

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.55 of 2008

An appeal from the judgment and order dated 25.04.2008 passed by the Addl. Sessions Judge, Nayagarh in Sessions Trial No.3 of 2007.

Gopabandhu Sahoo Appellant

-Versus-

State of Odisha Respondent

For Appellant:

- Ms. Anima Dei
Amicus Curiae

For Respondent:

- Mr. Sonak Mishra
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing and Judgment: 13.12.2023

By the Bench: The appellant Gopabandhu Sahoo faced trial in the Court of learned Additional Sessions Judge, Nayagarh in S.T. Case No.3 of 2007 for commission of offences under sections 498-A and 302 of the Indian Penal Code (hereinafter the 'I.P.C.')

on the accusation that after his marriage with Sukanti Sahoo (hereinafter 'the deceased') and before 13.08.2006, he subjected the deceased to cruelty in order to coerce her parents to meet his unlawful demand of money and that during the evening hours on 13.08.2006 at village Duda, he committed murder of the deceased.

The learned trial Court vide judgment and order dated 25.04.2008 though acquitted the appellant of the charge under section 498-A of the I.P.C. but found him guilty under section 302 of the I.P.C. and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine, to undergo R.I. for a further period of six months.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') lodged by Laxmidhar Sahoo (P.W.2), the brother of the deceased, in short, is that on 13.08.2006 at about 09:00 p.m., D.W.1 Babula Sahu and the minor son of the appellant, who was aged about 10 years, came to his house and informed him that the deceased was very serious and they have been sent by the appellant to give such message. On being confronted by P.W.2, both D.W.1 and the minor son of the appellant told that since there was a quarrel, the deceased

committed suicide by hanging herself. However, on repeated query by P.W.2, he was told that the appellant assaulted the deceased and subsequently, when the gentlemen of the village were called and in their presence D.W.1 was asked, he informed that the appellant had killed the deceased by assaulting her. After getting such information, P.W.2 proceeded to the house of the appellant but on the way, he met the appellant and on being confronted, the appellant told that there was a quarrel for which the deceased committed suicide by hanging herself but on repeated query by P.W.2, the appellant stated that he had given some blows to the deceased. P.W.2 after arriving at the house of the appellant found the deceased dead and she was in a naked condition and blood was oozing out from his mouth and nostrils. It is further stated in the F.I.R. that the marriage between the appellant and the deceased was solemnized three years prior to the date of lodging of the F.I.R. and the deceased was the third wife of the appellant and at the time of marriage, utensils, gold ornaments and cash of Rs.6000/- was given to the appellant. It is further stated that the appellant used to assault the deceased after taking liquor and on intervention by his in-laws family members, he used to assure that he would not repeat such activities and would lead a peaceful life. It is stated that on 13.08.2006, the appellant killed the deceased by assaulting her.

P.W.9, the Assistant Sub-Inspector of Police attached to Banigochha outpost received the written report of P.W.2 on 14.08.2006 in connection with the occurrence which was sent to Officer-in-Charge of Daspalla Police Station for registration of the case and accordingly, Daspalla P.S. Case No. 69 dated 14.08.2006 was registered under sections 498-A and 302 of the I.P.C. against the appellant. P.W.9 took up investigation of the case and he examined the informant (P.W.2), visited the spot which is the backyard of the house of the appellant in village Duda. He prepared the spot map vide Ext.6, arrested the appellant and sent requisition to the Tahasildar, Daspalla and after his arrival, he held inquest over the dead body in presence of the witnesses and prepared the inquest report vide Ext.2 and then he sent the dead body to the Medical Officer, Dasapalla for post mortem examination through Constables and examined other witnesses and as per the direction of the Officer-in-Charge. P.W.9 handed over the charge of investigation of the case to S.I. of Police Kartikeswar Nayak (P.W.11) who, after taking over the charge of investigation, arrested the appellant on 15.08.2006 and forwarded him to Court. P.W.11 received post mortem report (Ext.7), made prayer to the learned J.M.F.C., Dasapalla for recording the statement of witness Ainthan Nayak (P.W.1)

under section 164 of the Cr.P.C. and on completion of investigation, he submitted charge sheet against the appellant under sections 498-A and 302 of the I.P.C.

