

(2010) 01 SC CK 0050

In the Supreme Court Of India

Case No : Criminal Appeal No. 212 of 2010 (Arising out of S.L.P. (Criminal) No. 5813 of 2007)

Satni Bai

APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 1 ACR 1096 : (2010) 1 ALD(Cri) 850 : (2010) 1 ALT(Cri) 272 : (2010) 58 BLJR 441 : (2010) CLT 693 : (2010) CriLJ 1459 : (2010) 1 Crimes 128 : (2010) 1 JT 560 : (2010) 1 SCALE 694 : (2010) 2 SCC 646 : (2010) 3 SCR 186 : (2010) 1 UC 385 : (2010) 3 UJ

Hon'ble Judges : P. Sathasivam, J; H. L. Dattu, J

Bench : Division Bench

Advocate : Kiran Bhardwaj, for the Appellant; Dhramendra Kumar Sinha and Atul Jha, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.

A mother is the truest friend we have, when trials heavy and sudden, fall upon us; when adversity takes the place of prosperity; when friends who rejoice with us in our sunshine desert us; when trouble thickens around us, still she cling to us, and endeavor by her kind precepts and counsels to dissipate the clouds of darkness, and cause peace to return to our hearts

- Washington Irving

1. Leave granted.

2. It is in this backdrop, we seek to introduce the facts of this case : A wicked mother is facing life sentence having been convicted u/s 302 of the Indian Penal Code for killing her own son with an axe by the Court of First Additional Judge,

Ambikapur in Case No. 366 of 1996. On appeal, the conviction is upheld by the Division Bench of the Chhattisgarh High Court.

3. The appellant, Satni Bai is the mother of the deceased. She belongs to a tribal community. She has filed this appeal from prison, where she is undergoing her sentence of life imprisonment. She is represented by amicus curiae in this appeal.

4. The case of the prosecution is that, on 18.8.1996, Heera PW-1 and his elder brother Naihar Sai had gone to the forest in the morning to collect wood and at about 1.00 P.M., they returned to the house and when they were sitting inside the house, they heard the cries of his daughter, Sumitra PW-4 and Anita, the daughter of his younger brother. On hearing the cries, they came out of the house and went towards the side from where the sound of cries were heard and saw Kannilal (deceased) lying in a pool of blood. Heera lodged the report P-1 in the Police Station, Sitapur. A.K. Tiwari PW-7 was officiating in the post of Station House Officer, Sitapur. He had recorded the statements of Heera PW-1 Balobai PW-2 and Sumitra PW-4. Heera PW-1 had stated that the appellant/accused was standing near the dead body of Kannilal with a bloodstained axe in her hand. As the appellant was attempting to run away from the scene of crime, he instructed his wife Balobai PW-2 to stop her and snatch the bloodstained axe from her. He had also stated, that, there were bloodstains on the clothes of the appellant as well. Balobai PW-2 in her statement before the police had stated, on the date of the incident they were sitting in the house and on hearing the cries of her daughter Sumitra PW-4, she came out of the house and saw appellant's son was lying dead and she saw the appellant standing near the dead body with the wooden part of the axe in her hand and the metal part of the axe on the floor. She had also stated, that, when the appellant started running away from the place, on instructions from her husband, she caught hold of appellant and locked her inside the house.

5. After recording the report P-1, the Station House Officer, Sitapur, left for the scene of occurrence and after giving notice to the Panchas, he had prepared Panchanama of the dead body of Kannilal. He had taken into his possession the blood stained axe on production by Heera PW-1 and also blood stained saree of the accused. He had also taken into possession the blood stained soil and plain soil from the place of occurrence. The investigating officer had also prepared the site plan. Thereafter, the dead body of deceased Kannilal was sent to the hospital situated at Sitapur for post mortem examination. The post mortem was carried out by Dr. K.K. Datta PW-8, who in his detailed report had stated that the axe wound on the left side of the head of the deceased was sufficient to cause the death. The blood stained articles were sent for examination to the Forensic Science Laboratory and, according to the report, blood was found on the saree of the accused and the weapon of offence - axe. After completion of the investigation, a charge sheet was filed against the appellant in the court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge for trial.

6. The prosecution in order to establish the charge against the appellant/accused, examined eight witnesses including Heera PW-1, his wife Balobai PW-2 and their daughter Sumitra PW-4, but were declared hostile and cross examined by State counsel. The accused when questioned u/s 313 of the Criminal Procedure Code, denied all the incriminating circumstances brought against her and reiterated about her being innocent.

