
(2013) 07 OHC CK 0050

In the Orissa High Court

Case No : Criminal Appeal No. 129 of 1996

Suresh Jalli @ Gedu Suria and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 117 CLT 178

Hon'ble Judges : Sanju Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : S. Mohanty, S. Ratho, P.K. Mishra and Mr. A.K. Mohapatra, for the Appellant; Zaffrulah, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—This appeal is directed against the Judgment & order of dated 8.3.1996 passed by the Learned Addl. Sessions Judge, Khurda in S.T. Case No. 59/151 of 1995 convicting both the Appellants for commission of offence u/s 302/34, IPC & sentencing them to undergo imprisonment for life. The prosecution case in brief is that a double murder had taken place within the jurisdiction of Jankia Police Station on the preceding night of 3rd November, 1993. Balabhadra Pradhan (P.W.15), an A.S.I. of Police in-charge of Nirakarpur Out-post left his outpost at about 8.00 A.M. for Jankia Police Station for some routine work. No sooner did he reach Khajuriapada, he saw a mob to have congregated on the canal embankment, where he took a pause & found that two unidentified dead bodies of age group of 25-30 years were lying in the paddy fields of Sudam Parida & Mumtaz Saha with multiple injuries on their body. Guarding the said dead bodies, he lodged a report (Ext.20) at the spot & sent the same to O.I.C., Jankia Police Station. By the time the written report (Ext.20) reached Jankia Police Station, Girija Prasad Das (P.W.16), the then Circle Inspector of Police, Khurda had already arrived at Jankia Police Station. So, he registered P.S. Case No. 239 dated 3.11.1993 u/s 302, IPC on the basis of which, P.W.15 treating the same as F.I.R., took up investigation of the case by himself

from that moment. Arriving at the spot, barely 4 K.Ms. from the police station, within an hour, he conducted inquest over the unidentified dead bodies in presence of witnesses (PWs.1 & 2) & prepared two separate reports marked as Exts.11 & 12. At about 1 P.M. on the same day, he dispatched both the dead bodies to G.B.S. Hospital, Khurda for post-mortem under two separate dead body challans marked as Exts. 13 & 14. Thereafter, through the Revenue Inspector of Nirakarpur, he got a spot map (Exts.6) prepared on the same day making a requisition therefor. At about 3 PM. on the same day, he made seizure of two Nos. of leather half shoes (black in colour) & one plastic chappal of the left leg (brown in colour). He also seized blood stained earth & sample earth from the spot under a seizure list marked Ext.4 in presence of P.Ws.3 & 7 & proceeded with the investigation. On 4.11.1993 at about 3 P.M. he seized one empty bottle of XXX rum smelling liquor, one plastic jerrycane, two steel glass tumblers smelling liquor from the house under the possession of the accused at Nirakarpur given on rent by Parbasia Bhoi & prepared seizure list marked Ext.2 in the presence of witnesses. Thereafter, he apprehended both the Appellants & arrested them on 8.11.1993 at 10 A.M. & submitted charge-sheet against both the Appellants.

2. The accused-Appellants took the plea of innocence.

3. In order to bring home the charge, the prosecution examined as many as 16 witnesses, out of which PWs.1 & 2 are the witnesses to inquest report, P.Ws.3 & 7 are witnesses to the seizure. P.W.4 is a resident of nearby village, who identified the accused, P.W.5 is the father of the deceased Paga @ Trinath Jena & P.W.6 is the father of the deceased, Chandramani, PW.8 is an auto rickshaw driver, P.W.9 is a co-villager of P.Ws.5 & 6, who had seen the accused going from his village along with the deceased, P.W.10 is known to the accused persons, P.W.11 is stated to be close friends of the accused & a witness to the last seen, PW.12 is the J.M.F.C., a witness to the T.I. parade held on 19.1.2000, P.W.13 is known to the accused persons since the distance between the village of the accused persons & his village is 13 kms., P.W.14 is the medical officer, who conducted autopsy, P.W.15 is the A.S.I. who has given written report & P.W.16 is the C.I. of Police, who conducted investigation. The prosecution has also relied upon certain documents marked as Exts.1 to 23 & seized the weapon of offence marked M.Os.I & II.

