

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.651 of 2012

(An appeal U/S. 374(2) of the Code of Criminal Procedure, 1973 against the judgment passed by Shri A.K. Panda, Addl. Sessions Judge (FT), Sambalpur in S.T. No.225/06 of 2010-2011 corresponding to C.T. Case No. 773 of 2010, arising out of Katarbaga PS Case No. 28 of 2010 of the Court of SDJM, Sambalpur)

Mangal Munda ...

Appellant

State of Orissa ...

Respondent

For Appellant :

Mr.B.K. Ragada, Advocate

For Respondent :

Mr.P.K.Mohanty, ASC

CORAM:

HON'BLE MR. JUSTICE D. DASH

HON'BLE MR. JUSTICE G. SATAPATHY

DATE OF HEARING :06.10.2023

DATE OF JUDGMENT:04.12.2023

G. Satapathy, J.

1. Being aggrieved by the impugned judgment and order passed on 02.06.2011 by the learned Addl.

Sessions Judge, Fast Track Court, Sambalpur in S.T. Case No. 225/06 of 2010-2011 convicting the Appellant for offence punishable offence U/S. 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- in default whereof, to undergo imprisonment for one month, the convict-Appellant herein has preferred this appeal.

Factual background

2. On 16.05.2010 at about 9am, while Mangru Khadia (hereinafter referred to as the "deceased") was consuming liquor with convict and convict's wife Bharti Munda in front of the Courtyard of the convict in village Pardesipali, the convict asked his wife for some water and, accordingly, she went to bring water to the nearby tube well. At this time, a quarrel ensued between the convict and the deceased and the convict brought out an axe from his house and assaulted the deceased indiscriminately by said weapon of offence i.e. an axe (MOI). After hearing the incident, PW 9 Jasoda Khadia,

whose house situates very close to the house of the convict, came out of her house and found the deceased lying on the ground sustaining with severe bleeding injuries and the convict standing there by holding an axe(MOI). On seeing PW9, convict threw away the axe to the roof of his house. After hearing commotion, the villagers including mother and sister of the deceased arrived at the spot and an ambulance was arranged to shift the deceased, but before the deceased could be shifted to the hospital, he succumbed to injuries. The parents and sister of the deceased guarded the dead body in the night.

3. On this incident, on next morning, PW1 Rabi Bhue proceeded to Katarbaga Police Station along with PW 8 Saraswati Khadia and another sister of the deceased and PW1 lodged an FIR under Ext.1 being scribed by PW10 Khirod Kumar Singhdeo before Katarbaga Police Station and, accordingly, in absence of IIC, the ASI of Police PW12 Dayanidhi Biswal registered

Katarbaga PS Case No. 28 of 2010 against the convict for offence U/S. 302 of IPC and took up the investigation of the case. In the course of investigation, PW 12 examined the informant and other witnesses, prepared the spot map under Ext. 12 after visiting it, conducted inquest over the dead body of the deceased vide Ext. 2 and dispatched the dead body to VSS Medical College and Hospital, Burla for Post Mortem examination. PW12 got MOI recovered by the convict pursuant to his disclosure statement recorded under Ext.3 and seized MOI under Ext. 4. PW 12 also seized the wearing apparels of the deceased as well as that of the accused together with sample & blood stain earth from the spot and the same were sent by another IO PW 11 Debi Prasad Das to RFSL, Sambalpur and the chemical examination report under Ext.11 was obtained. As usual on completion of investigation, PW 11 submitted a charge-sheet against the convict for offence U/S. 302 of IPC under which cognizance was taken and the charge was framed against

the convict for said offence, but the convict did not plead guilty to the charge and he, thereby, came to be tried by the trial Court for the aforesaid offence.

4. In support of the charge, the prosecution examined altogether 13 witnesses and proved document under Exts.1 to 16 as well as identified material objects under MO-I to III as against no evidence whatsoever by the defence.

5. The plea of the convict in the trial was denial simplicitor and false implication, but he took a specific plea of alibi in his statement recorded U/S.313 Cr.P.C.

