

(2022) 09 OHC CK 0197

In the Orissa High Court

Case No : Criminal Appeal No. 181, 192 Of 2000

Mano Khillo

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302

Citation : (2022) 09 OHC CK 0197

Hon'ble Judges : Dr. S. Muralidhar, CJ;Chittaranjan Dash, J

Bench : Division Bench

Advocate : K. Sattar, Ishwar Mohanty

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ

1. These two appeals are directed against a judgment dated 27th June, 2000 passed by the Additional Sessions Judge, Jeypore in Sessions Case No.53 of 1998/Sessions Case No.185 of 1998 convicting the Appellant-Mano Khillo for the offence under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default to undergo rigorous imprisonment (RI) for one year and convicting the Appellants, Manu Andarba, Gandhar Andirba and Trinath Andirba [the Appellants in CRA No.192 of 2000] to imprisonment for four years with a fine of Rs.500/- and in default to undergo further RI for six months for the offence under Section 201 read with Section 34 IPC.

2. The case of the prosecution is that Madhab Andarba (PW 4) appeared before Ranjan Pattnaik(PW 14), the Officer-in-Charge (OIC) of Padwa Police Station (PS) at around 6.10 am on 10th February, 1998 stating that on the previous day i.e. on 11th February, 1998 his brother Jaya Andarba had been killed by Mano Khillo (A1) and the other three had assisted him in cremating the dead body, thus, making the evidence disappear.

3. The case of the prosecution is that Mono Andarba, brother of PW 4 was giving Dasaha (10th day of feast) on the death of his son which was attended by all the villagers. After the feast, the persons who took active part in it were sitting near the fire at the kitchen. The deceased Jaya came and sat there. The Appellant Mano Khillo (A1) also came and sat there. A1 suddenly pointedly asked the deceased that some persons had drunk his salap (a kind of intoxicating juice). The deceased replied that he had asked his brother-in-law to make salap. On hearing this, A1 is supposed to have got angry and started abusing the deceased, who then left the place. However, A1 was supposed to have followed him.

4. After sometime, PW 4 was told that Jaya Andarba his brother had been murdered. PW 4 then rushed to the spot i.e. the place in front of the house of the deceased. He was lying in front verandah with an injury on his lower abdomen just above the private parts and was profusely bleeding. The deceased could not utter anything and died then and there. According to the prosecution, although the relatives of the deceased wanted to report the matter to the police, the accused persons dissuaded them from doing so and the dead body was cremated despite their protests.

5. When the following Sunday, the brother of A-1 gave a feast, the informant (PW 4) became suspicious of the involvement of the accused in the crime and therefore, lodged a report with the Investigating Officer (IO), who registered P.S. Case No.12 of 1998 and took up investigation.

6. It must be noted at this stage that Rama Chandra Hontal (PW 1) who was related to the deceased, was projected as an eye witness to the crime. He belonged to another village and was supposed to have visited the village of the accused when the incident took place. However, he did not immediately inform anyone, including his own daughter with whom he was staying, about the incident. The trial Court upon analyzing the evidence of PW 1, reached the following conclusion:

"i) The fact that PW 1 did not reveal the name of the assailant or about the incident to anybody in the night between 11th and 12th will in my opinion not cause any serious lacuna.

ii) There is nothing to believe that P.W.1 was not examined by the I.O. immediately after lodging the report.

iii) On the whole on a proper scrutiny of the evidence of the P.W.1, I do not find any inherent lacuna in his statement to brand him as unworthy of credency.

iv) It is now well settled principles of law that once a witness is declared hostile by the prosecution his evidence cannot be treated as the versions of the prosecution. As they have been declared hostile by the prosecution and their statement u/s 161 Cr.P.C. have been confronted to them the fact that they have not supported the prosecution will not ensure to the benefit of the defence.

v) From the evidence of P.W. 4, it is clear that just prior to the finding of dead body of the deceased a quarrel broke in between the appellant and the deceased.

vi) From the evidence of the witnesses it is clear that the accused persons did not report the matter to the Police and cremated the dead body of the deceased. Certain inconsistencies are pointed out by the defense in the evidence of these PWs. But in my opinion the inconsistencies or deficiency are so trifling that it should not be given any weight.

vii) In my considered opinion the prosecution has not failed merely because the dead body is not recovered and that the same is not subjected to autopsy."

7. The trial Court then proceeded to convict the Appellants and sentenced them in the manner indicated hereinbefore.

8. The Court has heard the submissions of Mr. K. Sattar, learned counsel appearing for the Appellants and Mr. Ishwar Mohanty, learned Additional Standing Counsel for the State-Respondent.

9. It must be noticed at the outset that the two post occurrence witnesses i.e. PW 2 (Moti Muduli) and PW 3 (Sukri Andaruba) turned hostile. Likewise, certain other post occurrence witnesses

i.e. Raghu Khemundi (PW 9), Jogu Muduli (PW 11), Alei Binurugu (PW 12) and Mohan Kumar Panda @ Manaj (PW 14) turned hostile. The seizure witness Lalita Sisa (PW 8) also did not support the prosecution. Since the dead body was cremated hurriedly, no post-mortem could be conducted.