4. On the other hand, the defence has examined one witness from its side & exhibited documents marked as Exts.A to E to deny the allegations.

5. Learned Addl. Sessions Judge after vivid discussion of the evidence, both oral & documentary, & considering the material objects was convinced that the prosecution could be able to establish the guilt of the accused-Appellants beyond all reasonable doubt to bring home the charge u/s. 302, IPC against the Appellants & convicted them thereunder & imposed punishment of imprisonment for life.

6. Mr. Mishra, Learned Counsel on behalf of Mr. Suraj Mohanty appearing for the Appellants, assails the impugned Judgment on the ground that chain of circumstantial evidence on which the Learned Trial Court based the conviction of the Appellants has not been completed & fully established. His further contention is that solely basing upon "last seen together" theory, the conviction made u/s. 302, IPC is illegal, & bad in law & strenuously urged that nobody has actually seen the Appellants assaulting the deceased to death.

7. Mr. Zaffrullah, Addl. Standing Counsel appearing on behalf of the State, supported the impugned Judgment stating that the Court below has rightly held the Appellants guilty of the offence u/s 302, IPC & sentenced them thereunder & therefore, this Court need not interfere with the same.

8. There is no eye witness to the crime. However, complicity of the Appellants is sought to be proved basing on the following circumstantial evidence. They are:

(i) Injuries detected on both the deceased were ante mortem in nature & that they succumbed to those injuries because of shock & hemorrhage.

(ii) Detection of multiple injuries on the person of both the deceased as per inquest reports (Exts.11 & 12) & post mortem report (Exts.18 & 19).

(iii) The two deceased were last seen alive while they were in the company of the accused persons.

(iv) Both the deceased were on intimate terms with the accused persons soon before the occurrence being involved in "Ganja" business, which ultimately resulted in gross misunderstanding because of distribution of the spoils.

(v) Identification of the accused persons before Magistrate in T.I. parade.

(vi) Both the accused persons made extra judicial confessions before P.W.13 of having committed murder of both the deceased.

(vii) Recovery & seizure of M.Os.I & II at the instance of the accused persons on 8.11.1993 leading to discovery.

9. Out of the aforesaid seven items of circumstantial evidence pressed into service to determine the guilt of the Appellants, item Nos. v, vi & vii could not be proved by the prosecution, but the prosecution was successful in proving that the death of the deceased was homicidal in nature & the only incriminating circumstance that was proved against the Appellants was that they were last seen with the deceased persons.

10. Before examining the evidence available on record, it would be appropriate to point out the law relating to appreciation & acceptance of circumstantial evidence in a criminal trial.

11. The Supreme Court in Hanumant Vs. The State of Madhya Pradesh, while dealing a similar case based on circumstantial evidence in para 10 has held as follows:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, & all the facts to established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances, should be of a conclusive nature & tendency & they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused & it must be such as to show that within all human probability the act must have been done by the accused. In spite of the forceful arguments addressed to us by the Learned Advocate General on behalf of the State, we have not been able to discover any such evidence either intrinsic within Ext.P-3(a) or outside & we are constrained to observe that the Courts below have just fallen into the error against which warning was uttered by Baron Alderson in the abovementioned case.

The aforesaid decision in Hanumant Govind (supra) was followed in a Constitution Bench decision of the Apex Court in Govinda Reddy and Krishna and Another Vs. State of Mysore, The position of law was subsequently reiterated in a decision reported in Naseem Ahmed Vs. Delhi Administration, wherein in para-10 it held as follows:

This is a case of circumstantial evidence & it is therefore necessary to find out whether the circumstances on which prosecution relies are capable of supporting the sole inference that the Appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear & cogent evidence & those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation & divorced from the context of the overall picture emerging from a consideration of the diverse circumstances & their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand & appreciate their true effect. If a person is seen running away on the heels of a murder, the explanation that he was fleeing in panic is apparently not irrational. Bloodstains on the clothes can be attributed plausibly to a bleeding nose. Even the possession of a weapon like a knife can be explained by citing a variety of acceptable answers. But such circumstances cannot be considered in watertight compartments. If a person is found running away from the scene of murder with bloodstained clothes & a knife in his hand, it would in a proper context, be consistent with the rule of circumstantial evidence to hold that he had committed the murder.

