

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.468 of 2012

(An appeal U/S.374(2) of the Code of Criminal Procedure, 1973 against the judgment passed by Sri. B.N. Das, Adhoc Additional Sessions Judge, Fast Track Court No.3, Bhubaneswar in Crl. Trial (Sessions) No.5/11 of 2011 corresponding to GR Case No. 2080 of 2010, arising out of Kharavela Nagar PS Case No.184 of 2010 of the Court of learned SDJM, Bhubaneswar)

Hari @ Harendra Naik ... **Appellant**

-versus-

State of Odisha ... **Respondent**

For Appellant : **Mr. S. Behera, Advocate**

For Respondent : **Mr. G.N. Rout, ASC**

CORAM:

HON'BLE MR. JUSTICE D. DASH

HON'BLE MR. JUSTICE G. SATAPATHY

DATE OF HEARING :17.11.2023

DATE OF JUDGMENT:08.01.2024

G. Satapathy, J.

1. This appeal is directed against the judgment passed on 09.05.2012 by the learned Adhoc Additional Sessions Judge, Fast Track Court No.3, Bhubaneswar in Crl. Trial (Sessions) No.5/11 of 2011 convicting the

appellant for commission of offence punishable U/S.302 of IPC and U/Ss.25/27 of Arms Act and sentencing him to undergo imprisonment for life for offence U/S.302 of IPC and to undergo Rigorous Imprisonment (RI) for three years on each count for offences U/Ss.25/27 of Arms Act with stipulation of running of sentence concurrently.

An overview of prosecution case:

2. On 27.07.2010 at about 9.15 PM, Dr. Brahmananda Panda (hereinafter referred to as the "deceased") went to his residential house situated in the upstairs of his Nursing Home (Panda Nursing Home, Kharavela Nagar, Bhubaneswar) after completing consultation of the patient, but on the next date morning at about 8 AM, when the sweeper of Nursing Home, PW1-Minakshi Maharana went to the room of the deceased to clean, she discovered the deceased lying dead with a pool of blood and, thereafter, she screamed and rest of the employee of Nursing Home went there only to find the dead body

of deceased lying with injuries to his head, hand and shoulder.

On this incident at about 8.30 AM, the Manager of Nursing Home PW2-Jitendra Kumar Mishra lodged an FIR vide Ext.1 against unknown person for the murder of the deceased and, accordingly, on receipt of Ext.1, the IIC, Kharavela Nagar-PW25 namely Satyajit Mishra registered Kharavela Nagar PS Case No.184 of 2010 against unknown person for offence U/S.302 of IPC and took up the investigation of the case. In the course of investigation, PW25 *interalia* examined the informant and other witnesses, held inquest over the dead body under Ext.2 as well as sent the dead body to Capital Hospital for PM examination, seized articles stained with blood and also gave requisition to the DFSL team for spot visit. Accordingly, the DFSL team found the finger print on the handle of storewell kept inside the bed room of the deceased and collected the finger print through scientific process. In the course of investigation, PW25

apprehended the convict-Hari @ Harendra Naik, who in police custody gave recovery of the weapon of offence "Bhujali(MOI)" pursuant to his disclosure statement under Ext.12 and MOI was accordingly recovered and seized from a bushy place behind the Panda Nursing Home under Ext.13. Similarly, the convict also gave recovery of one Timex watch and his wearing apparels stained with blood and the same were accordingly seized by PW25 under Exts.14 and 15. Subsequently, PW25 got the finger print taken by the DFSL from the storewell matched with the sample finger print of the convict taken by DFSL team and also collected the biological materials of the convict through doctor. In the penultimate part of his investigation, PW25 sent all the incriminating materials seized to SFSL, Bhubaneswar through Ext.31 and received the chemical examination report under Ext.32 and, thereafter, on completion of investigation, PW25 submitted charge-sheet against the convict.

Finding prima facie material, the learned SDJM

took cognizance of offence U/S.302 of IPC and Sec. 25 & 27 of the Arms Act and committed the case of the convict to the Court of Sessions and, thereafter, on receipt of the record on transfer, the learned Adhoc Additional Sessions Judge proceeded with the trial when the convict denied to plead guilty to the charge. This is how the convict faced the trial in the Court.

3. In support of the charge, the prosecution examined PW1 to 25 in all, exhibited documents under Exts.1 to 34 and identified ten material objects vide MOI and X as against no evidence whatsoever by the convict. The plea of the convict in the course of trial was one of complete denial and innocent of the offence. In addition, the convict further took the plea in his statement U/S. 313 of Cr.P.C. that police took his signatures on blank papers.

4. After appreciating the evidence on record upon hearing the parties, the learned trial Court convicted the appellant for committing murder of the

deceased by mainly relying upon the following circumstance:

(i) Homicidal death of the deceased.

(ii) Sample finger print of convict tallied with the finger print taken from the storewell kept in bed room of the deceased.