7. The trial court raised the following questions for determination:

1) Whether the prosecution was successful in establishing that the death was homicidal in nature ?

2) Whether the prosecution was successful in establishing that the accused with the intention of causing death, caused the death of Kannilal?

8. To answer the first question in the affirmative, the trial court has placed reliance on the post mortem report of the doctor. To answer the second question, the trial court has taken into consideration the circumstantial evidence available on record, since the sole eye witness Sumitra PW-4 has turned hostile. The trial court had also taken other factors into consideration like the recovery of bloodstained axe and saree of the appellant, for which there was no proper explanation on the part of the appellant. Based on these materials on record, the trial court after holding the appellant guilty for the commission of offence u/s 302 of the Indian Penal Code for committing the murder of her son Kannilal has sentenced her to undergo imprisonment for life.

9. Since the appeal filed against the judgment and order of the trial court is dismissed by the High Court, the accused is in appeal before us.

10. We have heard amicus curiae for the appellant and the learned Counsel for the State. The learned amicus-curiae submitted that the evidence on record does not establish the case of homicide and that at any rate the chain of circumstances is not so complete as to lead to the hypothesis of guilt of the accused.

11. It has been consistently laid down by this Court, that, when a case rests only on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn, have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [See State of U.P. Vs. Satish,].

12. In Joseph Poulo Vs. State of Kerala, , the court has explained under what circumstances conviction can be based purely on circumstantial evidence. It is observed, that, "it is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and

reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavor in the case should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused."

13. This Court in the case of Padala Veera Reddy Vs. State of Andhra Pradesh and others, , has observed that when a case rests on circumstantial evidence, the following tests must be satisfied:

(i) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those 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 within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with this innocence.

14. In C. Chenga Reddy and Others Vs. State of Andhra Pradesh, , this Court has held that:

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

15. In State of U.P. Vs. Ashok Kumar Srivastava, , it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

16. The principles that would emerge from these decisions is that conviction can be based solely on circumstantial evidence, but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court.

17. Keeping in view the settled legal principle, we have re-appreciated the evidence on record. It is true that this case is not of direct evidence of committing murder of deceased Kannilal by the accused/appellant, who is none other than the mother of the deceased, but is based on circumstantial evidence and the circumstances brought on record by the prosecution are of two categories: That the accused was seen at the place of occurrence holding blood stained axe in her hand near the dead body of the deceased Kannilal and she also tried to run away from the place of occurrence; that the axe which was snatched from the accused by Balobai and the saree of the accused were found stained with the blood. To prove the first circumstance, the prosecution has examined Heera PW-1, Balobai PW-2 and Sumitra PW-4. PW-1 has stated that on the fateful day when he returned from the forest at about 1.00 P.M., he heard the cries of Sumitra and came out of the house, went towards the court yard of Naihar Sai and saw the dead body of Kannilal in the court yard. Accused was standing there holding axe in her hand and he lodged the report, P-1. This witness has been declared hostile by the prosecution. The prosecution was allowed to cross examine this witness, on which he has stated that the portion 'A' to 'A' of the report P-3 shows that the girls were crying that the aunt has murdered Kannilal. The accused was running away with the axe and the axe was snatched from her and she was tied, all this was informed by him while lodging the report, P-3. He had also stated in the report P-3, that the axe was smeared with blood and hair and accused's garments were also stained with blood. In the cross-examination, he has stated that the place of occurrence was the house of Naihar Sai who is his brother. His wife Balobai was scolding Satni (accused) and on their remonstrations, Satni (accused) tried to run away, but, before that the accused was sitting by the side of her son Kannilal (deceased). The above evidence of Heera PW-1 is corroborated by the evidence of Balobai PW-2 and Sumitra PW-4. In the cross-examination of these witnesses, the defence has not been able to elicit any circumstance which shows that the accused was not present when Heera PW-1 and Balobai PW-2 went to the scene of occurrence and, therefore, the presence of the accused at the place of occurrence near the dead body of her son Kannilal holding blood stained axe in her hand is established. It is also established from the evidence of these witnesses that the accused tried to run away from the place of occurrence and she was caught by Balobai PW-2. These witnesses are closely related to the appellant. From their deposition, a clear and consistent picture emerges that when they gathered at the courtyard being alarmed by the cries of Sumitra (daughter of Heera) and Anita (daughter of the appellant), they saw that the appellant was standing with a bloodstained axe near the body of her son, Kannilal. She also tried to run away, and Balobai restrained her and seized the axe from her possession. The axe as well as the saree of the appellant was blood stained according to the witnesses. There are no inherent contradictions in the testimony of these witnesses. The defence has been unable to dispel the chain of events which emerge from the testimony of these witnesses.