In several cases the Apex Court had the occasion to deal with the cases of similar nature on the aspects of circumstantial evidence, namely, Bakhshish Singh Vs.

State of Punjab, Bakshish Singh v. State of Punjab, Udaipal Singh Vs. The State of U.P., , Khasbaba Maruti Sholke Vs. The State of Maharashtra, AIR 1977 SC 1064, Hukum Singh v. The State of Rajasthan Ram Das Vs. State of Maharashtra, Umedbhai Jadavbhai Vs. The State of Gujarat, , S.P. Bhatnagar Vs. State of Maharashtra, Gambhir Vs. State of Maharashtra, Dharm Das Wadhvani Vs. The State of Uttar Pradesh, Sharad Birdhichand Sarda Vs. State of Maharashtra, Bhugdomal Gangaram and Others Vs. State of Gujarat, Lakhanpal Vs. State of Madhya Pradesh, , Mantu alias Sunil Kumar Bhuyan v. State, 1983 Cri.L.J. 1554, Mahadev Ghosh v. The State, Kartarey and Others Vs. The State of Uttar Pradesh, Raghav Prapanna Tripathi Vs. The State of Uttar Pradesh, Thimma and Thimma Raju Vs. State of Mysore, , Raghubir Singh Vs. State of U.P., & Prem Thakur Vs. State of Punjab,

12. In Dharm Das Wadhvani Vs. The State of Uttar Pradesh, the Apex Court has held as follows:

Every evidentiary circumstance is a probative link, strong or weak, & must be made out with certainty. Link after link, forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on to the next & on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient.

13. In the decision in Sharad Birdhichand Sarda Vs. State of Maharashtra, , five golden principles relating to appreciation of circumstantial evidence have been aptly described as the "panchshil" of circumstantial evidence, which reads as follows:

(i) the circumstances from which the conclusion of guilt is, to be drawn should be fully established. The circumstances must or should & not may be established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature & tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; &

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused & must show that in all human probability the act must have been done by the accused.

The aforesaid principles have also been followed & reiterated in the recent decision of the Apex Court in Mustkeem v. State of Rajasthan, (2011)11 SCC 724, Rukia Begum Vs. State of Karnataka, & Arvindkumar Anupalal Poddar Vs. State of Maharashtra,

14. The above principles on circumstantial evidence have been considered in the case in hand. The circumstances relied on by the Trial Court was that the

deceased & the accused-Appellants were last seen together on 2.11.1993 at about 2 PM. & dead bodies of the deceased were found on 3.11.1993 by PW.15 at about 8 A.M. On scanning the evidence, it is found that P.W.9, a co-villager of PWs.5 & 6, stated to have seen both the accused-Appellants going from his village to Atharnala in the company of both the deceased & his co-villager Ramesh Nayak at about 2 PM. one day prior to the date of occurrence, i.e. 2.11.1993. He further stated that being requested by the two deceased persons, he accompanied them to Atharnala. While proceeding to Atharnala, they were discussing their business about Ganja in an agitating voice & he also gathered impression from their discussion that they had misunderstanding about distribution of money received out of that business. The witness further stated that he was assured to bring back the bicycle belonging to the deceased Chandra in which they came from their village with the accused persons & Ramesh Naik. He was sitting in the front side of the frame of the bicycle, which was being plied by Chandra, He brought the bicycle of Chandra & returned the same at his house.

