

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.16 of 2007

Kanhu Charan Panda

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Appellant

-versus-

State of Odisha

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Respondent

Advocates appeared in this case:

For Appellant

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Mr. B.K. Ragada, Advocate

For Respondent

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Mr. P.K. Muduli
Addl. Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

JUDGMENT

09.05.2022

Dr. S. Muralidhar, CJ.

संस्थानिक नमूने

1. This appeal is directed against the judgment and order dated 29th November, 2006 passed by the Additional Sessions Judge, Nayagarh in S.T. Case No.107/2005 convicting the Appellant for the offence punishable under Section 302 Indian Penal Code (IPC) and sentencing him to rigorous imprisonment (RI) for life and to pay a fine of Rs.5,000/- and in default to undergo RI for a further period of six months.

2. It must be mentioned at the outset that the FIR in this case was lodged on 31st May, 2004 and the Appellant was arrested nearly a

month later on 30th June, 2004. He is stated to have remained in custody since then. This being a double murder of a woman and her infant son, the Court was not inclined to enlarge the Appellant on bail when it heard his bail application on 27th January, 2020.

3. This is a case based on circumstantial evidence. The case of the prosecution was that the deceased Sanju was the wife of one Prahalad Panda of village Kendupali. The deceased Krushna is a minor son. On 29th May, 2004 both Sanju and her son were found missing from their village and could not be traced. On the next day, the dead bodies of a child and female were found lying side by side which could not be identified by the people of the nearby villages present there. The faces of the dead bodies were found disfigured and appeared to have been crushed by stone. The Officer-in-Charge (OIC), Fategarh Police Station (P.S.), who reached there upon receiving the information found four pieces of stones with blood lying near the bodies along with the plastic bottle containing water, a pair of chapals, a blood stained jute bag containing wearing apparels of the lady and the child. He drew up a plain paper FIR at the spot and took up investigation of the case himself. A sniffer dog and Scientific Officer were deployed and the bodies were sent for post-mortem.

4. During investigation, the nexus of the accused with the murders came to light from the statement of the witnesses. The accused is stated to have confessed to having kept the ornaments of the

deceased Sanju in the house of one of his relatives. At his instance, the ornaments of the deceased were recovered and seized. On completion of investigation, a charge sheet was submitted against the accused for the offence under Section 302 IPC. The accused pleaded not guilty and claimed trial.

5. The prosecution examined 17 witnesses including 2 doctors (PWs 12 and 13). There were two Investigating Officers (IOs) i.e. PWs 16 and 17. The daughter (PW 4), the mother-in-law (PW 5) and husband (PW 10) of the deceased Sanju were also examined. There were witnesses to the seizure and to the inquest.

6. The trial Court on analyzing the evidence culled out the following circumstances as forming a continuous chain:

(i) The accused had a previous acquaintance with the family of the deceased;

(ii) The accused was on visiting terms with the family members of the deceased at their house;

(iii) On the day previous to the one on which Sanju and her son went missing, the accused was in the village of the deceased and had visited their house;

(iv) On the next morning, the accused was found to have accompanied the deceased Sanju and her son;

(v) On the day after they went missing, the dead bodies of the deceased persons were found at Hanumantia hillock;

(vi) It was established by prosecution witnesses that accused absconded soon after the occurrence till he was apprehended by police;

(vii) From the report of the doctor, it was established that the death of the deceased persons was homicidal and the cause of death was due to severe blows dealt on the heads of the deceased persons with sufficient force by means of stone;

(viii) The seized stones (M.Os.XVI & XVII) contained human blood and this substantiated the fact that they were used in the commission of the crime;

(ix) While in police custody, the accused made a statement that led to the recovery of the stolen ornaments which he had removed and kept in the house of P.W. 11;

(x) It had been established by the evidence of P.Ws.4 and 10 that the stolen ornaments belong to the deceased Sanju;

(xi) The modus operandi of the accused was clearly established from the removal of the ornaments; it was for grabbing such property that the murders had been committed.

7. The trial Court concluded that each of the above links in the continuous chain of circumstances had been conclusively proved by the prosecution and therefore, the guilt of the Appellant for the offence punishable under Section 302 IPC, for having murdered Sanju and her infant son, was proved beyond reasonable doubt.

8. This Court has heard the submissions of Mr. B.K. Ragada, learned counsel appearing for the Appellant and Mr. P.K. Muduli, learned Addl. Govt. Advocate for the State (Respondent).