6. After appreciating the evidence on record upon hearing the parties, the learned trial Court convicted the Appellant by heavily relying upon the circumstance as deposed to by PW 9. This is how the Appellant before this Court in this appeal.

7. In the course of hearing, Mr. B.K. Ragada, learned counsel for the Appellant has submitted that in the facts and circumstance of the case, the learned trial

Court has committed serious error in holding the Appellant guilty of the offence because the circumstances as inferred by the learned trial Court do not remotely disclose the guilt of the Appellant for any offence. Mr. B.K. Ragada has also submitted that although the learned trial Court has heavily relied upon the evidence of PW 9 in holding the circumstance to have been firmly and cogently established against the convict, but by no stretch of imagination such circumstance has established the guilt of the Appellant since PW9 had never seen the Appellant assaulting the deceased nor her evidence remotely connect the convict with the commission of crime and, thereby, reliance cannot be placed upon the evidence of PW9 in convicting the Appellant. In summing up his argument, Mr. B.K. Ragada, learned counsel for the Appellant has relied upon the decision in ***Raju @ Rajendra Prasad Vrs. State of Rajasthan; 2022 (88) OCR SC 655*** to contend that since PW9 had not seen the occurrence, benefit of doubt may be extended to the

appellant and, accordingly, learned counsel for the Appellant has prayed to allow the appeal.

8. On the other hand, Mr. P.K. Mohanty, learned ASC has refuted the submission of Mr. Ragada by *inter-alia* contending that the circumstance so established against the convict unerringly point towards the guilt of the convict and the circumstances are so complete that there is no escape from the the conclusion that within all human probability, the crime was committed by the Appellant and, accordingly, Mr. Mohanty has prayed to dismiss the appeal.

9. After having considered the rival submissions upon perusal of record, this Court considers it apposite to re-appreciate and scrutinize the entire evidence on record to find out legal sustainability of the impugned judgment of the conviction recorded against the Appellant. At the outset, it is to be reminded, that in case of murder, there are two important issues which need to be answered; firstly, the nature of death i.e. homicidal death and

secondly, the person responsible for such homicidal death of the deceased.

10. A cursory glance to the evidence on record would go to indicate that there is no direct evidence by which it can be said that the Appellant was responsible for the murder of the deceased or he committed the murder, but there are circumstance available in evidence on record to find out the legal sustainability of the impugned judgment. Firstly, there is no dispute about the homicidal death of the deceased which is apparent from the medical evidence of PW 13 which *inter-alia* transpired the following:-

On PM examination, he(PW 13) found

External Injuries:-

(i). *Elliptical shaped cut wound measuring 6.8 x 1.5 cm noticed at the right side of head 1 cm above the upper pole of pinna, blood and lymph found adherent to the margin, margins were cleanly cut with slight bevelly downwards and brain matter had come out of the wound.*

(ii). *Cut wound measuring 3 x 0.5 cm placed vertically over right side zygomatic area of face, margins showing slight contusion effect and dried blood and lymph were adhered.*

(iii). Abraded contusion of size 3 x 1 cm on right side of corresponding the temporal hair line.

(iv). Cut wound measuring 3 x 1 cm at back of root of right ear and another such cut wound measuring 3 x 0.5 cm at back side of right pinna.

(v). Abraded contusion of size 2 x 1 cm over left side cheek, brownish in color and 2 number of abraded contusion measuring 1.5 x 1 cm each noticed on the left molar prominence.

(vi). Tangential bevelled cut wound directed downward was noticed on the left side of face corresponding the body mandible and measured 4 x 2 cm.

(vii). Cut wound, elliptical in shape measuring 7 x 1.5 cm transversely situated in the midline of back at the interscapular region corresponding T-5 vertebral spine. The wound was deep enough to cut through the lamina of the vertebra, reached up to the spinal canal.

(viii). Cut wound of size 3 x 1 cm at the midline of back of root of neck and limited within the subcutaneous tissue.