(iii) Recovery of weapon of offence (Bhujali-MOI) at the instance of convict in presence of the witnesses pursuant to his disclosure statement.

(iv) Recovery of Timex watch MOII at his instance and the seized wearing apparels of the convict MO IV being found stained with blood of the deceased.

(v) Motive behind the crime which was for bearing grudge against the deceased for abusing him and his paramour who are found by the deceased in a compromise position in his Nursing home.

Rival Submissions:

5. In the course of hearing of the appeal, Mr. S. Behera, learned counsel for the appellant has submitted that the learned trial Court has fallen in

gross error by holding the chain of circumstance complete to hold the appellant guilty of the offence, but none of the circumstances were convincingly established against the appellant. It is further submitted by him that the appellant had borne grudge against the deceased for abusing him and one lady cook namely Gita Jena for finding them to be in a compromising position, but the said Gita Jena has not been examined by the prosecution and there is a serious gap in the circumstance and the learned trial Court ignoring these circumstance has proceeded erroneously to convict the appellant. It is also submitted by him that although PWs.1 to 7 have deposed in the Court that the convict had threatened the deceased to kill him for abusing him and his paramour, but police was not approached in this regard and, therefore, the motive behind the crime cannot be said to have been established by the prosecution against the convict. Mr. Behera, however, has criticized the impugned judgment for over relying

upon the evidence of finger print expert since the same was planted and the recovery of MOI-IV being suspicious, the reliance on CE report by the learned trial Court is misplaced on erroneous premises for holding the appellant guilty of the charge. In summing up his argument, Mr. Behera, learned counsel for the appellant, has prayed to allow the appeal by setting aside the impugned judgment of conviction and order of sentence which according to him is not sustainable in the eye of law.

6. On the other hand, Mr. G.N. Rout, learned ASC has, however, strongly submitted that each of the circumstance so proved against the convict by the prosecution clearly and unerringly points towards the guilt of the convict and the circumstances so established form a chain so complete that it is incapable of offering any explanation consistent with the innocence of the convict and the circumstances taken cumulatively prove only the hypothesis of the guilt of the convict and, therefore, the impugned

judgment of conviction and order of sentence require no interference by this Court. Mr. Rout has, accordingly, prayed to dismiss the appeal.

Analysis of law and evidence

7. After having considered the rival submissions, this Court proceeds to examine the sustainability of the conviction of the appellant by going through the evidence on record extensively and examining the impugned judgment of conviction meticulously. In order to prove the charge of murder, the primary question crops of for discussion is the nature of the death of the deceased. In this case, there appears no dispute about the nature of death of the deceased to be homicidal in nature which is apparent from the evidence of doctor PW10-Dr. Kabita Nayak which discloses eight incised wounds, three liner abrasions and one cut wound on the dead body of the deceased as well as internal injuries of fractures of right parietal bone and left occipital bone, subdural haematoma and effusion of blood in brain, in addition to her further

evidence which transpires that she by examining the weapon of offence "Bhujali(MOI)" had answered to the query of the IO affirmatively in Ext.9 by opining that the death can be caused by MOI. PW10 was cross examined by the defence, but nothing substantial was elicited from her mouth to help the appellant in any way.

8. It is worthwhile to reiterate that motive assumes great significance in a case of murder. According to the prosecution, the motive behind crime (murder) of the deceased was for the reason that the deceased had abused the appellant after finding him with his (deceased) cook namely Gita Jena in a compromise position inside the kitchen and very often noticing their illicit affairs and the accused(appellant) had threatened the deceased to kill him, when the accused was ousted from the Nursing Home. The above motive was consistently stated by PWs.2, 4, 5 and 7, but such evidence of motive as established through the evidence of these witnesses has never

been demolished by the defence which is further consolidated by their evidence to have seen the appellant giving threatening to kill the deceased. It is also stated by PW11, the son of the deceased that he came to know from his late father that the accused(appellant) who was a sweeper, had illicit affairs with the lady cook Gita and the deceased caught both of them red handed and abused the accused(appellant) and warned him for the same and he had accordingly advised his late father to remove the accused from the Nursing Home and his late father accordingly removed the accused(appellant).

9. Adverting to another circumstance against the accused-appellant was his disclosure statement before PW25 in presence of PWs.16 and 23. The testimony of PWs.16 and 23 transpires that the accused while in police custody had given recovery of "Bhujali" (MOI) from a bushy place near the Nursing Home in their presence pursuant to his disclosure statement and they signed on the disclosure statement as recorded

by PW25 under Ext.12 and their evidence also discloses that the accused had signed on such disclosure statement. The above evidence finds support from the evidence of IO-PW25, who had precisely stated about recovery and seizure of MOI at the instance of the accused and the evidence of these three witnesses could not be demolished by the defence in any way to disbelieve the recovery of MOI at the instance of accused.

