IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No. 95 of 2006

An appeal from the judgment and order dated 02.09.2006 passed by the Adhoc Addl. Sessions Judge (F.T.C-II), Keonjhar in S.T. Case No.33/68 of 2006.

Sama Munda ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Satyanarayan Mishra (4)

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: 20.11.2023

By the Bench: The appellant Sama Munda faced trial in the Court of learned Adhoc Addl. Sessions Judge (FTC-II), Keonjhar in S.T. Case No.33/68 of 2006 for offences punishable under sections 302 and 201 of the Indian Penal Code (hereinafter 'I.P.C.') on

the accusation that on 28.12.2005 at about 5.00 p.m., he committed murder of one Sankri Munda (hereafter 'the deceased') and having knowledge or reason to believe that such offence has been committed, he caused the evidence connected with the said offence to disappear by throwing the dead body of the deceased in the backyard of Suna Munda (P.W.3) with intention to screen himself from legal punishment.

The learned trial Court vide judgment and order dated 02.09.2006 found the appellant guilty of the aforesaid charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-(rupees five thousand), in default, to undergo R.I. for one year under section 302 of the I.P.C. and to undergo R.I. for three years and to pay a fine of Rs.1000/-(rupees one thousand), in default, to undergo R.I. for three months under section 201 of I.P.C. and both the substantive sentences were directed to run concurrently.

Prosecution Case:

2. The prosecution case, as per the oral report submitted by Gopal Munda (P.W.1) before the officer in-charge of Nayakote Police Station on 30.12.2005, is that on 29.12.2005 in the afternoon at about 05.00 p.m., while he was searching for

his bullock, he noticed the dead body of a lady was lying in the backyard of Suna Munda (P.W.3) and when he reached near the dead body, he could find that it was the body of the deceased and there was bleeding injury on her person. P.W.1 immediately intimated the same to the ward member and others and subsequently he came to know that on 28.12.2005 at about 05.00 p.m., the appellant had come to the house of his brother-in-law for attending *sudhi kriya* and was confronted by the deceased as to why the appellant was calling her a 'witch'. Over such issue, there was a quarrel between the appellant and the deceased and during such quarrel, the deceased was assaulted by a lathi so also by means of a tangia inside the house of the brother-in-law of the appellant and after commission of the murder, the dead body of the deceased was thrown in the backyard of the house of the P.W.3. Since, there was no proper communication from the place of occurrence to the police station and it was a hilly area and there was fear of wild animals, the matter could not be reported in the police station immediately for which the dead body was guarded.

On the basis of the oral report given by P.W.1, P.W.9 Trilochan Nayak, A.S.I. of Banspal outpost under Nayakote police station reduced the report into writing and on the basis of such

report, in the absence of officer in-charge of Nayakote police station, Nayakote P.S. Case No.31 dated 30.12.2005 and P.W.9 took up investigation of the case. During the course of investigation, P.W.9 examined the informant, visited the spot, prepared the spot map (Ext.4), examined the other witnesses and tried to find out the whereabouts of the appellant but was unsuccessful on that day. On 31.10.2005, P.W.9 again visited the spot and examined some more witnesses, conducted inquest over the dead body and prepared the inquest report as per Ext.5 and sent the dead body for post mortem examination. The appellant was arrested on that day and from the house of one Samara Munda, who was the brother-in-law of the appellant, one bamboo lathi and one axe was seized on production by the appellant as per seizure list Ext.8. On that day, at about 01.45 p.m., the blood stained earth and sample earth were seized from the spot as per seizure list Ext.9. The white colour full shirt of the appellant was also seized as per seizure list Ext.10. The appellant was sent to C.H.C., Banspal for collection of his blood sample and nail clippings through constable. The appellant was forwarded to the Court and the wearing apparels of the deceased were seized on the production by the constable after the post mortem examination as per seizure list Ext.12. P.W.9 also made

query to the doctor (P.W.8), who conducted the post mortem examination, about the possibility of the injuries caused to the deceased by such weapons and he received the query report vide Ext.3. P.W.9 subsequently received the P.M. report (Ext.2) and made prayer before the S.D.J.M., Keonjhar for sending the exhibits to S.F.S.L., Rasulgarh, Bhubaneswar for examination and received the C.E. report vide Ext.15. On 27.02.2006, the officer in-charge of Nayakote Police Station took charge of investigation and on completion of investigation on 17.03.2006, he submitted charge sheet against the appellant under sections 302 and 201 of the Indian Penal Code.