Upon submission of charge sheet, the case was committed to the Court of Session, after complying due formalities, the learned trial Court framed charges as aforesaid. Since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses & Exhibits:

3. In order to prove its case, the prosecution examined as many as eleven witnesses.

P.W.1 Ainthu Nayak is a co-villager of the appellant who stated that on the fateful day, when he was going towards his land, he heard groaning sound of the deceased saying 'MARIGALI MARIGALI' and upon hearing such sound, he proceeded to the spot and saw that the deceased was lying on the ground and the appellant was pressing his one of his legs against the throat of the deceased and was dealing kicks by another leg.

P.W.2 Laxmidhar Sahoo was the brother of the deceased who is also the informant in this case. He stated that

on the relevant day, D.W.1 and the son of the appellant came to his house and informed him that there was a quarrel between the appellant and the deceased and the appellant had assaulted the deceased which resulted in her death. Upon receiving such information, he proceeded to the house of the appellant where he found the deceased lying dead in a naked condition and blood was oozing out of her mouth as well as nose. He further stated that when he confronted the appellant about the incident, the appellant informed him that there was a quarrel between him and the deceased for which she committed suicide. He is also a witness to the preparation of the inquest report vide Ext.2.

P.W.3 Dhirendra Nayak is a co-villager of the appellant who stated to have seen the deceased lying dead in the house of the appellant. He is a witness to the preparation of inquest report vide Ext.2.

P.W.4 Gobardhan Kanra is a co-villager of the appellant. He is a witness to the preparation of the inquest report vide Ext.2.

P.W.5 Baikuntha Kanra is a co-villager of the appellant who stated to have seen the dead body of the deceased in presence of the police. He is also a witness to the preparation of the inquest report vide Ext.2.

P.W.6 Rajendra Kumar Ratha stated that one saree and a paper were seized by the police after being produced by a police constable in his presence. He is a witness to the seizure of the above materials as per seizure list Ext.3.

P.W.7 Dinabandhu Sahoo is the cousin brother of the appellant who stated to have heard the groaning sound of the deceased at about 4 to 5 p.m. on the relevant day. He further stated to have seen Pramod Naik and Gandia carrying the deceased towards the courtyard of the appellant and subsequently, he learnt about the death of the deceased.

P.W.8 A.T. Dora was working as a constable at the Banigochha outpost. He stated that P.W.9 directed him and two other constables to guard the spot where the dead body of the deceased was lying and command certificate vide Ext.4 was issued in his favour. He further stated that after the post mortem examination, on his production, the command certificate and wearing apparels of the deceased were seized by P.W.11 vide Ext.3.

P.W.9 Gopal Krishna Nayak was posted as the Assistant Sub-Inspector of Police attached to Banigochha outpost. He received the written report from P.W.2 and sent the same to the O.I.C., Daspalla for registration of the case and took

up preliminary investigation. As per the subsequent direction of the O.I.C., he handed over the charge of investigation to P.W.11.

P.W.10 Dr. Basant Kumar Panda was working as the Surgery Specialist at the Government Hospital, Daspalla. He conducted post mortem examination on the dead body of the deceased on police requisition and proved his report vide Ext.7.

P.W.11 Kartikeswar Nayak was working as the Sub-Inspector of Police at Daspalla Police Station. He took over the charge of investigation from P.W.9, as per the direction of the O.I.C., Daspalla and on completion of investigation, he submitted the charge sheet.

The prosecution exhibited eight documents. Ext.1 is written report, Ext.2 is the inquest report, Ext.3 is the seizure list, Ext.4 is the command certificate, Ext.5 is the dead body challan, Ext.6 is the spot map, Ext.7 is the post mortem report and Ext.8 is the statement of P.W.1 recorded under section 164 of the Cr.P.C.

Defence Plea:

4. The defence plea of the appellant is one of complete denial. In order to negate the prosecution case, the defence examined one witness.