18. Next comes the second circumstance. The blood stained axe and the blood stained saree of the accused was taken into possession by the investigating officer as has been recorded in the seizure memo. They were sent to Forensic Science Laboratory for examination and the report received mentions that both the articles were found blood stained. Therefore, it is proved beyond reasonable doubt that the accused was standing with the blood stained axe near the dead body of the deceased Kannilal,

19. The third circumstance is the post mortem report prepared by Dr. K.K Datta, which revealed the following wounds on the body of the deceased:

- i. One incised wound measuring 12 X 1.5 cm till mandible bone deep in the cheek.
- ii. Incised wound measuring 10 X 1.5 cm on left side behind the head, from which the brain was visible.
- iii. Incised wound 6 X 1 cm deep till bone, on left side of the neck, deep till bone.
- iv. Incised wound 7.5 X 1.5 cm deep till vertebrae.

According to Dr. Datta, wound No. 2 was life endangering and there is no doubt this was caused by the axe which was recovered from the hands of the accused. We find that the post mortem report coupled with the testimony of the witnesses presents a very clear and cogent chain of the events which occurred on the fateful day unerringly points towards the guilt of the appellant. The picture emerging has also not been refuted satisfactorily by the defence.

20. The learned Amicus Curiae appearing for the appellant submits that the appellant is the mother of the deceased child and it is not possible for a mother to possibly kill her own child. She further submits that because of the illiteracy and ignorance of the appellant, she has been falsely implicated for the death of her child.

21. Motherhood is one of the most precious gifts endowed upon mankind and there is no relationship more pristine and pure than that of a mother and her child. No mother in normal circumstances can tolerate even a scratch on the body of her child. Basic instinct of a mother is well explained by a well known author Washington Irving in one of his books, wherein he has said, that, "a father may turn his back on his child; brothers and sisters may become inveterate enemies; husbands may desert their wives, and wives their husbands. But a mother's love endures through all; in good repute; in bad repute, in the face of the world's condemnation, a mother still loves on, and still hopes that her child may turn from his evil ways, and repent; still she remembers the infant smiles that once filled her bosom with rapture, the merry laugh, the joyful shout of his childhood, the opening promise of his youth; and she can never be brought to think him an unworthy." In the present case, the appellant was found standing near the dead body of her son with a bloodstained axe in her hand. The normal reaction for any mother would have been to go hysterical and clutch the body of

her son. But, what is the reaction of a mother in the present case, as stated by PW-1 and PW-2 in their evidence, who came near the scene of occurrence on hearing the cries of Anita and Sumitra, that the accused tried to flee away from the scene of the crime before being restrained. This kind of reaction and lack of remorse would not have been forthcoming had she been innocent. This unusual reaction to the death of her son who was aged 4 at the time of his death, in no uncertain terms point towards her involvement in the crime. In our view, this is an unusual case and therefore the plea that a mother is not capable of killing her own son, in the absence of any evidence to the contrary cannot be accepted. Apart from this, at the time of questioning u/s 313 Cr.P.C, the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating her and connecting her with the crime by her total denial of everything when those circumstances were brought to her notice by the Sessions Court, she not only lost the opportunity but stood self condemned.

22. There is also no question of falsely implicating the appellant. The witnesses are her close relatives. Heera PW-1 being the brother-in-law of the appellant and Balobai PW-2 being the sister-in-law of the appellant, had no enmity nor animosity against the appellant. With regard to the issue of Sumitra PW-4, being declared a hostile witness by the prosecution and the contradictions in her testimony, it needs to be kept in mind that the witness is a 16 year old girl, with an impressionable mind. It is very likely that she was shocked beyond belief at the sight of the dead body and it is not possible to comprehend how she would have reacted. Different people react differently to crisis situations, so it is very much possible that with the passage of time between the occurrence of the crime and recording of her testimony, her memory of the incident would have blurred. That by itself is not enough to set aside the conclusion reached at by the courts below.

23. For all the reasons stated supra, we have no hesitation to agree with the findings of the Division Bench of the High Court holding the appellant guilty of the offence u/s 302 I.P.C. Accordingly, the appeal fails and it is dismissed.