(ix). Cut wound of size 6.7 cm in length noticed transversely over blade of right shoulder. It was deep and 1 cm width on the lateral end and was found to be superficial and of gradually decreasing width towards the medial end.

(x). Cut injury of similar shape of length 7 cm was noticed over back of right shoulder and another such wound was noticed on the right side of back 4 cm bellow the spine of scapula.

(xi). Abrasion of size 2 x 2 cm on the lateral aspect of left arm and of size 1 x 0.5 cm, 2 in number on the left side of chest below the nipple.

(xii). Abrasion of size 0.5 cm, 2 in number noticed over right knee.

11. Further on dissection, PW 13 had found *inter-alia*, the temporalis muscle was cut which corresponds to the external injury No.i and underline skull bone was so also cut with a piece of wedge shape skull bone measuring 6.8X4X3 cm found to be depressed in words and on the back, the external injury no.vii was involved with T-5 vertebrae & the lamina and spinous processes were cut and the wound was final canal deep. Finally, PW 13 in his opinion had stated that external injuries no. iii,v,xi and xii appears to be non-fatal and could have been caused by impact with hard and rough surface/object and the rest of the injuries along with their internal effects were caused by moderately heavy to heavy sharp cutting weapon and the death was homicidal in nature and all the injuries were fatal to cause death in ordinary course of nature, whereas external injury nos. i

and vii were individually sufficient to cause death in ordinary course. PW 13 concluded that the death was due to shock as a result of cranio cerebral injury and spinal injury. The defence has never disputed the homicidal death of the deceased. It is, therefore, clear that finding of the trial Court as to the homicidal death of the deceased is concurred by this Court.

12. Adverting to the next issue as to who was responsible for the death of the deceased, the evidence of PW9 is very much important and crucial, since the evidence of PW9 transpired that she found the deceased, convict and convict's wife consuming liquor sitting in the Courtyard of the house of convict and the place was illuminated by the light of the Dibri at that time and at a little distance a bulb was also glowing in the house of one Chaitu Khadia. After sometime, PW9 heard the convict asking some water from his wife Bharati and, accordingly, his wife Bharati went to bring water from a tube well situated in front of the house of Khirod Singhdeo and

again after some time, she heard the sound of the assault and came out of the house immediately and found the deceased Manguru lying on the ground sustaining bleeding injury and the convict standing there by holding an axe(MOI) and soon the convict threw away MOI to the roof of his house. PW9 also found the children of the convict shouting that their father had killed the deceased and at that time, the deceased was alive and struggling for life. Immediately the mother and sister of the deceased namely Saraswati and Parbati reached at the occurrence spot and she told them about the incident. The defence had, of course, cross-examined PW9, but it ended upon only eliciting that the Courtyard where the convict and deceased were consuming liquor was not visible from the place where she was taking her dinner and the house of the convict situates at a distance of about 10 to 12 feet from her house. It is, therefore, clear that the house of PW9 was very close to the occurrence spot and the deceased and convict together were

consuming liquor at that time. Further, it was elucidated from her mouth in cross-examination that the convict threw away the axe to the roof of his house and prior to the arrival of the Police, some villagers had apprehended the convict under a tamarind tree which was nearer to the occurrence spot. The evidence of PW9 is no way demolished by the defence. Further, it is also clear from the evidence of PW12 and PW 3 that the weapon of offence axe (MOI) was seized by PW 12 and the same was also sent to RFSL, Sambalpur as per the evidence of PW11 along with other incriminating materials and the chemical examination report was received vide Ext.11 which disclosed human blood on MOI.

13. Besides, the evidence of PW13 transpired that he had answered to the query of the IO about possibility of the injuries on the deceased by MOI in affirmative way vide Ext. 14/2 by opining that the injuries were possible by MOI.

