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BIBHACHHA
v.
STATE OF ORISSA

MAY 8, 2001

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[M.B. SHAH AND SHIVARAJ V. PATIL, JJ.]

*Penal Code, 1860—S.302—Murder—Circumstantial evidence—
Establishment of guilt of accused beyond reasonable doubt—Conviction and
sentence—Validity of.*

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Appellant was prosecuted for an offence under S.302 IPC. The prosecution case was solely based on circumstantial evidence. According to prosecution (i) accused and deceased were last seen together; (ii) the testimony of PWs that the gold chain worn by the deceased was sold at the request of accused; (iii) investigating officer recovered the kathury (kati) at the instance of the accused; (iv) the doctor who conducted the autopsy opined the possibility of injuries of deceased by weapon like kati and (v) Blood stained clothes were recovered from the spot. Trial Court on appreciation of evidence, convicted and sentenced the accused, which was confirmed by High Court. Hence the present appeal.

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On behalf of appellants, it was contended that the prosecution has failed to establish its case to sustain the order conviction; the prosecution case depends on the circumstantial evidence only and the circumstances are not established so as to point only to the accused that he was guilty; that the chain of circumstances was not complete and there are several doubts and discrepancies in the prosecution case.

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Dismissing the appeal, the Court

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HELD : The cumulative effect of all the circumstances established by the prosecution undoubtedly indicate to the guilt of the accused. Both the court below on proper appreciation of evidence have concurrently recorded the finding that the accused is guilty. Thus, there is no justification for interference with the conviction and sentence awarded by courts below.

[550-F]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.

638 of 1998.

From the Judgment and Order dated 9.9.97 of the Orissa High Court in Crl. A. No. 185 of 1991.

S.C. Patel for the Appellant.

Radha Shyam Jena for the Respondent.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. This appeal is directed against the judgment of the High Court of Orissa confirming the judgment of conviction and order sentencing the appellant to suffer life imprisonment. The appellant was the sole accused.

Briefly stated, the prosecution case is that on 16.11.1989 Damodar Patel (PW-1) while had gone to respond the call of nature found one dead body lying on the sandy riverbed of Hati River. There was only chaddi on the dead body. The pant and shirt were lying at a distance from the dead body and one motorcycle was kept by the side of the pillar of the bridge. PW-1 came to the village and told about the same to one Madhu Naik. Both of them went to police station at Jaipatna and orally reported the incident in the police station at Jaipatna. The report was reduced to writing. A U.D. case No. 9/89 was registered. The investigating Officer held inquest of the dead body and the same was sent to post-mortem. The dead body was identified to be of the deceased. After completion of the investigation, charge- sheet was laid. The appellant was tried for an offence under Section 302 IPC in the Sessions Court. The defence of the appellant was one of total denial.

The prosecution in support of its case examined as many as 39 witnesses. The prosecution case rests on circumstantial evidence only. PW-1 is the informant. Siba Sankar Padhi (PW-2) is the father of the deceased who identified the dead body of the deceased and found that gold chain, which the deceased was usually wearing, was missing. Binayak Behera (PW-8) deposed that the deceased and accused were moving together on 15.11.1989 on motor vehicle and that the deceased had told him that he was to purchase a revolver from the accused. Udayanath Panigrahi (PW-9) also found the accused and the deceased together taking tea in the shop of PW-8 on 15.11.1989. Malaya Chandra Maher (PW-13) stated that the accused purchased a soap at about 9.15 P.M. on 15.11.1989 and Pradumna Kumar Mehar (PW-14), who accompanied him, found the accused washing his cloth. PW-15 is the hotel

A keeper. The accused and the deceased were last seen by him on 15.11.1989. He found that the deceased was wearing a gold chain. PW-16 identified the pant of the accused. PW-19 stated that one Rama Saraf offered him to purchase one gold chain for Rs. 4,400 on 16.11.1989. Kusa alias Sona Mehar (PW-20) deposed that Chasiram Meher came with a gold chain and weighed it and received the gold chain on payment of Rs.4,400/- on 17.11.1989; the gold chain (M.O.I.) was given to Ramachandra Saraf after coming to know that it was involved in a murder case. The gold chain was seized in the presence of PW-21. PW-22 is a Medical Officer, who held post-mortem of the deceased. PW-23 is a witness to the seizure of shawl, pant and shirt stained with blood. PWs-25, 26 and 27 are the witnesses for seizure. PW-29 is a witness to the discovery of Kati (M.O.VII) seized from inside the sandy waterbed of Hati River. PW-31 is one of the I.Os., who recorded the F.I.R. and PW-32 is the I.O., who sent other articles for chemical examination. PW-33 is a witness who saw the deceased and the accused going towards Jaipatna at about 6.00 P.M. on 15.11.1989. PW-34 is one of the I.Os., who seized Kati and gold chain. The learned Sessions Judge having appreciated the evidence on record summed up in para 20 thus: -