D.W.1 Rabindra Kumar Sahoo is the brother of the second wife of the appellant who stated that on the fateful day, he got up from his afternoon nap at about 4 p.m upon hearing hulla. He further stated to have seen Pramod and Gandia carrying the deceased to the courtyard and others, who were present there, administered water to the deceased and at that time, the appellant rushed to the spot. He also stated that the deceased was groaning at that moment. He proceeded to call P.W.2 and by the time they returned, the deceased had already succumbed. He categorically stated that the deceased committed suicide by hanging herself.

Findings of the Trial Court:

5. The learned trial Court after analyzing the oral as well as documentary evidence on record came to hold that in view of the evidence of doctor (P.W.10) and eye-witness (P.W.1), it is clearly established beyond all reasonable doubt that due to pressing of the throat and the assault caused by the appellant, there was bleeding from the nose and the mouth of the deceased and death was caused. The learned trial Court was pleased to hold that as per the inquest report (Ext.2), the dead body was lying in the courtyard which found corroboration from the evidence of P.W.7 and P.W.9 and it is clearly established that on the fateful day, the appellant assaulted the deceased by

pressing his leg on her throat as a result of which there was bleeding from her mouth, nose and trachea, laryngeal box and hyoid bone was broken for which there was respiratory failure and death was caused and the eye-witness has clearly substantiated the fact in the evidence that it is none else but the appellant himself who caused the death of the deceased. The learned trial Court also came to the finding that the deceased met with a homicidal death and upon analyzing the evidence on record, it was held that the prosecution has utterly failed to prove the charge under section 498-A of the I.P.C. and acquitted the appellant of such charge. However, it came to a definite conclusion that the prosecution has successfully brought home the charge under section 302 of the I.P.C. against the appellant beyond all reasonable doubt and accordingly, convicted thereunder and sentenced him as aforesaid.

Contention of the Parties:

6. Ms. Anima Dei, learned counsel appearing for the appellant submitted that it is very difficult to accept the evidence of P.W.1 as an eye-witness to the occurrence and since the dead body was lying in the courtyard of the house and P.W.1 was standing behind the fence of the backyard of the house and there is no evidence that from his standing position, the courtyard would be visible, it is difficult to accept that he would

be in a position to witness the assault, if any, by the appellant on the deceased. The learned counsel further submitted that though the place of assault in the 'bari' is stated to be a muddy place but the doctor has ruled out that there was any mud found on the body of the deceased. It was further argued that P.W.7 has categorically stated that the deceased was lifted by two persons namely Pramod Nayak and Gandia towards the courtyard of the house and when he asked those two persons, they told that the deceased was hanging from a 'saguan' tree and they were brining her from that place. The learned counsel submits that the defence plea that it is a case of suicidal hanging is getting corroboration from the evidence of not only P.W.7 but also D.W.1. The learned counsel further submits that no motive behind the commission of crime has been established by the prosecution and the conduct of the P.W.1 in not raising hulla even though he was stated to be standing for five minutes and watching the occurrence is an improbable feature and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Sonak Mishra, learned Additional Standing Counsel, on the other hand, supported the impugned judgment and argued that the defence plea that it is a case of suicidal hanging is falsified by the medical evidence inasmuch as the

doctor (P.W.10), who conducted post mortem examination over the dead body of the deceased, not only marked that the trachea, laryngeal box and hyoid bone were broken but he has specifically stated that the death was homicidal and the injuries noticed on the person of the deceased were ante mortem in nature and further he has stated that the injuries inflicted on the neck of the deceased could be caused if anyone puts his leg with pressure and it may lead to respiratory failure and since the evidence of P.W.1 is that he saw the appellant pressing the throat of the deceased by his leg while she was lying on the ground and was also dealing kicks by another leg, the homicidal death is clearly established and merely because P.W.1 did not raise any hulla to draw the attention of the others, it cannot be a ground to disbelieve his evidence particularly when the evidence has come on record that the appellant was involved in anti-social activities. The learned counsel further argued that the evidence of P.W.1 has not at all been shattered in the cross-examination and nothing has been brought on record by way of cross-examination of P.W.1 that from his standing position, the place of assault would not be visible and therefore, the learned trial court has rightly arrived at the conclusion that it is a case of homicidal death and that the appellant was responsible for committing the murder of the deceased and thus, the jail criminal appeal should be dismissed.

