PETITIONER:
KANSA BEHERA

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT12/04/1987

BENCH:
OZA, G.L. (J)
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OZA, G.L. (J)
KHALID, V. (J)

CITATION:
1987 AIR 1507 1987 SCR (2)1096
1987 SCC (3) 480 JT 1987 (2) 193
1987 SCALE (1)1137
CITATOR INFO :
E 1991 SC1853 (10)

ACT:
Indian Penal Code-Section 302--Conviction on circumstantial evidence--When valid--Circumstance of accused being with the deceased on the evening of occurrence--Whether sufficient to convict accused.
Indian Evidence Act, 1872--Sections 3 and 14--Circumstantial evidence-Conviction based on--When valid--Circumstance of accused being with deceased on the evening of occurrence--Whether sufficient when other accused from whom instrument of offence recovered is acquitted.

HEADNOTE:
The prosecution alleged that the deceased had some land dispute with one of the accused and his two brothers, that the deceased was done away through the instrumentality of the appellant and that his body with the throat cut was found by the road-side. The brother-in-law of the deceased identified the dead body and lodged information with the police. After investigation, the appellant and the other accused were arrested. The weapon of offence was produced by the other accused. Both the accused were remanded to judicial custody for the alleged murder of the deceased. The appellant escaped and was declared as absconder. The other accused was discharged for want of prima facie case against him.
After a long lapse of time, the appellant was apprehended and was committed to sessions. On the basis of circumstantial evidence that the appellant was seen with the deceased on the evening preceding the day on which the deceased was found dead, that a dhoti and shirt, stained with human blood, were recovered from his possession when he was arrested and that an extra-judicial confession was made by him when he was arrested after absconding, he was convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life. The High Court having confirmed the conviction and sentence, the appellant appealed to this Court.
Allowing the appeal by special leave,
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HELD: 1. It is a settled rule of circumstantial evidence that each one of the circumstances has to be established beyond doubt and all the circumstances put together must lead to the only inference and that is of the guilt of the accused. [1101E]

2.1(a) It is not in dispute that the appellant was seen with the deceased on the evening preceding the night when the deceased is alleged to have been killed. This fact has been established by the evidence of P.Ws. 3 and 4 and the appellant himself has admitted it, even though his caSe Was that the throat of the deceased was cut by the other accused. Even the wife of the deceased has deposed that the appellant had told her that her husband was lying dead. It is clear that only on the basis of this circumstance the appellant could not have been convicted. [1099C-D]

2.1(b) As regards recovery of a shirt and dhoti with blood stains, there is no evidence in the report of the Serologist about the blood group and, therefore, the evidence could not positively be connected with the deceased. The evidence of blood group is only conclusive to connect the blood stains with the deceased. In the absence of such evidence, this could not be a circumstance on the basis of which any inference could be drawn. [110lB-D]

2.1(c) Regarding the extra-judicial confession by the appellant, made after a long lapse of time, no reliance could be placed on it, especially in view of the circumstances in which the appellant was apprehended and the statement made, and also because of the denial by one of the two witnesses that the appellant had made by confession. [1100F-1101A]

2.2 The only circumstances which could be said to have been established is of the appellant being with the deceased in the evening and on that circumstance alone the inference of guilt could not be drawn especially in the circumstances of the case where another accused person from whom an instrument of offence was recovered and who had a grudge against the deceased, had been let off. [1101F]

3. The conviction and sentence passed against the appellant are set aside. [1101G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 323 of 1978.

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From the Judgment and Order dated 9.3.1976 of the Orissa High Court in Criminal Appeal No. 1 of 1974.

N.K. Agarwal for the Appellant.

Ms. Mona Mehta and R.K. Mehta for the Respondent.

The Judgment of the Court was delivered by

OZA, J. This appeal has been filed after obtaining leave from this Court by the appellant against his conviction under Section 302 and sentence of imprisonment for life awarded by Sessions Judge, Mayurbharj, Kenjhar, Baripada by his order dated 8th December 1973 and maintained by High Court of Orissa by its judgment dated 9th March, 1976.

The prosecution case in short was that the deceased Bhatal Majhi had some land dispute with Jitrai Majhi and his brothers. It is alleged that Jitrai Majhi did away with the deceased through the instrumentality of the present appellant. The incident is alleged to be at the night intervening between 13th and 14th December 1968. Bhatal Majhi was found dead in the morning of 14th December, 1968 by the road-side near a weekly market known as Joka Hata with his throat cut.

Bishnu Majhi the brother-in-law of the deceased P.W. 1 identified the dead body and lodged the information to Bangriposi Police Station the same day Ext. 3. The assailant was reported to be unknown.

P.W. 10, the Second Officer attached to the said Police Station investigated into the case, held an inquest, despatched the dead-body for post-morten examination seized certain incriminating articles and finally arrested the appellant on 15.12.68 at 11 a.m The same day 3 a.m. he arrested accused Jitrai Majhi. The weapon of offence a razor M.O. IV was produced by accused Jitrai Majhi which was seized under Ext. 5 Investigating Officer, P.W. 10 forwarded both the accused Jitrai Majhi and Kansa Behera, present appellant, in custody to Court, the appellant escaped as the lock up was defective and he,could not be traced. Finally a charge sheet was submitted against both Jitrai and Kansa indicating the appellant as absconder. Jitrai was discharged by the Sub Divisional Magistrate, Baripada vide his order dated 27.2.1970 for want of prima facie case as against him. So the case as against him needs no consideration. Later, after the apprehension of the appellant on 22.8.72, he was committed to the Court of Sessions on 28.6. 1973.

