

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.376 of 2012

In the matter of an Appeal under section 374(2) of the Code of Criminal Procedure, 1973 and from the judgment of conviction and order of sentence dated 4th April, 2012 passed by the learned Sessions Judge, Nabarangpur in Criminal Trial No.74 of 2006.

Khagapati Kalar *Appellant*

-versus-

State of Odisha *Respondent*

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellant - M/s.Neelakantha Panda,
S. Parija-1 & Miss.S.Sethi
(Advocates)

For Respondent - Mr.P.K.Mohanty,
Additional Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE G.SATAPATHY

Date of Hearing :12.02.2024 : Date of Judgment : 29.02.2024

*D.Dash, J.*The Appellant, by filing this Appeal, has challenged the judgment of conviction and order of sentence dated 4th April, 2012 passed by the learned Sessions Judge, Nabarangpur in Criminal Trial No.74 of 2006 arising out of G.R Case No.146 of 2006, corresponding to Jharigam P.S. Case No.23 of 2006 of the Court of the learned Judicial Magistrate First Class, Umerkote.

The Appellant (accused) thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (in short, 'the IPC'). Accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.1000/- (Rupees One Thousand) for commission of the offence under section 302 of the IPC.

2. PROSECUTION CASE:-

Bella Pandey is the wife of the accused. The marriage between the accused and Bella had taken place in or about the year 1995-96. They were residing in a house at Kusumi situated near the parental house of Bella. On 27.04.2006, the accused, Bella, Bella's mother, namely, Sukaldei Pandey (P.W.5) and brother, Lachmi Pandey (P.W.4) had gone to village Banjiamba to the house of one Ballava Pandey (P.W.1) in order to attend an obsequies ceremony. It was around 11 am, after reaching the house of Ballava, P.W.1, all took their lunch. Around 5 p.m. in the evening, a quarrel took place between the accused and his wife Bella. Bella then went to the house of one Ananta Pandey, which was near the house of Ballava (P.W.1). She was sitting on the veranda of the said house. It is stated that the accused followed Bella and assaulted her when she was sitting on the veranda of Ananta by giving fist blows, slaps and kicks. The incident wherein the accused was assaulting his wife (Bella), had been seen by Bansi Kalara (P.W.9) and one Pradeep, the two children,

who were playing near the courtyard of the house of said Ananta. On account of such assault by the accused, Bella lost her sense. Wife of Ananta, namely, Haramani Pandey, having come to know about the incident, reached there. She found Bella lying on the verandah where the accused was sitting. The mother of Bella (P.W.5) also came there and saw her daughter (Bella) lying dead on the verandah. She went to her house at village Kusumi, which was four kilometer apart and informed the same to her sons (P.W.4 & 6). All of them, i.e., P.Ws.4, 5 & 6 immediately went to village Banjiamba and saw the deceased lying at the spot without any sense. Bella was lifted by P.W.6 & others on the back carrier of the bi-cycle and all including the accused returned to their village Kusumi. Many villagers, i.e., P.Ws.2, 7 & 11 came to see Bella. Bella was then dead. Being asked by P.W.11, the accused, in presence of other villagers, confessed to have assaulted his wife Bella in the house of Ananta Pandey, which had led to her death. On the next morning, the brother of Bella, i.e., P.W.4 lodged a written with the Officer-in-Charge (OIC), Jharigam P.S. On receiving the said report, the OIC treated the same as F.I.R. (Ext.3) and upon registration of the case, took up the investigation.

3. In course of investigation, the Investigating Officer (I.O.-P.W.13) examined the informant (P.W.4) and other witnesses. The I.O. (P.W.13), having visited the spot, prepared the spot map

(Ext.9). The I.O. (P.W.13) held inquest over the dead body of Bella and prepared the report (Ext.2). He (P.W.13) sent the dead body of Bella for post mortem examination by issuing necessary requisition. The blood stained earth and sample earth from the spot were seized under seizure list (Ext.1). The I.O. (P.W.13) apprehended the accused on the same day, i.e., 28.04.2006 at about 5.00 p.m and seized the wearing apparels of the deceased and accused under seizure lists Ext.10 & 4 respectively. On 11.05.2006, the Circle Inspector (C.I.) of Police (P.W.12) took the charge of the investigation from the I.O. (P.W.13). The second I.O. (P.W.12) visited the spot and sent the seized incriminating articles for chemical examination through Court.

On completion of investigation, the second I.O. (P.W.12) submitted the Final Form placing this accused to face the Trial for commission of offence under section 302 of the IPC.

4. Learned J.M.F.C., Umerkote on receipt of the Final Form, took cognizance of the offence under section 302 of the IPC and after observing the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing the charge for the said offence against this accused.

5. In the trial, the prosecution examined in total fourteen (14) witnesses. Out of them, as already stated, the Informant, who happens to be the brother of Bella, has been examined as P.W.4.

P.W.1 is a witness in whose house the quarrel between the accused and the deceased ensued. P.W.2 is the Ward Member of Village-Kusumi. P.Ws.3 & 11 are the witnesses to the inquest. P.W.5 is the mother of Bella. P.W.6 is another brother of Bella. P.W.8 is one of the relations of the accused. P.W.9 is a child witness and an eye witness to the occurrence. P.W.10 is the scribe of the FIR. P.W.12 is the second I.O., who took charge of the investigation from the first I.O (P.W.13) and submitted the Final-Form. P.W.13 is the O.I.C. of the P.S. and the first I.O. of the case. The Doctor, who had conducted the autopsy over the dead body of the deceased, at the end has come to the witness box as P.W.14.