10. Since the star witness for the prosecution is PW 1, who is related to the deceased, his evidence has to be examined carefully. In *Piara Singh v. State of Punjab* AIR 1977 SC 2274 the Supreme Court held:

"4...It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

11. In *Hari Obula Reddy v. The State of Andhra Pradesh* (1981) 3 SCC 675 the Supreme Court observed:

"13... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a

conviction thereon."

12. Again in *Ramashish Rai v. Jagdish Singh* (2005) 10 SCC 498, it was held:

"7...The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

13. Turning to the evidence of PW1, the following statements in his examination-in-chief are relevant:

"I reside in village Tentuliguda [Para1, 3rd line]

I came back to my daughter's house and was sitting in front of her house. At about 7 P.M., I saw accused Mano Khillo stabbing Jaya Andraba by means of a Knife on his left thigh (the witnesses points out to the left lower abdomen, just above the waist line) [Para 1, 10thline]

The spot is at a distance of 15 cubits from the place, where I was sitting. It was evening at that time, but I could see the same, as there were some lanterns burning. As a result of the stabbing, the deceased Jaya Andraba sustained bleeding injuries [Para1, 7th line]

Though I saw the incident, I did not raise any cry for help, as I was frightened. [Para2, 5th Line]

On the next morning, I learnt that, Jaya Andruba had died. Para2, 7th line]

I revealed before the village elders about my witnessing the incident. [Para2, 9th line]

On the next morning, all the villagers including the accused persons standing on the dock, took the dead body of the deceased and cremated it." [Para 3, 1st line]

14. In his cross-examination, the answers given by PW 1, were as under:

"My daughter's name is Sukri. She is married to Jagannath Killo of Kantigaon. [Para4, 6th line]

It was decided by the village elders to cremate the deceased [Para5, 8th line]

Myself and Madhaba also agreed to the proposal. [Para5, 11th line]

I did not see any blood coming out of the body of the deceased. [Para7, 2ndline, Page5]

I did not reveal about the incident either to my daughter or to anybody else. [Para7, 5th line, Page5]

A lungi was wrapped on the dead-body. There was no blood stain on that lungi.”[Para7, 9th line, Page5]

15. Certain aspects of the evidence of PW 1 make it unnatural and strange. The FIR lodged after few days of the incident did not disclose PW 1 as the witness. It must be remembered that almost eight persons were sent up for trial on the basis of the evidence of PW 1. He however, does not indicate how he came to know of them in the absence of a test identification parade. Except PW 14 i.e. the IO, none of the PWs have corroborated the version of PW 1.

16. Mr. Ishwar Mohanty, learned Additional Standing Counsel has drawn attention to the evidence of PW 4 that when the deceased left the place, he was seen to be followed by A1. After sometime, Budu Muduli (PW 7) is stated to have informed PW 4 that something had happened to the deceased. However, PW 4 did not immediately report the crime. He is supposed to have been the part of the ceremony to cremate the deceased. It is only when a feast was held the following day that it raised a suspicion in the mind of the PW 4.

17. The solitary circumstance of PW 4 seeing the deceased being followed by A1 itself does not indicate that it was A1 who killed the deceased. The conduct of PW 1 in not informing his own daughter about what he had seen, particularly when the deceased happened to be his own relation, is highly unnatural and improbable. PW1 does not appear to be a reliable witness. He does not appear to be speaking the whole truth. His evidence does not inspire confidence for the reasons already noticed. The statement of PW 1 was recorded only on 30th April, 1998 more than two months after the occurrence. This also raises suspicion about the truthfulness of his deposition.

18. There are other factors that have considerably weakened the prosecution's case. The recovery of the knife was not proved by the prosecution. PW 10, the photographer states:

“I have not seen the accused Mana Khillo giving discovery of any knife to the Police”[Para 1, 1st line, Page2]

19. In this context, PW 13 states as under:

“It is not a fact that, the I.O. seized a knife in my presence basing on the statement of the accused Mono Khillo from a bamboo-bush on 28.02.1998” [Page 123, Para-2, 1stline]

20. Even the IO has admitted that the so-called knife was recovered from a bamboo bush not belonging to any private person. Clearly it was accessible to the public. Consequently, the recovery of the knife at the instance of A-1 has also not been satisfactorily proved by the prosecution.

21. It appears that the entire village participated in the cremation. Therefore, proceeding only against three of them for the offence under Section 201 IPC also does not tend assurance that they were alone involved in making the evidence

disappear.

22. Once the evidence of PW 1 is kept aside, there are no other pieces of evidence which even suggest the culpability of A1 or for that matter, the other Appellants in the commission of the crime. Considering the larger number of independent witnesses not supporting the case of the prosecution and the evidence of interested witness PW 1 not lending the assurance that PW 1 is speaking the entire truth, it cannot be said that the prosecution has been able to prove the case against the Appellants beyond all reasonable doubt.

23. In *Padam Singh v. State of Uttar Pradesh* 2000 SCC (Cri) 285, the Supreme Court explained as under:

"2...It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court like the trial Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubts as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding conviction."

24. Consequently, the Court sets aside the impugned judgment of the trial Court and acquits A1 of the offence under Section 302 IPC. The other three Appellants are also acquitted of the offence under Section 201 IPC. Consequently, the bail bonds of all the Appellants shall stand discharged.

25. The appeals are allowed, but in the circumstances with no order as to costs.

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