The case was committed to the Court of Session after compliance of due procedure, where the appellant was charged as aforesaid and since he refuted the charges and pleaded not guilty, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses & Exhibits:

3. During the course of trial, in order to prove its case, the prosecution examined nine witnesses.

P.W.1 Gopal Munda is the nephew of the deceased and informant in the case. He stated that at about 04.00 p.m. on

a Thursday towards the end of December 2005, when he was searching for two of his bullocks, he saw the deceased lying dead on the land of P.W.3.

P.W.2 Gora Munda is the brother-in-law of the appellant who stated that the appellant had come to his house to attend the Sudhi ceremony of his deceased daughter towards the last part of December, 2005. However, he expressed his inability to answer as to whether any weapon of offence was seized in his presence.

P.W.3 Suna Munda stated to have found the dead body of the deceased lying on his land and he along with others guarded the dead body. He further stated that during the investigation, the appellant confessed before the police to have killed the deceased and also led the police to the place where he had concealed the weapon of offence, i.e. bamboo lathi (M.O.I).

P.W.4 Pala Munda is the elder sister of the appellant who expressed her ignorance about the manner and circumstances under which the deceased died. She was declared hostile by the prosecution.

P.W.5 Krushna Munda stated that the police seized one bamboo lathi (M.O.I) and one axe (M.O.II) from the house

of P.W.2 in his presence and thus, he is a witness to the seizure of weapons of offence.

P.W.6 Guna Munda is the son of the deceased who stated that on the day of occurrence at about 6 to 7 p.m., the appellant assaulted his mother on her head by means of an axe in the house of P.W.2 and killed her. He further stated that out of fear he fled away from the spot of occurrence when the appellant was killing his mother.

P.W.7 Ballav Munda is a co-villager who stated to have seen the dead body of the deceased lying on a land near the jungle. He further stated that the appellant carried the body of the deceased to that place being armed with a bamboo lathi.

P.W.8 Dr. Bijaya Kumar Behera was working as an Assistant Surgeon in the District Headquarters Hospital, Keonjhar and he conducted post-mortem examination over the dead body of the deceased on police requisition. He proved his report vide Ext.2.

P.W.9 Trilochan Nayak was working as the A.S.I. at the Banspal outpost under Nayakote police station and he is the Investigating Officer of the case.

The prosecution exhibited fifteen documents. Ext.1 is the F.I.R., Ext.2 is the post mortem report, Ext.3 is the query report furnished by P.W.8, Ext.4 is the crime detailed report, Ext.5 is the inquest report, Exts.6 and 11 are the command certificates, Ext.7 is the dead body challan, Exts.8, 9, 10 and 12 are the seizure lists, Ext.13 is the statement of P.W.4 recorded under section 164 Cr.P.C. by the learned J.M.S.C., Keonjhar, Ext.14 is the forwarding report of S.D.J.M., Keonjhar addressed to Director of S.F.S.L., Rasulgarh for chemical examination and Ext.15 is the chemical examination report.

The prosecution proved two numbers of material objects (M.O.). M.O.I is the bamboo lathi and M.O.II is the axe.

Defence Plea:

4. The defence plea of the appellant is one of denial. The defence neither examined any witness nor exhibited any document.

Findings of the Trial Court:

5. The learned trial Court after assessing the oral as well as documentary evidence on record came to the conclusion that the death of the deceased was homicidal in nature. The

version of P.W.6 as an eye-witness to the occurrence was accepted and it was held that the evidence is clear, cogent and trustworthy. The learned trial Court has also accepted the version of the P.W.3 and P.W.4 so also P.W.7. The evidence of the I.O. regarding seizure of the weapon of offence at the instance of the appellant was also accepted and taking into the account the chemical examination report (Ext.15), the learned trial Court came to the conclusion that not only there was motive for commission of offence, which is apparent from the F.I.R. (Ext.1), but also from the evidence of the witnesses, it appears that the appellant carried the dead body and disposed of the same on the land of P.W.3 with the intention to cause disappearance of the evidence so also to screen himself from legal punishment and therefore, the charges under sections 302 and 201 of the I.P.C. was held to have been established by the prosecution.

