

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 37 of 1995

(An Application under Section 374(2) of the Code of Criminal Procedure)

AFR Bula Soren and Others Appellants

-Versus-

State of Odisha Respondent

Advocate(s) appeared in this case:-

For Appellant : Mr. A.Pradhan, Mr. D.P.Dhal,
Mr. S. K.Nayak, Advocates.
For Respondent : Mr. S.Pattnaik,
Additional Government Advocate
for the State.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

26th September, 2023

SASHIKANTA MISHRA, J.

The appellants Bula Soren, Damodar Soren and Budhia Hembram have preferred this appeal questioning the correctness of the judgment of conviction and sentence passed by learned Sessions Judge, Balasore on 21.01.1995 in S.T. Case No. 120/94. Being convicted for the offence

under Section 304/34 of IPC they have been sentenced to undergo R.I. for 5 years.

2. The prosecution case, briefly stated is that on 23.01.1994 in the evening, the informant received information that his sister Hira had been killed after being assaulted by the Adivasi people of village Sankuapara. He was further informed that a meeting was held under the leadership of accused Laxman Hembram (dead) to decide on allegation of witchcraft against Bhagaban, husband of the deceased Hira. Because of practice of witchcraft the wife of the accused Bula was allegedly suffering from disease. In the meeting, accused Laxman imposed a penalty of Rs. 5,000/- on Bhagaban which, after deliberation was reduced to Rs. 150/-. Bhagaban left the meeting to arrange the amount. At that time Hira came to the meeting and fell prostrate before accused Laxman praying for time to pay the penalty. At this juncture, accused Bula allegedly pulled her legs causing Hira to fall flat on the ground and thereafter the other accused persons trampled over her, throttled her neck and pulled her tongue, as a result of which she died. When the other persons present there intervened the accused persons drove

them away by pelting broken bricks and glasses. The brother of the deceased Laxman submitted a report after ascertaining the relevant facts from Bhagaban, the husband of the deceased. This led to registration of Simulia P.S. Case No. 16 of 1994 under Section 302/34 of IPC which was followed by investigation. Upon completion of investigation, charge-sheet was submitted against the accused persons under the aforementioned sections.

3. The accused persons took the plea of denial.

4. To prove its case, prosecution examined 11 witnesses of whom P.W.5 is the informant, P.Ws. 6 and 7 are eye witnesses to the occurrence, P.W.9 is the Autopsy Surgeon and P.W.11 is the Investigating Officer. Besides, prosecution proved 9 documents from its side. Defence did not adduce any evidence, either oral or documentary.

5. After appreciating the evidence on record, learned Sessions Judge held that the death of the deceased was caused by the assault made jointly by all the accused persons. The ocular evidence was well supported by the medical evidence. However, the learned Sessions Judge found no evidence of the offence of murder. It was on the other

hand held that the case was one of culpable homicide not amounting to murder. Since the accused persons did not have any intention but had the knowledge that their acts were likely to cause injury resulting in death, the offence under Section 304 Part II was made out. On such findings, the accused persons were convicted and sentenced as aforesaid.

6. During pendency of the appeal, the convict appellants namely, Laxman Hembram, Karia Soren having expired the case against them stood abated.

7. Heard Mr. A. Pradhan, learned counsel for the appellants and S.K.Mishra Additional Standing Counsel for the State.

8. Assailing the impugned judgment of conviction, Mr. Pradhan would contend that the conviction is entirely based on the evidence of P.Ws.6 and 7 which does not inspire confidence because of contradiction therein. Mr. Pradhan further contends that the medical evidence regarding cause of death is not fully consistent with the ocular evidence, which creates a doubt as regards the veracity of the prosecution case.

9. Per contra, Mr. S.K.Mishra learned Additional Standing Counsel has supported the findings of the Trial Court by submitting that the evidence of the eye witnesses is clear, cogent, consistent and was therefore, rightly relied upon. Further, the medical evidence is fully consistent with the version of the eye witnesses as regards the nature of assault and cause of death of the deceased.

