Bahadul Alias Ghanshyam Padhan vs State Of Orissa on 16 January, 1979

Equivalent citations: AIR1979SC1262, 1979CRILJ1075, (1979)4SCC346, 1979(11)UJ348(SC), AIR 1979 SUPREME COURT 1262, (1979) 4 SCC 346, (1979) 48 CUTLT 456, 1979 SCC(CRI) 982, 48 CUTLT 456, 1979 UJ (SC) 348, 1979 CRILR(SC&MP) 177

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Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against the judgment of the Orissa High Court dated 16th March, 1972, upholding the conviction of the appellant under Section 302 IPC and sentence of life imprisonment awarded by the Sessions Judge. A detailed narrative of the prosecution case is to be found in the judgement of the High Court and it is not necessary for us to repeat the same all over again. The appellant is said to have assaulted Ushabati Padhan by means of an axe on 14-8-1967 at 7.00 a.m. following a dispute between the appellant and his party and Ushabati Padhan who are laid some claim to the land which was being ploughed by the appellant. The central evidence against the appellant consisted of the following:-

> (1) Evidence of P.Ws. 1 to 7 (2) Judicial confession made by the appellant before a Magistrate (3) Production of the blood-stained Tangia from the appellant's house after taking it from his house

2. The trial court after considering the evidence refused to rely on the oral evidence led by the prosecution arid disbelieved P.Ws. 1-7. The Sessions Judge further found that the confession was voluntary and he based his conviction on the confession alone corroborated as it was by the evidence of P.Ws. 11, 12 before a Magistrate under Section 164 of the CrPC. The appellant filed an appeal in the High Court which did not agree with the finding of the Sessions Judge on the assessment of oral evidence led by the prosecution and appears to have accepted the evidence of P.Ws 1 to 7. In doing so the High Court tried to displace some of the reasons given by the Sessions Judge but seems to have overlooked one very important fact which completely demolishes the evidence of these witnesses We would like to indicate this fact first. According to the statement of the eye witnesses P Ws. 2 to 7 at the time of occurrence they were ploughing in the Atia Land of Daitari which is a low lying area but which according to the statement of the witnesses made before the police was not

visible from the place of occurrence nor any person standing there could be in a position to see the occurrence. P.Ws 3 to 7 had tried to resile from the statement which they gave before the police but on being confronted the Investigating Officer has proved that each one of them has made that statement before the police, that they were at the low lying area where the occurrence took place and which was not visible from there. PW 2 has not admitted this fact before the police but from the evidence it appears that he was also ploughing the land at the same place where P.Ws. 3 to 7 were. In these circumstance the evidence of PW 2 also falls in the same category as those of P.Ws. 2 to 7. The learned Sessions Judge had dealt with the circumstances in great detail and going into this aspect observed as follows:-

> These PWs have also stated before the I O. that they were at the time of incident ploughing in the Atia Land of Daitari in the low lying portion and hearing the Halla and shout of PW 1 they came to the DHIPA land and saw the incident which they categorically denied in court and contradict their statements to the I.O. It is further admitted by these P.Ws. that if they would be in the low lying portion of the Atia land, they will not be able to see the incident now also hear it.

3. In view of this finding of the Sessions Judge which has neither been reversed nor noticed by the High Court it is impossible for us to rely on the evidence of PWs 2 7. As regards PW 1 we have been taken through to the evidence of this witness who is a young girl of 15 years and has admitted that before going to the Police Station she had met her maternal uncle and one Purna Dahuri who had asked her to go to the Police Station and also instructed her as to what had to be reported. Thus the witness clearly admits that she was tutored by two persons and none of them has been examined by the prosecution to prove that there was no tutoring. Apart from this the Sessions Judge has pointed out that there are a number of contradictions in her evidence and the statement given by her in the FIR. On going through the evidence of PW 1 we feel that it is rather unsafe to rely on this evidence for the purpose of the convicting the appellant on a murder charge. We would, therefore, exclude her evidence from consideration. This leaves us to the other two pieces of evidence, namely, the judicial confession made by the appellant before a Magistrate and the evidence of the production of tangia. As regards the confession, the High Court itself refused to act on it as it was satisfied that the confession was not a voluntary one. In this connection the High Court observed as follows:-

> The fact is that the accused was arrested on 14-8-1967 and the Magistrate took no pains to ascertain as to how long he was in police custody before he was produced before him. He also further admits that no time for rejection was given to the accused on 17 8-1967 when he was produced for making the judicial confession. It is well settled that no judicial confession can be acted upon unless it is proved to be voluntary and true. In view of the testimony of PW 8, who has not acted with due circumspection, it is difficult to reach the conclusion that the confession was voluntary.

4. In these circumstances, therefore, we are not in a position to rely on the judicial confession. As regards the production of the tangai by the accused before the police, the High Court seems to have relied on it as admissible under Section 8 of the Evidence Act. As there is nothing to show that the

appellant had made any statement under Section 27 of the Evidence Act relating to the recovery of this weapon hence the factum of recovery thereof cannot be admissible under Section 27 of the Evidence Act. Moreover, what the accused had done was merely to take out the axe from beneath his cot. There is nothing to show that the accused had concealed it at a place which was known to him alone and no one else other than the accused had knowledge of it. In these circumstances the mere production of the tangia would not be sufficient to convict the appellant. For the reasons given above we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. The appeal is accordingly allowed, the conviction and sentence imposed on the appellant are set aside and he is acquitted of the charge against him. The appellant is directed to be released forthwith.