9. At the outset, it must be noticed that the law in relation to the circumstantial evidence is fairly well settled. It has been reiterated in a large number of judgments of the Supreme Court. It is sufficient to refer to just a few of them. In *Nizam v. State of Rajasthan (2016) 1 SCC 550*, the Supreme Court reiterated the settled principles of law concerning a case based on circumstantial evidence as follows:

"9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In *Bodhraj @ Bodha And Ors. vs. State of Jammu & Kashmir, (2002) 8 SCC 45*, wherein this court quoted number of judgments and held as under:-

"10. It has been consistently laid down by this Court that where a case rests squarely on

circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* (1977) 2 SCC 99, *Eradu v. State of Hyderabad* AIR 1956 SC 316, *Earabhadrapa v. State of Karnataka* (1983) 2 SCC 330, *State of U.P. v. Sukhbasi* (1985) Suppl. SCC 79, *Balwinder Singh v. State of Punjab* (1987) 1 SCC 1 and *Ashok Kumar Chatterjee v. State of M.P.*, 1989 Suppl. (1) SCC 560) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of

the accused and totally inconsistent with his innocence.”

10. In *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681, this court held as under:

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

The same principles were reiterated in *Sunil Clifford Daniel vs. State of Punjab*, (2012) 11 SCC 205, *Sampath Kumar vs. Inspector of Police, Krishnagiri* (2012) 4 SCC 124 and *Mohd. Arif @ Ashfaq vs. State (NCT of Delhi)*, (2011) 13 SCC 621 and a number of other decisions."

10. Keeping the above settled principles in view, this Court proceeds to examine each of the links in the chain of circumstances and whether each such circumstance has been conclusively proved by the prosecution in the present case.

11. As regards the last seen, the first four links of chain of circumstances have been spoken to by the mother-in-law of the deceased i.e. Saria Panda (PW 5). She stated that the deceased Sanju was the wife of her only son Prahalad. She had two daughters and one son. Besides cultivation, Prahalad used to travel frequently for earning his livelihood. The accused belonged to Bagedia, Nuagaon whereas the deceased belonged to village Kendupalli. The accused was a cousin of Satyabhama, the daughter of PW 5. He had also married in the same village viz., Kendupalli. Being related to the family, the accused used to visit regularly their house and used to talk to PW 5 and also with deceased Sanju.

12. P.W.5 stated that in the early morning of Saturday about one or two years prior to her deposition, she woke up to find Sanju and her son Krishna (who was three years old) missing. The previous day i.e. Friday the accused had come to their house with some curd. She was not present in the house as she had gone to listen to a *Purana* recital. When she returned around 3 to 4 pm, she noticed the accused hurriedly leaving the house. On that day, her husband as well as Prahalad were absent. The next day the deceased and her son went missing. Nityananda Panda of the same village Kendupali informed PW 5 late in the evening that he had seen Sanju and her son going with the accused in the early hours of the morning of that day. Two days later P.W.5 came to know the dead bodies of Sanju and Krishna were lying at

Hanumantia Pahada. P.W.5 verified the clothes and ornaments of her deceased daughter-in-law. She did not herself see the dead bodies. In cross-examination, P.W.5 stated that she informed her son Prahalad over telephone about Sanju having gone missing.

13. Nothing much could be elicited from P.W. 5 during her cross-examination which could discredit her testimony. This was a natural witness although a related one. She sufficiently proved the acquaintance of the accused with the deceased. Three of the circumstances, i.e. the acquaintance of the accused with the deceased, his frequently visiting the house of the deceased, his being seen last with the deceased before her disappearance can be said to be sufficiently and conclusively proved by the evidence of PW 5.

14. Mr. Ragada referred to the decision in *Nizam v. State of Rajasthan* (*supra*) to urge that the time gap between the last seen and the recovery of the body is very relevant in such circumstances. Here, the deceased went missing in the early hours of the previous day and the body was found the next day. However, the defence has not suggested that there could be any intervening event that could point the guilt of anyone else in the commission of the offence. As far as the present case is concerned, the last seen theory has been sufficiently established by the prosecution without any suggestion that the deceased and her son could have been with anyone else during the intervening

period. Further, as the other events unfolded, it can be seen that the evidence pointed unerringly only to the guilt of the present Appellant and no one else.

15. The circumstance of the deaths of the two i.e. the mother and the son being homicidal has been sufficiently proved in the medical evidence of PW 12 who examined the child and PW 13, who examined the dead body of Sanju. There were numerous injuries which included lacerations, bruises, abrasions on both the bodies. It was clear that these injuries were not possible due to fall from a certain height from a hillock or accidentally falling from a motor cycle. The injuries suggested only a homicidal death.

16. The Court has carefully perused the deposition of PWs 12 and 13 and finds that nothing much has been elicited in their cross-examination which could suggest anything other than homicidal death of the deceased. This circumstance has also been conclusively established by the prosecution.

