
(2022) 09 OHC CK 0108
In the Orissa High Court
Case No : Jail Criminal Appeal No.7 Of 2011

Tukuna @ Tankadhar Swain	Vs	APPELLANT
State Of Odisha		RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2022) 09 OHC CK 0108

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

Bench : Division Bench

Advocate : ChandanPanigrahi, J. Katikia

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The present appeal is directed against a judgment dated 4th November, 2010 passed by the learned 2nd Additional Sessions Judge, Cuttack in ST Case No.305 of 2009 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to imprisonment for life together with fine of Rs.20,000/- and in default of payment of fine, to suffer rigorous imprisonment (RI) for six months. Of the fine amount, it was directed that Rs.19,000/- must be paid to the father of the deceased KeluPradhan (PW 1) for the death of his son AkashPradhan, who was aged about 8 years.

2. The case of the prosecution is that AkashPradhan (the deceased), who was 8 years old, was the only son of the informant (PW 1), a resident of village Bania. Four days prior to the incident, there was a hot exchange of words between the informant and the accused for which the Appellant had borne grudge against PW 1.

3. On 22ndMarch, 2009 at about 9am on the village road, Akash was playing along with other children. At that time, the Appellant called Akash to his house. In the house, he mixed poison in the rice powder (ChaulaBhuja) and fed Akash

that adulterated food. After some time, the accused lifted Akash in his arms and left him on the Pindha, i.e. the courtyard of PW 1. On being asked by Bela Pradhan (PW 3) the cousin of PW 1, Akash informed her that the Appellant had administered some poison with rice powder for which he felt pain in his body. Then the condition of Akash deteriorated. The village children then called PW 1 who was in the field at a distance. Before PW 1, Akash disclosed that the Appellant had forcibly fed him rice powder after mixing it with poison. PW 1 then took Akash along with PW 3 in a rickshaw to Kalapathar Hospital. The doctor there referred him to Bhubaneswar Hospital, but on the way Akash died.

4. PW 1 then brought back the dead body to his village and reported the matter to the Inspector-in-Charge (IIC), Baidesar Police Station (PS). Basanta Kumar Pati (PW 6), who was then working as a Sub-Inspector of Police registered PS Case No.11 of 2009 and took up investigation. He visited the spot, examined the witnesses, conducted inquest over the dead body and prepared the inquest report on 23rd March, 2009 in the presence of the witnesses. He then sent the dead body in the Banki Hospital for post-mortem examination. On the same day, he arrested the Appellant.

5. On completion of investigation, PW 6 submitted a charge sheet on 5th July, 2009 against the Appellant for the offence under Section 302 IPC.

6. Seven witnesses were examined by the prosecution and none for the defence. The trial Court, on an analysis of the evidence, came to the conclusion that the prosecution had been able to prove the guilt of the Appellant for the aforementioned offence beyond all reasonable doubt. One of the clinching pieces of evidence was the oral dying declaration made by the child first to PW 3 and again to PW 1.

7. The legal position as regards such oral dying declaration is well settled. In *Khushal Rao v. State of Bombay* AIR 1958 SC 22, it was explained as under:

"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) 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; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made ; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that 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; (5) that 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 (6) that 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, for example, whether there was sufficient light if the crime was committed at night; 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."

8. Again in *State of U.P. v. Krishna Master* (2010) 12 SCC 324, it was observed as under:

"24. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness."

9. This was reiterated in *Parbin Ali v. State of Assam* (2013) 2 SCC 81; *Laxmi v. Om Prakash* (2001) 6 SCC 118 and *Munnu Raja v. State of M.P.* (1973) 3 SCC 104. Recently, in *State of Uttar Pradesh v. Veerpal* (2022) 4 SCC 741, it has been observed as under:

"16. Now, on the aspect, whether in the absence of any corroborative evidence, there can be a conviction relying upon the dying declaration only is concerned, the decision of this Court in the case of *Munnu Raja & Anr.* (supra) and the subsequent decision in the case of *Paniben (Smt) V. State of Gujarat*, (1992) 2 SCC 474 are required to be referred to. In the aforesaid decisions, it is specifically observed and held that there is neither a rule of law nor of prudence to the effect that a dying declaration cannot be acted upon without a corroboration. It is observed and held that if the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration."

10. PW 3 was subjected to extensive cross examination, but his evidence left no manner of doubt regarding the extra judicial confession of the deceased. This was corroborated by Bata Krushna Pradhan (PW 4), Smt. Bhanu Pradhan (PW 5), who are unrelated witnesses but co-villagers. Dukhi Pradhan (PW 2) also corroborated the above evidence of PWs 3, 4 and 5. It was, therefore, safe to place reliance on the evidence of the above witnesses to hold that the important

link in the chain of circumstances, viz., the oral dying declaration of the deceased stood proved satisfactorily by the prosecution.

11. That the death was due to poison stands confirmed on a collective reading of the evidence of Dr. Rabindranath Rath (PW 7) and the forensic evidence. The Director, SFSL, Rasulgarh by letter dated 17th September, 2010 sent the chemical examination report (Ext.5) directly to the Court. The viscera contained organophosphorous insecticidal poison. This clinched the fact that the cause of death was due to poisoning. The previous enmity and quarrel with the father of the deceased supplied motive for the crime and that too has been established by the prosecution. The trial Court has noticed the conduct of the accused who absconded soon after the death of the deceased till he was apprehended. This was an additional link in the chain of circumstances.

12. The Court is, therefore, satisfied that all the above important links in the chain of circumstances have been established by the prosecution and collectively it forms a continuous chain and points to the guilt only of the accused and no one else.

13. The Court, therefore, finds no reason to interfere with the impugned judgment of the trial Court. The appeal is accordingly dismissed.

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