14. The evidence of PW 1 also transpired that the house of PW9 situated near the house of the convict so also the evidence of PW7 disclosed that the house of PW9 and deceased was situated near the house of convict. PW7 is the mother of the deceased and her evidence disclosed that on hearing the news, she came to the spot and found her deceased-son lying on the ground sustaining severe bleeding injuries on his head and backside and he was also struggling for life and she also found PW9 whose house was nearby to the house of the deceased present there and on her enquiry, PW9 disclosed the fact to her. Similarly, the evidence of PW8 who is the sister of the deceased, disclosed that after hearing the sound, she along with her mother rushed to the spot and found his brother lying on the ground with severe bleeding injury on his head and back side of body and PW9 informed her that convict had assaulted his brother Manguru by means of an axe. Of course, PW Nos. 7 and 8 were not the eye witnesses to the occurrence,

but one important circumstance comes out of their mouth that the presence of PW9 at the spot. The evidence of PW9 clearly demonstrate the principle of *res gestae* in terms of Section 6 of the Evidence Act which reveals that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places. So the evidence of PW 9 is clearly acceptable and the Appellant has not made out any ground/circumstance to disbelieve her evidence.

15. From a cumulative and meticulous analysis of evidence on record, the following circumstance emerged and proved against the convict:-

(i) The convict, her wife and the deceased were consuming liquor sitting in front of the house of the convict at the relevant time.

(ii) Convict sent his wife to bring water at the relevant time.

(iii) On hearing shout/commotion, PW9 rushed to the spot and found the deceased lying on the ground with serious bleeding injury on his person and the convict was standing there holding MOI.

(iv) The convict threw the axe to the roof of his house.

(v) The deceased suffered homicidal death.

(vi) MOI was found stained with human blood.

(vii) PW Nos. 7 and 8 reached to the spot and told about the incident by PW No. 9.

16. The evidence of PW9 clearly established that the deceased and convict were shortly seen by her prior to death of the deceased and the convict was standing there by holding an axe which was strong circumstance and the defence has failed to explain such circumstance. In addition, the plea of alibi taken by the convict for the first time at the crime of recording of his statement U/S. 313 Cr.P.C which was not established nor any evidence was led to establish such facts and such false plea is an additional link to the circumstance to establish the guilt of the convict. A careful reading of the evidence on record would go to indicate that the aforesaid circumstances from which the conclusion of guilt of the convict are sought to be drawn were fully established and the circumstances so established were consistent only with the hypothesis of guilt of the accused and it were

incapable of explanation of any other hypothesis except the guilt of the convict. The aforesaid circumstances were not only conclusive in nature, but also had the definite tendency and character unerringly pointing towards the guilt of the convict. The circumstances so taken form a chain so complete that there was no escape from the conclusion that within all human probability, the crime was committed by the convict and none else, and the circumstances so drawn were incapable of any explanation consistent with the hypothesis of innocence of the convict.

17. Although the Appellant draws attention to the evidence of PW9 to contend that since she was not the eye witness to the occurrence, it would not be safe to base conviction of the Appellant and, accordingly, reliance has been placed upon the decision in **Raju @ Rajendra Prasad (supra)**, but such claim of the Appellant is the figment of his imagination inasmuch as in the decision relied on, the convict was not last seen with the deceased

but in this case the convict was not only last seen with the deceased but also were found taking liquor shortly before assault by the deceased which was seen by PW9 . The defence has attacked the prosecution evidence mainly on the ground that it was dark, but the evidence of PW9 had clearly revealed that the spot was illuminated by a Dibri(Kerosene Lamp) which was never demolished by the defence in cross-examination.

18. On a careful scrutiny of the evidence on record together with the impugned judgment, this Court does not find any error apparent in the impugned judgment of conviction, which calls for no interference by this Court in this appeal. Consequently, no ground is made out by the Appellant to interfere with the impugned judgment of conviction and order of sentence.

19. In the result, the appeal stands dismissed. As a logical sequitur, the impugned judgment of conviction and order of sentence passed by the learned Sessions

Judge, Fast Track Court Sambalpur in S.T. Case No.
225/06 of 2010-2011 are hereby confirmed.

(G. Satapathy)
Judge

I Agree

(D.Dash)
Judge



*Orissa High Court, Cuttack,
Dated the 4th day of December, 2023/Priyajit*