Contentions of the Parties:

6. Mr. Satyanarayan Mishra (4), learned counsel appearing for the appellant contended that though the evidence of P.W.6 has been accepted to be an eye witness to the occurrence, but in view of the material contradictions in his evidence which have been duly proved through the Investigating

Officer, it would be apparent that he was not an eye witness to the occurrence and that for the first time, he stated so in the Court and therefore, the learned trial Court should not have placed reliance on his evidence. Neither P.W.1 nor P.W.2 stated anything as to where the occurrence took place and their evidence is also silent about the presence of P.W.6 in the house of P.W.2 at the time of occurrence. The learned counsel further argued that even though P.W.7 has stated that he had seen the appellant carrying the dead body of the deceased holding a bamboo lathi, but he has not stated to have seen the appellant carrying the dead body from the house of P.W.2 and merely because blood stained earth was seized from the house of P.W.2 by the Investigating Officer and the appellant was seen carrying the dead body of the deceased holding a bamboo lathi and the bamboo lathi seized was containing human blood of group 'B', it cannot be said that the prosecution has been able to establish the charge under 302 of the I.P.C. against the appellant 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 appearing for the State of Odisha, on the other hand, supported the impugned judgment and argued that even if in

view of the contradictions appearing in the evidence of P.W.6, it is accepted that he was not an eye witness to the occurrence, still the prosecution case cannot be discarded in view of a series of circumstances and materials available against the appellant. The learned counsel argued that the presence of P.W.6 at the spot coupled with the seizure of blood stained earth from the spot i.e. the house of P.W.2, the version of P.W.7, who had seen the deceased being carried by the appellant holding a lathi, the finding of the chemical examination report about the detection of human blood of group 'B' from the bamboo lathi (M.O.I) matching with that of the deceased and moreover, the seizure of the lathi (M.O.I) and axe (M.O.II) at the instance of the appellant through which the injuries were possible as per the opinion of the doctor (P.W.8), it can be said that the chain of the circumstances is so complete that it unerringly points towards the guilt of the appellant and therefore, the learned trial Court is quite justified in convicting the appellant under sections 302 as well as 201 of the I.P.C. and therefore, the JCRLA should be dismissed.

Whether the deceased met with a homicidal death?:

7. Adverting to the contentions raised by the learned counsel for both the parties, let us first analyze the evidence

adduced by the prosecution regarding the homicidal death of the deceased. We find that apart from the inquest report (Ext.5), the doctor (P.W.8), who conducted the post mortem examination over the dead body of the deceased on 01.01.2006, has noticed the following injuries:-

> i) Incised injury $2^{1/2''}$ x ½" bone deep present over the left temporal region half inch above the left ear;
>
> ii) Incised injury of size 2"x$^{1/2''}$ x ½" present on the left side of face extending from left angle of mouth to left mandibular region;
>
> iii) Incised injury of size ¾'' x ¼'' x ¼'' present over the left ear pinna;
>
> iv) Lacerated injury of size 1'' x ½'' x ½'' present on the left side of neck just above the thyroid region.

On dissection, he found a depressed facture on the left temporal bone. Brain membranes were soft, stained with blood corresponding to the fracture on temporal region. Brain matter was soft, blood stained corresponding to the fracture side and he specifically opined that the cause of death was on account of the head injury and all the injuries were ante mortem in nature and injuries nos.1 to 3 might have been caused by a

weapon having cutting edge and injury no.4 being caused by a blunt object. In the cross-examination, he has stated that injury no.1 was sufficient to cause death of the deceased. The evidence of the doctor has not at all being shattered in the cross-examination and the learned counsel for the appellant has also not challenged the same and therefore, on the basis of the evidence adduced by the doctor (P.W.8) and the post mortem report (Ext.3), we are of the view that the learned trial Court has rightly come to the conclusion that the deceased met with a homicidal death.

Whether the appellant committed murder of the deceased?:

8. Now, coming to the evidence of the star witness examined on behalf of the prosecution i.e. P.W.6, we find that he has stated that the deceased was his mother and the house of P.W.2 was situated near to his house and on the day of occurrence at about 6 to 7 p.m., the appellant assaulted the deceased on her head by means of an axe in the house of P.W.2 and killed her. He has further stated that P.W.2 was his friend and P.W.1 called the deceased to the house of the P.W.2 where the appellant killed the deceased and he further stated that apprehending danger to his own life, he fled away from the spot.

In the cross-examination, P.W.6 has stated that the appellant had no previous enmity with the deceased and sometime the deceased used to take liquor. It was further elicited from the cross-examination of P.W.6 that he had gone inside the house of P.W.2 when the appellant assaulted the deceased by means of an axe. However, it has been confronted to the P.W.6 and proved through the I.O. (P.W.9) that he had not stated that P.W.1 called the deceased to the house of P.W.2 and that the appellant assaulted the deceased there by means of an axe and killed her. Therefore, the material part of the evidence of P.W.6 that he had seen the appellant assaulting the deceased on his head by an axe and killing her is not there in the previous statement of P.W.6 recorded under section 161 Cr.P.C. Moreover, P.W.1 has not stated to have called the deceased to the house of P.W.2. Similarly, P.W.2 has not stated that P.W.1 called the deceased to his house. Neither P.W.1 nor P.W.2 has stated about the deceased or deceased being called to the house of P.W.2 or about the presence of the appellant in the house of P.W.2.