10. According to the evidence of PW25, he has not only seized the MOI, but also seized the wearing apparels of the accused (i.e. shirt and jean pant (MO.III and X) and he had sent MO.I, III and X and other incriminating materials to SFSL, Rasulgarh for chemical examination under Ext.31 and the CE report was received from the SFSL vide Ext.32 which clearly discloses presence of human blood of "O" Group which was the blood group of the deceased on MO.I, III and X, but the accused has failed to offer any explanation as to how the blood stain of the deceased

was found on his wearing apparels and the weapon recovered at his instance, rather the answer given by the accused in his statement U/S.313 of Cr.P.C. as to presence of blood stain of the deceased on these items as false, which provides additional link to the chain of circumstance established by the prosecution against the appellant.

11. Last but not the least, one of the circumstances against the deceased which is the strongest circumstance in this case is the finding of finger print of the accused from the storewell kept in the bed room of the deceased. The above fact was established by the evidence of PW25 who testified in the Court that during the visit, the DFSL team found a chance finger print on the handle of almirah kept inside the bed room of the deceased and they took the developed chance finger print from the almirah also the photograph thereof which was reiterated by PW17, who stated in his evidence that he had also taken photographs of the finger prints which was brought by

the finger print SI-Sarat Kumar Swain from the steel almirah kept in the room and such evidence further invigorated by the evidence of Sarat Kumar Swain being examined as PW19 that he found physical clue for getting chance finger print on the locker door of the steel almirah and he developed the print with the powder and asked the photographer to take the chance finger print found there and the photographer took the same in their presence. He(PW19) also took the specimen finger prints of two of inmates of Nursing Home. Exts.18 and 19 are the specimen finger prints of two employees of the Nursing Home. It is further revealed from the evidence of PW19 that he took the sample finger prints of the accused (suspect) and that of one Raja Naik. PW19 has accordingly identified these specimen finger prints of accused Hari Naik under Ext.20. More or less the evidence of PW20 transpires that on his direction, PW17 had collected the finger prints from the almirah kept inside the room. Although the defence has availed to cross

examine PW17 to 20, but it has not been able to demolish their evidence with regard to collection of sample chance finger prints and specimen finger prints of accused. In addition, PW24 who was the finger print expert of State Finger Print Bureau, Bhubaneswar and who had examined the sample chance finger prints and the finger prints taken from the almirah. PW24 in his evidence has stated that on comparison, the chance finger print marked "A" by the IO tallied with the specimen print marked "X", which is said to be the right thumb finger print of accused Hari Naik. The defence has very casually cross examined PW24 without bringing any evidence in cross examination to disbelieve his evidence which clearly suggests that the chance finger prints found from the almirah kept in the bed room of the deceased was the finger print of accused Hari Naik. On analysis of evidence of PWs.17 to 20 and 24 makes it apparently clear that the finger print collected from the almirah was that of the accused Hari Naik(appellant) who in his statement

U/S.313 of Cr.P.C. has expressed ignorance to the questions of finding his finger print from the house of the deceased. Thus, this is another piece of strong circumstance proved against the appellant which clearly incriminates him.

12. On a careful conspectus of the evidence on record together with discussion made hereinabove, it appears to the Court that the prosecution has proved the following circumstance against the appellant beyond all reasonable doubt through legally admissible evidence:

- (i) Homicidal death of the deceased.
- (ii) Motive of the appellant to kill the deceased.
- (iii) Finding of finger prints of the appellant from the storewell kept in the bed room of the deceased.
- (iv) Recovery and seizure of weapon of offence "Bhujali(MO.I)" pursuant to the disclosure statement of the appellant and recovery and seizure of wearing apparels of the appellant vide MO.III and X.

(v) Finding of blood stains of the deceased on MO.I, III and X as per CE report under Ext.32.

All these circumstance taken cumulatively form a chain of events so complete unerringly pointing towards the guilt of the accused-appellant and the aforesaid circumstance has definite tendency and character to establish hypothesis consistent only with the guilt of the accused-appellant and it excludes all other hypothesis consistent with innocence of the accused except the one to be proved against the appellant and it firmly showed that in all human probability the act must have been done by the accused-appellant and, therefore, the conclusion arrived at by the learned trial Court finding the accused-appellant guilty of the offence does not require any interference by this Court.

13. In the result, the criminal appeal is dismissed on contest, but no order as to costs. Consequently, the impugned judgment of conviction and order of sentence as recorded on 09.05.2012 by

the learned Adhoc Additional Sessions Judge, Fast Track Court No.3, Bhubaneswar in Crl. Trial (Sessions) No.5/11 of 2011 are hereby confirmed.

14. Since the appellant was directed to be released on bail by way of an order passed on 10.02.2023, he is directed to surrender to custody forthwith to suffer the sentence, failing which necessary steps be taken for recommitment of the appellant to the custody.

I Agree

**(G. Satapathy)
Judge**

**(D.Dash)
Judge**

*Orissa High Court, Cuttack,
Dated the 8th day of January, 2024/Subhasmita*