6. Besides leading the evidence by examining the above witnesses, the prosecution has proved several documents which have been admitted in the evidence and marked Ext. 1 to 12. Important of those are the F.I.R. (Ext.3), Inquest Report (Ext.2) and Postmortem Examination Report (Ext.11). The spot map prepared by the I.O. (P.W.13) and the chemical examiner's report had been admitted in evidence and marked as Exts.9 & 7 respectively.

7. The accused, having taken the plea of denial and false implication, has examined one witness i.e. D.W.1, who has stated that the deceased died by falling from bicycle, while being taken by P.W.6 to Village-Kusumi.

8. Mr.Neelakantha Panda, learned counsel for the Appellant (accused), instead of questioning the nature of death of Bella, as has been proved by the prosecution through the Doctor (P.W.14), who had conducted the autopsy over the dead body of Bella and that of the I.O. (P.W.13), who held the inquest over the dead body as also the evidence of the witnesses, who had seen the deceased being assaulted submitted that even accepting the role played by this accused and acts done by him as stated by the witnesses; viewing the other surrounding circumstances, which have emerged in evidence, the Trial Court ought to have convicted the accused for commission of the offence under section 304-II of the I.P.C. He submitted that there was no prior planning behind the incident and it has happened all of a sudden when fact remains that the accused, his wife (Bella) and other relations had together gone to the house of Ballava (P.W.1) to attend an obsequie ceremony and there, they had stayed till the evening. He further submitted that all of a sudden, a quarrel having taken place between the husband (accused) and the wife (deceased) when the wife came out and sat in the verandah of another's house, the evidence is that the accused came and assaulted her by means of fist blows, kick and slaps. According to him, there was absolutely no intention on the part of the accused nor he had the knowledge that for such acts on his part, the death would occur. He next highlighted the conduct of the accused that even after the

incident the accused has not left the place and was all along with his wife till she was brought to their village and there also he is stated to have confessed to have assaulted her. He further submitted that cumulatively viewing the entire happenings in the incident, the subsequent events, when are kept in view with the fact that the parties hail from rural back ground whose temper usually run high and behavior for silly reasons, often becomes abnormal, the Trial Court ought not to have convicted the accused for commission of offence under section 302 of the IPC. He, therefore, urged for alteration of conviction for commission of offence under Section 302 of the IPC to one under Section 304-II of the IPC and accordingly, he contended that the accused be visited with the sentence as appropriate for the said offence.

9. Mr.P.K.Mohanty, learned Additional Standing Counsel submitted all in favour of the finding returned by the Trial Court that the accused is liable for commission of the offence under Section 302 of the I.P.C. He further submitted that as per the evidence, the accused had dealt fist blows, kicks and slaps upon the deceased and since the death has resulted from the injuries on account of the said assault, the Trial Court did commit no mistake in holding the accused guilty for commission of the offence under section 302 of the IPC.

10. Keeping in view the submissions made, we have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.W.1 to P.W.14), D.W.1 and have perused the documents admitted in evidence and marked as Ext.1 to Ext.12.

11. The cause of death as per the evidence of the Doctor (P.W.14) is on account of laceration of liver at the antero inferior surface of right lobe for which uncoagulated blood had accumulated as has been found out upon dissection of the dead body and due to laceration of liver there was internal haemorrhage of blood inside the abdominal cavity. The external injuries noticed are the abrasion over the right side molar region on face, laceration over the right ear pinna, blackening of left side eye; one bruise over left side iliac region of size and abrasion of lips.

P.W.1 has stated to have heard there was a quarrel between the accused and the deceased.

P.W.2 has stated that on being asked, the accused told to have assaulted the deceased by his hands. It is the evidence of P.W.4, who is the brother of the deceased that her mother (P.W.5) came and told that the accused to have quarreled with his wife and assaulted her wife (deceased) by giving fist, kicks and slaps. It is also his evidence that he with the accused, deceased and her

mother (P.W.5) and others had gone to that Village-Banjiamba to attend an obsequie ceremony in the house of Ballava (P.W.1). the same is the evidence of P.W.5 that the accused assaulted the deceased by giving fist, kicks and slaps. None of the witnesses are stating as to the reason for such quarrel, taking place. It is also not stated by any witnesses that the relation between the accused and the deceased was not cordial. So, the evidence, being cumulatively viewed, with the facts that the parties hail from rural pocket situated within the scheduled area of the State where ordinarily their temper run high and for silly reasons, they many a times behave differently, at times behave in a quite an unexpected manner; we are of the view that the offence could be properly categorized as one punishable under section 304-II of the IPC. We are thus of the considered opinion that for the role played by the accused and the act done, he would be liable for conviction under Section 304-II of the IPC.

In that view of the matter, this Court, alters the conviction under Section 302 of the IPC to one under section 304-II of the IPC. Consequently, the Appellant (accused) is sentenced to undergo rigorous imprisonment for a period of eight (8) years.

12. In the result, the Appeal is allowed in part. With the above modification as to the judgment of conviction and order of sentence dated 4th April, 2012 passed by the learned Sessions

Judge, Nabarangpur in Criminal Trial No.74 of 2006, the Appeal stands disposed of.

(D. Dash)
Judge

G. Satapathy, J. I Agree.

(G.Satapathy)
Judge



Basu