E “The evidence of PWs. are cogent and consistent to bring about a conviction on the evidence are unimpeachable in character and have shown unerringly the guilt of the accused. The accused had intentionally committed murder of the deceased which is found in the evidence of movements of the accused on 15.11.1989 in and without the company of the deceased and the dead body of the deceased was found on the next day of the occurrence with the injuries on the deceased and missing of M.O. I from the person of the deceased, recovery of M.O. IV, V and VI and the blood stains found in M.O. VI, IV and V and the blood stains found in M.O. VI and recovery of the M.O. VII from inside water from river bed and the recovery of M.O. I of the deceased which was disposed of by sale after the occurrence have completed the chain of circumstances leading to a definite conclusion that the accused intentionally committed murder of the deceased. There are some discrepancies in the evidence which do not have any adverse impact on the charge of the prosecution.”

H The High Court on re-appreciation and analysis of the evidence in the light of the submissions made at the Bar, concluded that the prosecution has been able to prove, such of the circumstances relied on by it to complete the chain of circumstances against the accused to bring home the charge beyond all

reasonable doubt. In this view, finding no illegality or infirmity in the order of conviction recorded by the trial judge, dismissed the appeal by the impugned judgment. A

The learned counsel for the appellant urged that the prosecution has failed to establish its case to sustain the order of conviction; the prosecution case depends on the circumstantial evidence only and the circumstances are not established so as to point only to the accused that he is guilty. According to him the chain of circumstances is not complete and there are several doubts and discrepancies in the prosecution case. Per contra, the learned counsel for the respondent-State made submissions supporting the impugned judgment. He submitted that both the courts on proper and objective assessment and appreciation of evidence have found the appellant guilty of offence under Section 302 IPC and this Court under the circumstances may not upset the impugned judgment. B C

It is no doubt true that the prosecution case rests on circumstantial evidence only. The circumstances as unfolded during the trial and as reflected in the judgments of the Sessions Court as well as the High Court broadly stated are the following: - D

1. The accused and the deceased were last seen together on 15.11.1989 as spoken to by the prosecution witnesses. E
2. Recovery of one yellow colour full shirt (M.O. IV), Ash colour full pant (M.O. V) and one shawl (M.O. VI) at the instance of the accused under Section 27 of the Evidence Act on 18.11.1989 under Exbt. 13 in the presence of PWs 23, 25 and 30 and one Ishwar Panigrahi. PWs-7 and 15 stated that the shirt (M.O. IV) and pant (M.O. V) were worn by the accused on 15.11.1989. The apparels seized under Exbt. 13 contained blood stains. F
3. Recovery of the gold chain by PW-34 from one Sardar Kar Saraf on 30.11.1989 under Exbt. 9 in the presence of PWs-21 and 26.
4. PWs-4 and 15 stated that the gold chain (M.O. I) was being worn by the deceased. G
5. The statements of PWs-19, 20 and 27 made in connection with the transaction, sale of the gold chain at the request of the accused.
6. The recovery of Kathury (Kati) (M.O. VII) by the I.O. at the H

A instance of the accused under Exbt. 15 in the presence of PW-29.

7. The opinion of the doctor, PW-22, who conducted autopsy on the possibility of injuries of deceased by weapon like kati (M.O. VII).

B 8. Presence of human blood on clothes seized.

These circumstances are supported and established by acceptable evidence as rightly held by the trial court and confirmed by the High Court.

C Both the courts on proper appreciation of evidence have concurrently recorded the findings that the accused is guilty. We may add that as per the report of the chemical examiner of State Forensic Science Laboratory, one white chaddi, worn by the deceased, marked as 'E' and sample sand marked as 'F', 'H' and 'J' were extensively stained with blood. A few small patches of blood stains were also detected on shawl marked as 'C'. Blood stains were not detected on iron kati. It may be stated here itself that the same was discovered from bed of flowing river. It is evident from the report of Serologist (Exbt. 19) that portion of shawl and portion of chaddi were stained with human blood, so also sample of sand. The High Court has also noticed that the chemical examiner found that the blood stains found on the shawl (M.O. VII) was of group 'B' and that the blood group of the deceased was also of group 'B'.

F Thus having regard to all these aspects we are of the view that the prosecution has proved that each one of the circumstances aforementioned point to the guilt of the accused and the cumulative effect of all the circumstances too undoubtedly indicate guilt of the accused excluding any other hypothesis. More so, in this case when the defence of the accused is one of total denial. We have no good reason or valid ground to interfere with the impugned judgment.

G In view of what is stated above, we do not find any merit in the appeal. Hence it is dismissed.

S.VK.

Appeal dismissed.