

(1966) 01 GAU CK 0001
In the Gauhati High Court

Thoudam Ibochouba Singh

APPELLANT

Vs

Government of Manipur

RESPONDENT

Date of Decision : 04-01-1966

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 326

Citation : AIR 1966 Guw 12 : (1966) CriLJ 776

Hon'ble Judges : Rajvi Roop Singh, J.C.

Bench : Single Bench

Judgement

Rajvi Roop Singh, J.C.

1. This is an appeal, by Thoudam Ibochouba Singh, who has been convicted by the learned Sessions Judge of Manipur u/s 302 of the I.P.C. and has been sentenced to imprisonment for life.

2. The facts necessary for this disposal of this case are that the accused-appellant Th. Ibochoba Singh and the deceased Ibomacha Singh were the residents of village Langthabal Mantirikhong. It is also alleged that they were friends and used to move together. It is said that on 27.4.62 at 3 p.m. the appellant came to the house of Ibomacha Singh and took him for witnessing a performance at Kadompokpi. Thereafter, it is not known as to why the deceased received the injuries and by whom. But according to the prosecution the appellant inflicted certain injuries to the deceased with a blunt weapon and due to those injuries the deceased fell down on the side of the road. In the evening L. Aber Singh while going to his village on a bullock cart found the deceased lying on one side of the road. He put him on his cart and brought him to his house. Thereafter, he sent information to the relation of the deceased and on that information his brother Mangi Singh (P.W. 1) came there. As the deceased had injuries on his person so Kh. Mangi Singh took him to Civil Hospital, Imphal.

There the Doctor on duty examined his injuries and admitted him as an indoor patient. In the meantime, a report about this occurrence was lodged by Kh.

Mangi Singh, the elder brother of the deceased at Police Station, Imphal, on 28.4.1962. On this report a case u/s 326 I.P.C. was registered and S.I. Mani Singh took the investigation of this case in his hand and went to the Civil Hospital and found the condition of the deceased very serious. Thereafter, he went to the place of occurrence and prepared the site plan etc. The deceased Ibomacha Singh died in the afternoon of 30.4.62. On the death of Ibomacha Singh, the offence was altered from Section 326 to 302 I.P.C. and its investigation was then taken up by Shri N. Gouramani Singh (S.I.). Shri N. Gouramani Singh, S.I. went to the Civil Hospital and prepared the inquest report of the dead body. He sent the dead body with constable Section Madhumangol Singh to Dr. K. Gopal Singh for post-mortem examination. Dr. K. Gopal Singh performed the post-mortem examination on the dead body on 30.4.62 at 4.35 p.m. He found the following ante-mortem injuries on his person:

1. One swelling 1" diam. on the area 3" above lateral end of the right eye-brow.
2. One transverse lacerated wound 1" ? " ? bone deep just on the right side of occipital protuberant, and
3. One Longitudinal lacerated wound 2" ? ?? bone deep ?" above occipital protuberant.

All these injuries, according to him, were caused by blunt weapon. The cause of death according to him was due to shock and haemorrhage as a result of cranium injury. On receipt of this post-mortem report Shri N. Gouramani Singh (S.I.) examined the witnesses and after completion of the investigation submitted a charge sheet against the appellant on 31.12.62 he learned Additional District Magistrate after preliminary enquiry committed the appellant to the Court of Sessions Judge to stand his trial u/s 302 I.P.C. by his order dated 29.8.63.

3. The prosecution, in order to substantiate the offence u/s 302 I.P.C. examined 15 witnesses. The appellant when examined pleaded not guilty. His case was that he has been falsely implicated in this case. He led no evidence in his defence. The learned Sessions Judge after consideration of the entire evidence and all aspects of the case convicted the appellant as noted above. The appellant being aggrieved with this judgment of the learned Sessions Judge has filed this appeal.

4. In this case the first point for consideration is whether the deceased Ibomacha Singh died on 30.4.62 due to injuries caused by blunt weapon. The death of Ibomacha Singh as a result of the injuries caused by a blunt weapon on 27.4.62 is well established and in fact not disputed. The learned Counsel for the appellant too at the very outset frankly conceded that in the face of preponderate, direct and circumstantial evidence he does not contest the factum of the death of Ibomacha Singh at Civil Hospital, Imphal. I too feel that he has rightly conceded in view of the overwhelming direct and circumstantial evidence on the record.

5. The next and the main question for decision is how Ibomacha Singh was killed

and by whom. In this case the evidence against the appellant is purely circumstantial and it is on the strength of the following circumstances-that the learned Sessions Judge came to the conclusion that the appellant is guilty:

(1) The deceased was last seen alive in the company of the accused, and

(2) The dying declaration made by the deceased before the witnesses, viz., L. Aber Singh (P.W. 2), K. Mangi Singh (P.W. 1) and N. Biramangol Singh (P.W. 4).

6. The learned Counsel for the appellant vehemently urged that the circumstantial evidence relied upon by the learned Sessions Judge is not enough to bring home the offence to the appellant beyond reasonable doubt. He pointed out 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, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and 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 and it must be such as to show that within all human probabilities the act must have been done by the accused. The principle that the inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis suggested must be reasonable. In support of his contention he placed reliance on *Hanumant Vs. The State of Madhya Pradesh*, *Hanmant Govind Nargundkar v. State of Madhya Pradesh*. The learned Government Advocate did not dispute the proposition of law. As regards this principle, there is no dispute. It is well settled principle of criminal jurisprudence that circumstantial evidence must be consistent and consistent only with the guilt of the accused and that if the evidence is consistent with any other rational explanation, then there is an element of doubt of which the accused must be given the benefit.