17. The evidence of PW 11 is significant on the aspect of seizure of the jewellery belonging to the deceased. She was the cousin of the accused, who was the son of her father's younger brother. She stated that two years earlier to her examination on 4th February, 2006 the accused came to her house in village Adheiguntha and gave her some ornaments which included a silver paunji, a gold chain Hanumantia and he borrowed Rs.500/- from her. Three

months thereafter the accused came to the police and on being demanded by him she gave the ornaments. They were seized by the police in presence of the witnesses. She was declared hostile to the extent she denied that the accused confessed his guilt to her. She was subjected to cross-examination. Some contradictions were elicited from her vis-à-vis the statements made by her to the I.O. However, these are not material contradictions. However, what she has disclosed in the examination-in-chief was sufficient to implicate the accused as far as handing over the ornaments of the deceased to her.

18. PWs 4 and 10 have proved that the ornaments belonged to the deceased. PW 4 was the daughter of the deceased. She identified the ornaments. Certain omissions elicited from her vis-à-vis the statements made by her before the police were not material enough to discredit her testimony. Likewise, PW 11 who was a cousin sister of the accused also could correctly identify the ornaments. It must also be added that the test identification (T.I.) parade was conducted as regards identification of the gold jewellery belonging to the accused. The evidence of PW 15 who was working in J.M.F.C., Khandapara is relevant in this context. The daughter of the deceased participated in the T.I. Parade and correctly identified the jewellery. Therefore, this circumstance was also sufficiently established.

19. The fact that the accused went absconding soon after the event is also proved from the fact that he was arrested only on 30th May, 2004 after a search.

20. The prosecution has also been able to conclusively prove by way of the chemical examination report MOs 16 and 17 that the seized stones contained human blood and were used for the commission of the crime. The Court has also perused the serological examination report which confirmed the presence of human blood of 'B Group' on the stones found near the dead bodies.

21. As already noticed there were two IOs in the case. PW 16 stated that the identification of the dead body was done by the daughter, who was at the hospital where the post mortem was conducted.

22. In the context of motive for the crime, the evidence of PW 8 is relevant. He mentioned how the deceased was the 'Salabhauja' of the accused as she was visiting frequently during the absence of her husband, they suspected the illicit intimacy between them. The husband of the deceased stayed out of the village most of the time as he went for work as a wage earner. He stated how on 28th May, 2004 he had seen the accused in the village. On 29th May, the father and mother of Prahalad Panda informed him that Sanju and her baby son were missing. On 30th June, 2004 he heard that

Kanhu Panda had been arrested and detained by Fategarh Police. Then, PW 8 and one Damodar Panda went there to meet him. He asked the accused what had happened. The accused is stated to have confessed to PW 8 about his long standing love affair with Sanju. He further informed them that Sanju had insisted on taking her to somewhere including Bhubaneswar or Cuttack but the accused had refused stating that he had a family. In the early hours of 29th May, he took Sanju and her son and went to Kantilo via Marada Chhak and again returned to Marada Chhak during the evening. He thereafter took Sanju and her son to Hanumantia Mundia. He also informed PW 8 that while going Sanju had taken all her ornaments in a bag. He confessed that at Hanumantia Hill he first killed her son and when Sanju protested, he killed her as well with a stone. He had then taken the gold ornaments and a new saree and kept them in the house of Sarojini Panda (P.W. 11) of village Adheiguntha who was his cousin sister.

23. PW 8 was subjected to searching cross-examination by the defence but nothing much emerged to throw any serious doubt on the reliability of the witness. PW 8 was in fact recalled for further cross-examination by the defence. He, in fact, again spoke of the illicit intimacy between the accused and the deceased Sanju. Therefore, the testimony of PW 8 supplied another important link in the chain of circumstances as far as motive for the commission of the crime is concerned. Except a blanket denial, no satisfactory

explanation has been offered for the accused for the incriminating circumstances found against him.

24. The Court is, therefore, satisfied that the prosecution has been able to convincingly prove each of the links in the chain of circumstances already set out hereinbefore. The Court would, in this context, like to refer to the decision in ***G. Parshwanath v. State of Karnataka (2010) 8 SCC 593*** where the Supreme Court reiterated what should be proved by the prosecution in the case of circumstantial evidence as under:

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to

the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

25. The Court is satisfied that in the present case all the ingredients for proving the guilt of an accused in a case of circumstantial evidence stand fulfilled by the prosecution. The links in the chain of circumstances are continuous and each of the circumstances points unerringly to the guilt of the accused and of

no one else. Consequently, the Court is unable to find any error having been committed by the trial Court in convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him in the manner aforementioned.

26. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

SK Jena/Secy.