15. In course of hearing Mr. Mishra, Learned Counsel appearing for the Appellants has urged that the deceased was last seen by PWs.9 & 11 at 2 PM. on 2.11.1993 at Atharnala & the dead bodies of the deceased were found in a road-side at Jankia at 8 A.M. on 3.11.1993, which is at a distance of more than 40 kms. Hence in the said long gap of time, there is a chance that many more persons might have come in between the case of the prosecution is that the I.O. had seized some glasses smelling liquor & other materials from the house of one Parabasia Bhoi of Nirakarpur which was under the possession of the Appellants on rent, but the said witness was not examined by the prosecution to prove whether the deceased were together with the Appellants on the fateful night or not. He further submitted that absence of evidence regarding such an important link, it is difficult to connect the Appellants with the crime. In support of such argument, he has relied on the Judgments in Dasu alias Jashoda Dei Vs. State of Orissa, Mohibur Rahman and Another Vs. State of Assam, & Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir, Learned Counsel for the Appellants also relied upon the Judgments reported in Paramjit Singh and others Vs. State of Punjab, & Matu Munda Vs. State of Orissa & 1987 (II) OLR 625 (Soudagar Nayak v. State of Orissa) in respect of delay in investigation.

16. Mr. Mishra, Learned Counsel for the Appellants further urged that the prosecution has strenuously relied upon the evidence of PWs.9 & 11 to prove that the Appellants were last seen together with the deceased & PW.9 in his evidence stated that he accompanied the Appellants & the deceased persons to Atharnala & on return he got the bicycle of Chandra (one of the deceased) & returned the same in the house of the said deceased Chandra but the said fact has not been corroborated by the father of the said deceased examined as PW.5.

17. So far as the applicability of the Judgment in Dasu @ Jasoda Dei (supra) is concerned, it is a clear case of improbability in the prosecution version, thereby this Court has observed that conviction was unfounded on fact & misconceived in

law & accordingly, set aside the conviction by allowing the appeal. The fact of the said case is not akin to the facts of the present case, rather the evidence of PWs.9 & 11 are very specific, consequence thereof, the Trial Court has rightly convicted the Appellants for committing the heinous crime like that of murder of two persons & sentenced them to undergo imprisonment for life.

18. So far as applicability of the Judgments reported in Mohibur Rahman (supra) & Bodha Raj @ Bodha (supra) are concerned, we are of the view that the case in hand is based on circumstantial evidence & as such, there is no dispute on the proposition of law laid down by the Apex Court in this regard. But the principles laid down have to be considered while deciding the cases based on circumstantial evidence. So far as the Judgment relied upon, i.e., Matu Munda (supra) is concerned, it is revealed that this Court has upheld the conviction considering the circumstantial evidence read with the "last seen together" theory, which is squarely applicable to the present case,

19. P.W.11 in his statement has stated that the accused-Appellants were very close friends of both the deceased. One Ramesh Nayak & another were also very intimate to them. Both the accused-Appellants were dealing in Ganja & the two deceased were also involved in Ganja business with the accused-Appellants. They were in visiting terms to each other's house. He further stated that on 2.11.1993 at about 2 P.M. both the accused persons, the two deceased & one Ramesh Nayak came to his house, called him to accompany them, but he flatly refused. Both the accused-Appellants & two deceased went to Atharnala on foot & he followed them for some other purposes & thereafter, the two accused-Appellants & the two deceased persons went somewhere by bus. PW.13 stated to have known both the accused-Appellants & he had seen both in village Khandiabandha, which is at a distance of about 13 Kms. from village Bira Narasinghpur, where he resides. He further stated that at about 11 A.M. of 8.11.1993 while he was returning from the house of one of his relations of Nirakarpur, he got information that both the deceased had been killed & both the Appellants were at Jankia P.S. & so he went to Jankia P.S. & he found these two accused persons were inside the police lock-up & 4-5 of his friends were there in Jankia P.S. & being asked by him as to how Paga & Chandra (deceased) had been killed, both of them confessed to have killed them during the night of 2.11.1993 because of misunderstanding between them in connection with their business. They also confessed that during interrogation by the police, they made disclosure statement that they had kept the weapon of offence near the canal embankment in Jagatpur mouza & they volunteered to lead the police as well as the witnesses to the place of concealment & at the spot accused-Appellant Suresh Jalli gave recovery of a "Bhujali", which was kept concealed under a bushy tree & the same was seized by the police. After an hour & a half, accused-Appellant Santosh Jalli searched for the iron rod, which was thrown by him to the paddy field at a nearby place & he recovered the same & made over to the I.O. Accordingly, seizure list was prepared.