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The prosecution examined 10 witnesses and nobody was examined in defence. There is no eye-witness of the incident. The learned courts below convicted the appellant on the basis of circumstantial evidence. The circumstances established against the appellant are: i) that he was last seen with the deceased on the evening of 13th Dec. 1968 when it is alleged that he and deceased took liquor together; ii) that a dhoti and shirt were recovered from the possession of the appellant when he was arrested on 15.12.68 and these articles were found to be stained with human blood; and iii) that P.Ws 7 and 8 have deposed to about an extra-judicial confession made by this appellant when he was ultimately arrested after absconding in Bihar.

So far as the first circumstance that the appellant was seen with the deceased on the evening preceding the night when the deceased is alleged to have been killed is not in dispute. This fact has been established by the evidence of PWs 3 and 4 and the appellant himself in his statement also admitted that he was there although his case was that the deceased throat was cut by Jitrai Majhi who also was an accused and was discharged on the basis of police papers by the Sub , Divisional Magistrate. It is clear that only on the basis of this circumstances the appellant could not have been convicted and as this circumstance is not in dispute, in our opinion, it is not necessary to go into this question.

Learned counsel appearing for the appellant contended that the circumstances appearing in evidence indicate that the deceased and Jitrai Mejhi had some trouble about land. It is alleged that the deceased land was pledged with Jitrai and the possession of the land was given to him. When the deceased offered him to repay the loan so that he may get back his land, it is alleged that Jitrai refused to give possession on the plea that the land was purchased by him. Ultimately it is alleged that the deceased took forcible possession of the land from Jitrai and therefore Jitrai bore a grudge against the deceased. It was also contended that the razor, the alleged instrument of offence was recovered at the instance of Jitrai when he was arrested and that was also found stained with blood. It was contended by learned counsel that in fact the appellant’s case is that it was Jitrai who cut the throat of the deceased and this also is

born out from a circumstance that next morning the appellant went to the wife of the deceased and informed her that their husband was lying dead at the place of occurrence.

It was also contended by learned counsel that the two witnesses who deposed about the dying declaration are P.Ws 7 and 8 but in fact

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P.W. 8 in cross-examination has gone back on that statement. It contended that even otherwise the dying declaration is a weak piece of evidence.

As regards the recovery of a shirt and dhoti which are alleged to be stained with human blood, it was contended that there is no clear evidence to indicate that the appellant was wearing dhoti at the time of the incident. As regards shirt it was Contended that although the serologist report indicate that it is stained with human blood but blood grouping is not there. In this view of the matter the presence of some stains of human blood after sometime could not be a circumstance on the basis of which any conclusive inference could be drawn. It was therefore contended that in view of these circumstances it could not be held that the circumstances point to the only conclusion of the guilt of the appellant.

It is significant that the wife of the deceased who has been examined as a witness deposed that next morning the appellant went to her and told her that her husband was lying dead, but she did not believe him and later Phudan Majhi came and told her that her husband was ill and wanted her to accompany him without taking food and she stated that she went alongwith him and found her husband lying dead with his throat cut. It is interesting that this Phudan Majhi who came and told her a false story has not been examined.

The three circumstances on the basis of which the appellant has been convicted have to be considered. The last one i,e. the extra judicial confession is proved by P.Ws 7 and 8. A perusal of the evidence of P.W. 8 discloses that this witness in cross-examination went back and denied any confession having been made by the appellant. The other witness is P.W. 7 who no doubt has spoken about an extra-judicial confession made by the appellant. This is after a long lapse of time as admittedly this appellant absconded after his arrest on 15.12.68 and was later arrested on 22.8.72 and this extra-judicial confession therefore appears to have been made after a long lapse of time. The circumstances .in which this appellant was apprehended and this statement is alleged to have been made also is rather interesting. In Bihar this appellant was apprehended for having committed theft and that he was produced before the Mukhiya of the Village P.W. 7 and the Mukhia wanted him to be handed over to the police. That it is alleged that the appellant said that I am wanted in connection with a murder case and I am hiding from the police and therefore requested not to be handed over to the police and in this background it is alleged that he made a statement that he has killed one Bhatal Majhi.

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Such an extra-judicial confession for proving which two witnesses were produced. One of these witnesses has gone back on that statement and this statement is alleged to have been made after a long lapse of time, in our opinion, is a piece of evidence on which no reliance could be placed and under these circumstances, in our opinion, this piece of evidence has to be left out of consideration.

As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained

with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the cloths of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.

So far as the appellant being with the deceased in the evening is concerned, it is not in dispute. But it is also significant that the instrument of the offence was recovered at the instance of one Jitrai Majhi who has been discharged and under these circumstances therefore the evidence about the appellant having been seen in the evening with the deceased also is of no consequence. It is a settled rule of circumstantial evidence that each one of the circumstances have to be established beyond doubt and all the circumstances put together must lead to the only one inference and that is-of the guilt of the accused. As discussed above the only circumstance which could be said to have been established is of his being with the deceased in the evening and on that circumstance alone the inference of guilt could not be drawn especially in the circumstances of the case where one another accused person from whom an instrument of offence was recovered, who had a grudge against the deceased has been let off.

In the light of the discussions above therefore, in our opinion, the courts below were wrong in convicting the appellant on these facts. The appeal is therefore allowed, the conviction and sentence passed against the appellant are set aside. It is reported that he is in custody. He shall be set at liberty forthwith.

N.P.V. Appeal allowed.

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