7. I shall now examine the circumstantial evidence in the light of the above principle. The first circumstantial evidence which has been relied upon by the prosecution is that the deceased was last seen alive in the company of the accused. The prosecution in order to prove this fact examined 4 witnesses, namely, K. Mangi Singh (P. W. 1), A. Yaima Singh (P.W. 5), A. Angoubi Singh (P.W. 6) and Th. Bheigya Singh (P.W. 7). The testimony of these witnesses is that the appellant came to the house of the deceased and took him for seeing a performance at village Kadampokpi. The learned Sessions Judge has placed reliance on this testimony while convicting the appellant.

8. The learned Counsel for the appellant vehemently urged that the mere fact that the deceased was last seen alive in the company of the accused shortly before the occurrence would in itself be not enough to prove that it was the

accused who had inflicted the fatal injuries upon the deceased. In support of his contention he placed reliance upon the case *Samad Malik v. State* reported in AIR 1953 J & K 1, In this case Wazir C. J. while deciding this case observed as follows:

The burden of establishing guilt of the accused is throughout on the prosecution and the prosecution must prove every link in the chain of evidence against the accused from the beginning to the end. When two persons are seen together and shortly afterwards one of them is found to have been murdered it cannot be inferred positively that his companion is responsible for the murder of the deceased unless there are other circumstances to support that inference. No doubt the circumstance that the deceased was last seen in the company of the accused raises a strong suspicion against the accused but mere circumstances of suspicion without more conclusive evidence are not sufficient to justify conviction of the accused.

There is great merit in the contention of the Seamed counsel for the appellant. The mere fact that the deceased was last seen alive in the company of the accused shortly before the occurrence raises a strong suspicion against the accused. But mere circumstances of suspicion without more conclusive evidence are not sufficient to justify the conviction of the accused.

9. The learned Government Advocate on the other hand frankly conceded that this circumstantial evidence alone is not enough to infer positively that the appellant is responsible for the murder of the deceased unless there are other circumstances to support that inference. But he contended that in the instant case besides the above circumstance, there is also the dying declaration made by the deceased in which the appellant has been named as the culprit. He further pointed out that the learned Sessions Judge has also convicted the appellant on the basis of dying declaration and this circumstantial evidence, therefore, this Court too should place reliance on it.

10. Now I shall examine the dying declaration alleged to have been made by the deceased before the P. Ws. as mentioned above.

11. The learned Government Advocate strongly contended that the dying declaration made by the deceased Ibomacha Singh is a truthful statement. He further pointed out that the learned Sessions Judge too fully relied on it while convicting the appellant. This Court, therefore, too should place reliance on this dying declaration of the deceased. He further averred that there is no need for any corroboration of this dying declaration but this alone is enough for the conviction of the appellant. In support of his contention he placed reliance on the case *Harbans Singh and Another Vs. State of Punjab*, . In this case Hon''ble DasGupta J, while deciding the case observed as follows:

It is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. The evidence furnished by the dying declaration must be considered by the Judge,

just as the evidence of any witness, though undoubtedly some special considerations arise in the assessment of dying declarations which do not arise in the case of assessing the value of a statement made in Court by a person claiming to be a witness of the occurrence. In the first place, the Court has to make sure as to what the statement of the dead man actually was. This itself is often a difficult task, specially where the statement had not been put into writing. In the second place, the Court has to be certain about the identity of the persons named in the dying declarations a difficulty which does not arise where a person gives his depositions in Court and identifies the person who is present in Court as the person whom he has named. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case has come to the conclusion that that particular dying declaration was not free from the infirmities as may be disclosed in evidence in the case.

12. The learned Counsel for the appellant in order to meet this argument of the learned Government Advocate contended that the dying declaration is a weak type of evidence and it is highly dangerous to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration. In support of his contention he placed reliance on the case *Ram Nath Madhoprasad and Others Vs. State of Madhya Pradesh*, In this case Hon'ble Mahajan J. observed as follows:

It is settled law that it is not safe to convict an accused person merely on the evidence furnished by dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration.

13. After having given my most anxious and due consideration to the arguments advanced on both sides, I find that there is force in the contention of the learned Government Advocate. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India, I have come to the conclusion that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon

oral testimony which may suffer from all the infirmities of human memory and human character, and in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

14. In this case the prosecution has alleged that the deceased Ibomacha Singh made two dying declarations one before Aber Singh (P.W. 2) and the second before K. Mangi Singh (P.W. 1) and N. Biramangol Singh (P.W. 4). (After examining evidence in respect of these two dying declarations at paras 14-16 his Lordships proceeded). In my opinion, the evidence is entirely insufficient to bring home the guilt to the appellant. The evidence may raise some sort of suspicion against the appellant, but suspicion however grave cannot form the basis of murder. I am, therefore, constrained to hold that the prosecution has miserably failed to prove the offence of murder against the appellant.

15. Accordingly, I, therefore, allow this appeal and set aside the order of conviction and sentence passed against him by the learned Sessions Judge and order that he be acquitted. I further order that he be released forthwith if not required to be detained under any other process of law.