Whether the deceased met with a homicidal death?:

7. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine whether on the basis of evidence available on record, the prosecution has successfully established that the deceased met with a homicidal death or not. P.W.10 conducted the post mortem examination on the dead body of the deceased on 15.08.2006 at Government Hospital, Daspalla and on dissection, he found that the trachea, laryngeal box as well as hyoid bone of the deceased were broken. He also found that both the lungs were congested and there were black spots in the abdomen and the spleen was congested and there was congestion of anterior neck muscles. On the basis of these findings, the doctor came to the conclusion that the death was homicidal in nature and the injuries on the deceased were opined to be ante mortem in nature and the cause of the death was due to respiratory failure. He specifically stated that the injuries inflicted on the neck of the deceased would be caused if anybody puts his leg with pressure on the neck and the same might result in respiratory failure causing the death. The post mortem report has been marked as Ext.7. In the cross-examination, it has been elicited that the doctor has noticed multiple abrasions on the right wrist joint and in the report, he has not mentioned to have noticed any foot mark on

the neck of the deceased. The doctor has stated that if anybody assaults a person lying upwards, there must be resistance from her side and her body must be shaking and there must be mud mark on the body of the assailant if anybody assaults by foot after coming in contact of the mud. The doctor has further stated that there was no ligature mark and the injuries were ante mortem in nature and all the three injuries i.e. the fractures of trachea, laryngeal box and hyoid bone could not have been possible due to suicidal hanging. Nothing has been brought out further in the cross-examination to disbelieve the evidence of the doctor or to substantiate the defence plea that it is a case of suicidal hanging. In view of the inquest report (Ext.2), the evidence of the doctor (P.W.10), findings of the post mortem report (P.W.7), we are of the view that the learned trial Court has rightly come to the conclusion that it is a case of homicidal death and therefore, the defence plea that the deceased died on account of suicidal hanging is not acceptable.

Whether evidence of P.W.1 as an eye witness is trustworthy and reliable?:

8. Coming to the evidence of the eye-witness (P.W.1), he has stated that on the date of occurrence while he was going towards his land, he heard the sound of the deceased saying 'MARIGALI MARILGALI' and hearing such sound, he went to spot

and found that the deceased was lying on the ground and the appellant had pressed her throat by one of his legs and dealing kicks by another leg and the deceased was groaning. He further stated that upon seeing him, the appellant went away and in the night, he could know that the deceased had died. In the cross-examination, P.W.1 has stated that there was a 'bari' in the backyard of the house of the appellant and it was surrounded by a fence and that the appellant had raised maize plants inside the 'bari' during the year of occurrence. He further stated in the cross-examination that the deceased was wearing a saree and the appellant was standing on her keeping his right leg on the throat and dealing kicks to her by his left leg and the appellant at that time was in bare foot. He further stated in the cross-examination that the appellant was dealing kicks consistently and he watched the occurrence continuously for five minutes. He further saw that the deceased was in an unconscious state and was not moving her limbs and only making groaning sound and he has specifically stated that nobody had seen the assault except him. He further stated that the villagers did not like the appellant due to his involvement in anti-social activities. He has denied the suggestion given by the learned defence counsel that he had enmity with the appellant prior to the occurrence regarding Panchayat work.

From the evidence of P.W.1, it not only appears that the assault took place in the backyard of the house of the appellant but there is nothing brought out in the cross-examination that merely because P.W.1 was standing by the side of the fence, it would not have been possible on his part to witness the assault made by the appellant to the deceased. It is correct that it has been brought out that the backyard of the house was surrounded by fence and some maize plants were there but in absence of any further evidence that the fence was of such a nature that the happenings inside the 'bari' would not be visible, if someone stands on the other side of the fence, it is difficult to accept the contention raised by the learned counsel for the appellant.