20. The aforesaid evidence of P.Ws.9 & 11 clearly indicate that the accused-Appellants were last seen together with the deceased at 2 P.M. of 2.11.1993 & the dead bodies were recovered on 3.11.1993 at 8 A.M. So far as the last seen aspect is concerned, it is necessary to refer to the decision of the Apex Court reported in (2008) 14 SCC 667, Chattar Singh & another v. State of Haryana, wherein in para 18 & 19, it is stated as follows:

18. So far as the last-seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. Vs. Satish, , it was noted as follows:

22. The last seen theory comes into play where the time gap between the point of time when the accused & the deceased were last seen alive & when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap & possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused & the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased & the accused were seen together by witnesses PWs 3 & 5, in addition to the evidence of PW 2.

19. In Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, , it was noted as follows:

27. The last-seen theory, furthermore, comes into play where the time-gap between the point of time when the accused & the deceased were last seen alive & the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the Courts should look for some corroboration. (See also Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir,

21. From the circumstances stated & discussed, it is clear that the deceased & accused were last seen together on 2.11.1993 as per the version of PWs.9 & 11 & the same has been corroborated by the confessional statement made by the accused before PW. 13 & recovery of "bhujali" as well as "iron rod", M.Os. I & II respectively, on the basis of leading to discovery made by both the accused, establish the factum of committing the offence by the accused persons. To fortify the stand, reliance has also been placed on the evidence of the doctor, PW.14, who had categorically stated relying on the post-mortem report that the cause of death was due to hemorrhage & shock & the injuries were ante-mortem in nature & the time since death was within 48 hours of examination vide Ext. 18 so far as dead body No. 1 is concerned & the examination was conducted on 3.11.1993. So far as the examination on 2nd dead body is concerned, the doctor (P.W.14) opined that the cause of death was due to hemorrhage & shock & that all the injuries were ante mortem in nature & were sufficient to cause the death of the deceased in ordinary course of event & the time since death is 48 hours

vide Ext.19. Construing the time of post mortem in respect of two dead bodies at 3 PM. & 4 PM. of 3.11.1993, 48 hours fell within the last seen i.e. at 2 PM. of 2.11.1993.

22. With the above circumstances relied upon by the Trial Court for convicting the Appellants, we find that the principles laid down by the Apex Court in various decisions have been satisfied & the circumstances narrated above as held by the Trial Court were all established without any doubt & are conclusive in nature. They were not explainable with any other possibility. The circumstances are consistent only with the hypothesis of the guilt of the Appellants & nothing else. The said circumstance excludes all other hypothesis & shows that in all humor probability the killing of the deceased must have been done only by the Appellants. The motive along with the chain of circumstances, which stood proved against the Appellants only go to show that the Appellants alone were responsible for the killing of the deceased. The Appellants miserably failed to show any missing link in the chain of circumstances demonstrated by the prosecution for the offence alleged against them.

23. We are in full agreement with the conclusions arrived at by the Trial Court & we find no good ground to interfere with the same since the Appellants did not dispute the identity of the dead bodies at any point of time that they did not state anything in course of recording their statement u/s 313, Cr.P.C. questioning about the last seen together & there was no missing link in the chain of circumstances demonstrated before the Court below. Having regard to our above conclusion we do not find any merit in this appeal. Accordingly, we confirm the conviction of the Appellants u/s 302/34, IPC & the sentence imposed thereunder. The appeal fails & the same is dismissed. The bail bonds of the accused-Appellants stand cancelled. They shall be apprehended to serve the remaining period of the sentence.