence against Basu Santa besides the inculpatory statement alleged to have been made by other accused Dhobulu Santa before P.Ws. 1 and 7. While using the inculpatory statement, the Court should have sufficient care and

caution and as a matter of prudence it should insist for other corroborative evidence. In this case, there is hardly any evidence other than the inculpatory statement to connect appellant Basu Santa with the crime. Rs. 800/- was also not seized from appellant Basu Santa but it was seized on production by P.W. 1.

8. Therefore, in this background, we are unable to affirm the conviction and sentence passed against Basu Santa for the commission of murder of Sashi Bhusan Mandal.

9. Now coming to the appeal filed by the other co-accused Dhobulu Santa the prosecution relied on the evidence of P.W.7 and also the disclosure statement Ext. 7. On a comparative statement of the evidence of P.Ws.7 and 10, it appears that P.W.7 has stated in his evidence that accused Dhobulu gave disclosure statement on 27.9.1992 whereas P.W. 10, who was the I.O. in this case, in unequivocal terms stated to have arrested him on 30.9.1992 at 4 P.M. In that event, even assuming Ext. 7 as true then also in strict sense it does not come u/s 27 of the Evidence Act so as to utilise against the appellant Dhobulu Santa. Further it is be noted that the seized materials were sent for chemical examination but we found nothing from the report to connect the appellant Dhobulu Santa that it was used in the commission of the offence.

10. Since the case depends upon the circumstantial evidence, all the facts so established should be consistent only with the hypothesis of the guilty of the accused. The proved circumstances should be of a conclusive nature and definite tendency unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The moral conviction, however, strong or genuine cannot amount to a legal conviction supported in law. It must be realised that the well established rule of criminal justice is that "fouler the crime higher the proof."

11. From the analysis of the evidence, we did not find that the prosecution was able to bring home the charge against both the appellants. We, therefore, disagreeing with the findings of the learned Addl. Sessions Judge, Jeypore acquit Dhobulu Santa u/s 302, I.P.C.

12. Accordingly, the conviction and sentence against both the appellants are hereby set aside. They shall be set at liberty forthwith.

M. Papanna, J.

I agree.