The I.O. (P.W.9) visited the spot on the date of lodging of the F.I.R. itself and he has specifically stated that by the time he reached at the spot, the dead body was shifted from the 'bari' to courtyard and there were marks of violence at the spot and there was dragging mark and foot prints at the spot. The dead body was lifted from the spot to the courtyard. P.W.7, no doubt, has stated that there were different trees in the backyard of the house of the appellant and the place where the utensils were washed in the 'bari' was a muddy spot and that 'bari' was fenced and maize plants were in existence, which were

of five feet height. But there is no evidence that the assault took place at the muddy spot. Therefore, the questions that have been put to the doctor that there must be mud mark on the body of the assailant if anybody assaults by foot after coming in contact of the mud becomes irrelevant. The evidence of P.W.1 has not at all been shattered in the cross-examination.

Law is well settled that it is the quality of evidence which matters and not the quantity and on the basis of the testimony of a solitary witness, which is clinching, trustworthy and above-board, the conviction can be recorded. The above proposition of law has been legislatively recognized through section 134 of the Evidence Act which emphatically says that no particular number of witnesses shall in any case be required for the proof of any fact. The above position of law has also found repeated reiteration from innumerable judgments of the Hon'ble Supreme Court and this Court. Recently, the Hon'ble Supreme Court in the case **Munna Lal -Vrs.- State of Uttar Pradesh reported in (2023) SCC OnLine SC 80**, while reaffirming that evidence has to be weighed and not counted, held as follows:

“28...Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity.

As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.”

When the evidence of P.W.1 relating to the assault on the deceased by the appellant is getting corroboration from the medical evidence adduced by P.W.10., there is hardly any difficulty in accepting the prosecution version. As far as the argument relating to non-protest by P.W.1 is concerned, it may be on account of several reasons; one of such reasons may be that the appellant was involved in anti-social activities. The reaction of witnesses on seeing a crime being committed in their presence varies from person to person and no concrete rule can be evolved that every witness must react to a specific occurrence in a particular way. Only because a witness reacted in a different way or weird manner and did not shout at the spot to draw the attention of others and/or come forward to save the person being assaulted, he cannot be declared as an unreliable witness nor can the Court discard his evidence altogether solely basing upon that ground. The Hon'ble Apex Court has time and again unequivocally held that post-occurrence behaviour of witnesses cannot be predicted and uniformity in their reactions cannot also be expected. In the case of **Rammi -Vrs.- State of M.P.**

reported in (1999) 8 Supreme Court Cases 649, the Hon'ble Highest Court held as follows:

"8. Such a remark on the conduct of a person who witnessed the murderous attack is least justified in the realm of appreciation of evidence. This Court has said time and again that the post-event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as a model by everyone witnessing such event. Different persons would react differently on seeing any violence and their behaviour and conduct would, therefore, be different. We have not noticed anything which can be regarded as an abnormal conduct of PW 9 Ram Dulare."

[Emphasis supplied]

Therefore, it cannot be said that merely because P.W.1, who was present at the spot, did not shout to draw the attention of others after seeing the assault, his presence at the spot would be disbelieved.

Conclusion:

9. Therefore, we are of the view that the finding of the learned trial Court that the prosecution has successfully established the charge under section 302 of the I.P.C. against the appellant beyond all reasonable doubt is quite justified and in

view of the foregoing discussion, the order of conviction and sentence as passed by the learned trial Court hereby stands confirmed. The JCRLA being devoid of merit stands dismissed.

It is deducible from the case records that the appellant was granted bail by this Court on 11.01.2019. The learned trial Court is directed to take steps to take the appellant into custody to serve out the remaining part of his sentence.

The trial court records along with a copy of this judgment be sent down to the concerned Court for information and compliance.

Before parting with the judgment, we put on record our appreciation to Ms. Anima Dei, learned Amicus Curiae for rendering her assistance in arriving at the above decision. She shall be entitled to her professional fee which is fixed at Rs. 7,500/-. We also appreciate Mr. Sonak Mishra, learned Additional Standing Counsel for ably and meticulously presenting the case on behalf of the State.

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S.K. Sahoo, J.

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Chittaranjan Dash, J.

Orissa High Court
The 13th December, 2023/AKPradhan