10. Reading of the impugned judgment suggests that learned Sessions Judge has mainly relied upon the version of P.W.6 (Hari Tudu) and P.W. 7 (Rani Tudu), who are husband and wife. P.W.6 claims to be an eye witness to the occurrence. In his evidence, he deposed that at the relevant time in the Panchayat presided over by co-accused Laxman, a penalty of Rs. 500/- was initially imposed on Bhagaban for practising witchcraft which was reduced to Rs. 150/-. Bhagaban want to arrange funds to pay the fine and thereafter, Hira (deceased) came and fell prostrate before accused Laxman, the Sardar praying for some time to enable them to pay the penalty and while she was lying prostrate, accused Bula pulled her legs. As a result, she fell flat on the ground and all the accused persons thereafter trampled over

her while she lay on the ground. They also throttled her neck and pulled her tongue and she died in the process. When P.W.6 intervened and protested the accused persons drove him away and his wife and chased them with broken bricks and glasses. It has been submitted that the statements that Bula pulled the legs of Hira while she was lying prostrate on the ground and that when he (P.W.6) protested the accused persons chased him with broken bricks and glasses are improvements from his earlier version in the FIR as well as his statement recorded under Section 161 Cr.P.C. Moreover, this part of the evidence has also not been specifically brought to the notice of accused Bula during his examination under Section 313 of Cr.P.C. After going through the FIR and the statement of P.W. 6 recorded by the I.O. under Section 161 of Cr.P.C, this Court finds force in the submission of learned counsel for the appellants. Moreover, as many as 11 questions were put to Bula but the specific statement of P.W. 6 regarding pulling of legs of the deceased and of chasing him from the spot using brickbats and stones was not specifically put.

10. As regards the evidence of P.W.7, wife of P.W. 6, it is seen that whatever she has said about the overt acts attributed to the accused persons are improvements over her earlier version recorded by the I.O. under Section 161 of Cr.P.C.. There is no evidence to show that she was present at the spot and therefore, her evidence can only be treated as heresay and hence, not admissible.

11. Learned Sessions Judge has however overlooked this vital aspect and accepted the version of P.Ws. 6 and 7 in toto. As it appears, learned Sessions Judge has placed great reliance on the medical evidence to hold that the injuries found on the deceased are consistent with the prosecution case of assault by the accused persons. The evidence of the Autopsy Surgeon P.W.9 shows that he found the following injuries on the body of the deceased.

- (i) Abrasion $\frac{1}{2} \times \frac{1}{4}$ two in number on right frontal region.
- (ii) Abrasion $\frac{1}{8} \times \frac{1}{8}$ on the right eyebrow on the lateral side of the right eye.
- (iii) Abrasion " $\frac{1}{8} \times \frac{1}{8}$ " on the right knee.
- (iv) Haematoma on the right frontal region " $\frac{1}{2} \times \frac{1}{2}$ ".
- (v) Haematoma $1" \times \frac{1}{2} \times \frac{1}{2}$ " in the mid line of parietal lobe.
- (vi) Haematoma $1" \times 1" \times \frac{1}{2}$ " on the left parietal lobe of the brain.

According to him, the cause of death was Hematoma on the left parietal lobe. If the evidence of P.W.6 is considered, the same suggests that the accused persons throttled her neck and pulled her tongue after trampling over her. There is absolutely no mention of any injury being caused to the head of the deceased and the statement that accused Bula pulled the legs of the deceased as a result of which she fell flat on the ground is an improvement over his earlier version. Thus, bereft of the statement there is nothing in the evidence to show as to how the injuries to the head were caused. Obviously, throttling of the neck and pulling of the tongue and even trampling over her body could not have resulted in any injury on the head of the deceased. Significantly, the Doctor did not find any injury on the neck or chest and stomach of the deceased even though, the accused persons allegedly trampled over her. Thus, there is clear gap in the ocular and medical evidence which learned Sessions Judge seems to have overlooked.

12. From a conspectus of the analysis of the evidence as made hereinbefore, this Court finds that the evidence as laid is not free from reasonable doubt, the benefit of which should

have gone to the accused persons. The finding of learned Sessions Judge that the pulling of the legs and then trampling over the body and throttling and pressing the deceased were simultaneous acts being apparently based on the version of P.W.6 and 7, which this Court finds difficult to believe, is therefore, not acceptable. Moreover, learned Sessions Judge also appears to have overlooked the fact that the above evidence relating to pulling her legs was not specifically put to accused persons and therefore, could not have been relied upon or utilised to hold the accused guilty.

13. For the foregoing reasons therefore, this Court is of the considered view that the finding of guilt arrived at by the learned sessions Judge cannot be sustained in the eye of law. Resultantly, the appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. The accused appellant being on bail, his bail bonds be discharged.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
26th September, 2023/ Deepak