

L.MOHAPATRA, J & C.R.DASH, J.

JCRA. NO.54 OF 2001 (Decided on 24.11.2010)

DUKHIA @ DUKHABANDHU SINGH

..... Appellant.

.Vrs.

STATE OF ORISSA

.....Respondent.

PENAL CODE, 1860 (ACT NO.45 OF 1860) – SEC.302.

For Appellant - Mrs. Pramila Mohanty.
For Respondent - Addl. Govt. Advocate.

This appeal is directed against the judgment and order dated 9.7.2001 passed by the learned Sessions Judge, Dhenkanal-Angul, Dhenkanal in S.T.Case No.100D of 1998 convicting the appellant for commission of offence under Section 302 of the Indian Penal Code (in short 'IPC') and sentencing him to imprisonment for life.

2. The deceased is a resident of village Tipei Jharan. On the date of occurrence, he had gone to Bali Jharan to purchase Mahua Flowers. At about 5 P.M., his son, P.W.1, received information that the deceased had been murdered by some one. Thereafter, he went to the village Sundarmundi and found the dead body of the deceased lying on the ridge of a paddy field. There was bleeding from the head of the deceased. Thereafter, P.W.1 and others guarded the dead body till morning and on the next day, P.W.1 went to Mahabir Road Out-post and presented the written report. On the basis of the said report, a station diary entry was made and F.I.R. was sent to Parjanga Police Station for registration. Investigation was taken up and on completion of investigation, charge sheet was submitted against the appellant for commission of offence under Section 302 of IPC.

3. Prosecution examined nine witnesses whereas none was examined on behalf of defence. The plea of defence is complete denial of the prosecution case. Out of nine witnesses examined by the prosecution, P.W.1 is the informant and is also son of the deceased. P.W.2 claims that the appellant had made an extra judicial confession before him admitting to have committed murder of the deceased. P.Ws.3 and 6 are the witnesses, who have stated that they had seen the appellant with the deceased on the date of occurrence. P.W.4 is a Constable, who accompanied the dead body for post-mortem examination and P.W.5 is the Doctor, who conducted post-mortem examination. P.W.7 is a seizure witness. P.W.8 is the A.S.I. of Mahabir Out-post, who received the written report and conducted initial investigation. P.W.9 is the I.O.

The trial Court accepting the evidence of P.Ws.3 and 6 came to a conclusion that the deceased was last seen with the appellant and also relying on the evidence of P.Ws.2 and 5 came to a conclusion that it is the appellant, who committed murder of the deceased.

4. Mrs. Mohanty, learned counsel appearing for the appellant assails the impugned judgment on the ground that out of two circumstances claimed to have been proved by the prosecution, the so-called extra judicial confession made before P.W.2 is unacceptable under law. The only other evidence against the appellant is the evidence

of P.Ws.3 and 6, who claim to have seen the deceased along with the appellant some time before the occurrence. According to the learned counsel, on the basis of evidence of P.Ws.3 and 6, no conviction can lie as the case of the prosecution is totally dependant on circumstantial evidence and the prosecution has failed to prove the chain of circumstances pointing at the guilt of the appellant.

Learned counsel for the State relied on the evidence of P.W.2 so far as it relates to extra judicial confession as well as the evidence of P.Ws.3 and 6 who claim to have been seen the deceased prior to his death along with the appellant.

5. As stated earlier, out of nine witnesses examined on behalf of the prosecution, P.W.1 is the informant and is also son of the deceased – He, in his evidence, has stated that from the morning of the date of occurrence the deceased and gone by his bicycle to village Bali Jharan. On the said date at about 5 P.M. his father's elder sister's son, namely, Adwait came to his house along with his cousin brother and informed that the deceased has been murdered by somebody. Accordingly, he went to the spot near village Sundaramundi and found the dead body of the deceased lying on the ridge of the land. He also found bleeding injuries on the head apart from other parts of the body of the deceased. Since he arrived near the dead body at about 8 P.M., he along with others guarded the same till morning and, thereafter, he went to Mahabir Road Outpost and submitted a written report. P.W.2 is a witness to the seizure under exhibit-3 and also claims that the appellant made an extra judicial confession before him. He, in his evidence, has stated that on 25.4.1998 the appellant, who was hiding in village Bali Jharan, was brought to the mango tope of his village by Pranabandhu Singh and Narottam Singh and others. He went to the mango tope at about 11.30 A.M. and found the appellant tied up. On his asking, the appellant is alleged to have stated that he committed murder of the deceased for money. Though such statement was made by P.W.2 in his deposition, P.W.9, the I.O., in his cross-examination has stated that during investigation, P.W.2 had not stated before him that on his asking, the appellant admitted to have committed murder of the deceased for money. Apart from above, as stated by P.W.2, at the time he visited the mango tope, the appellant had been tied by some of the youth belonging to the same village. Under these circumstances, even if any statement is made by the appellant, it can not be said to be a voluntary statement and, therefore, the evidence of P.W.2 with regard to extra judicial confession can not be accepted.

The other circumstance on which prosecution placed reliance is that the deceased was seen with the appellant some time before his death. P.Ws.3 and 6 were examined by the prosecution to support the said circumstance. P.W.3, in his evidence, has stated that on the date of occurrence, he was suffering from fever. At about 1.30 P.M. while he and P.W.6 were returning by their bicycles, they found the deceased sitting on a stone keeping his bicycle nearby. The appellant was standing near him with a small axe. Similar is the statement of P.W.6. Even if the evidence of these two witnesses is accepted, the prosecution has been able to prove that the appellant was found with the deceased at about 1.30 P.M. on the date of occurrence. The information regarding death of the deceased was given to P.W.1 at 5 P.M.. There is nothing on record to show that the deceased and the appellant were seen immediately before the occurrence. Apart from above, though it was claimed by the prosecution that the axe seized had contained blood, the chemical examination report is silent as to whether the blood found on the axe is that of the deceased or not. Law is well settled that when a case is based on circumstantial evidence, the chain of circumstances proved by the prosecution must point at the guilt of the appellant leaving no scope to entertain a

doubt. Here is a case where even if the evidence of P.Ws.3 and 6 is accepted to the extent that they had seen the appellant and the deceased at 1.30 P.M., there is no other evidence to connect the appellant with the alleged crime. We are therefore of the view that the prosecution has miserably failed to prove the charge against the appellant.

6. Accordingly, for the reasons stated above, we allow the appeal and set aside the impugned judgment and order dated 9.7.2001 passed by the learned Sessions Judge, Dhenkanal-Angul, Dhenkanal in S.T.Case No.100D of 1998 convicting the appellant-Dukhia @ Dukhabandhu Singh for commission of offence under Section 302 IPC. The appellant, who is in custody, be set at liberty forthwith unless his detention is required in any other case.

Appeal allowed.