Therefore, there is no material to corroborate the evidence of P.W.6. In view of the material contradictions in the evidence of P.W.6, his version as an eye witness to the

occurrence becomes doubtful. It is correct that from the house of P.W.2, the I.O. (P.W.9) seized blood stained earth and sample earth as per seizure list Ext.9 and the evidence of P.W.7 to have seen the appellant carrying the dead body of the deceased holding one bamboo lathi has remained unshaken and it has also been established from the chemical examination report that from the lathi (M.O.I), human blood was found having blood group 'B' and the doctor has also opined that the injuries sustained by the deceased were possible by the lathi (M.O.I) and axe (M.O.II), but when the evidence is silent that P.W.7 had seen the dead body being removed from the house of P.W.2, it is very difficult to hold that the prosecution has successfully established the charge under section 302 of the I.P.C. against the appellant. Therefore, 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 is not acceptable.

Whether the appellant is liable under section 201 of the I.P.C.?:

9**.** Now, coming to the charge under section 201 of the I.P.C. against the appellant, it is apposite for us to reproduce the provision which reads as follows:

> "Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

In the case of **Sukhram -Vrs.- State of Maharashtra reported in (2007) 7 Supreme Court Cases 502**, the Hon'ble Supreme Court has elaborately discussed the necessary ingredients of offence under section 201 of the I.P.C in the following words:

> "The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or

> with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown."

This Court is well cognizant of the position of law that merely carrying a body from the place of occurrence to another place may not come under the purview of section 201 of the I.P.C. In such circumstances, the intention of the person must be ascertained as why he was carrying the body and whether he had knowledge or reason to believe that the body is of a dead person who died a homicidal death. If a person is found to have the intention to cause disappearance of material evidence in order to screen himself or someone else from legal punishment, then it can be aptly concluded that his act attracts culpability under section 201 of the I.P.C.

While examining the evidence on record as to liability of the appellant under section 201 of the I.P.C., it is immaterial whether he has committed the offence punishable under section 302 of the I.P.C., rather he must have the knowledge that the offence has been committed, no matter if it done by him or by someone else. In other words, even if the appellant is found to be innocent under section 302 of the I.P.C., still he can be made liable for the offence under section 201 of the I.P.C. if it is found that he was instrumental in causing disappearance of the dead body with an intention to shield himself from the legal punishment.

In the present case, P.W.7 has stated to have seen the appellant carrying the dead body of the deceased being armed with a bamboo lathi and the corpse was discovered by P.W.1 only on the next day during the afternoon hours. The evidence of P.W.7 has remained unshaken and the appellant was seen carrying the dead body of the deceased being armed with bamboo lathi and the dead body was found from the backyard of the house of P.W.3 and P.W.9, the I.O. has also stated in that respect. In the accused statement, when the learned trial Court put the question to the appellant in connection with the evidence of P.W.7, the appellant simply replied that it was false. Since the

deceased had met homicidal death and the appellant was seen carrying the dead body being armed with a lathi as per the version of P.W.7 and the dead body was found in the backyard of P.W.3, the appellant was supposed to explain such circumstance appearing against him which he has failed. Therefore, it is proved that the appellant tried to dispose of the dead body of the deceased in order to screen himself from the ensuing liability and therefore, the prosecution has established the charge under section 201 of the I.P.C. against the appellant beyond all reasonable doubt.

Conclusion:

10. In view of the foregoing discussions, the conviction of the appellant under section 302 of the I.P.C. is hereby set aside, however, his conviction under section 201 of the I.P.C. is found to be apt and justified and stands confirmed.

It appears from the records that the appellant was taken into judicial custody in connection with this case since 31.12.2005 and he was not released on bail during the trial but during pendency of the appeal, he was granted bail by this Court on 08.02.2012 and therefore, he had already undergone the sentence which has been imposed by the learned trial Court for

the offence under section 201 of the I.P.C. Therefore, the appellant shall not be further taken into custody.

Accordingly, the JCRLA is partly allowed

Before parting with the case, we would like to put on record our appreciation to Mr. Satyanarayan Mishra, learned counsel who was engaged by the OHCLSC as the counsel for the appellant for rendering his assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable assistance provided by Mr. Sonak Mishra, learned Additional Standing Counsel.

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S.K. Sahoo, J.

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Chittaranjan Dash, J.

Orissa High Court
The 20th November 2023/B.K. Sahoo