

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRA No.20 of 2000**

(An appeal under Section 374(2) of the Code of Criminal Procedure, 1973)

Jayaram Sahoo

....

Appellant**-versus-****State of Odisha**

....

Respondent**Advocates appeared in this case:****For Appellant**

:

Ms. Swetlana Das, Advocate

For Respondent

:

Mr. J. Katikia
Addl. Government Advocate**CORAM:****THE CHIEF JUSTICE****JUSTICE R.K. PATTANAİK****JUDGMENT****31.03.2022****Dr. S. Muralidhar, CJ**

1. The present appeal is directed against the judgment dated 7th January, 2000 passed by the Additional Sessions Judge, Jajpur in S.T. Case No.28 of 1999 whereby the Appellant was convicted for the offence punishable under Section 302 IPC and sentenced to imprisonment for life.

2. The case of the prosecution is that the deceased, Sarathi @ Saria i.e. the wife of the Appellant, and the Appellant got married

in 1996. According to the prosecution, at the time of the marriage there was a demand for dowry in the sum of Rs.20,000/- and for ornaments. It is stated that despite the demands being fulfilled, after the marriage the Appellant continued to demand more dowry. Each time when the deceased came to her father's house, she took money being pressurized by the accused. After his father-in-law's death, knowing that the deceased was the only daughter, the accused insisted on his mother-in-law selling away all the properties and coming to live with them. His mother-in-law did not agree.

3. The prosecution's case is that 15 days prior to the death of Saria, the accused sent Saria to bring Rs.5,000/- from her mother. However, the money could not be arranged. The informant (PW 3) learnt that Saria was beaten to death at village Jhatiapada by the accused. On receiving such information, he went to the house of the accused and found Saria lying dead. There were injuries around her right ear. Accordingly, he suspected that the Appellant had killed Saria by giving her blows on the ear region. On the basis of the written complaint (Ext.1) to the Inspector-in-Charge (IIC), Dharماسala Police Station FIR was registered. On the conclusion of the investigation a charge sheet against the Appellant for the offence punishable under Section 302 IPC.

4. The defence of the accused was one of the denial. In his statement under Section 313 Cr PC he stated that while carrying Saria on a bicycle, with her riding pillion, he met with an

accident. As a result, Saria fell down on the road and sustained injuries, which led to her death.

5. Eleven witnesses were examined for the prosecution. Two defence witnesses were examined.

6. In his evidence, the Medical Officer (PW 10) stated that when he performed the post-mortem of the deceased on 23rd June, 1998 he found the following injuries on her person:

"i. One lacerated wound 2" x $\frac{1}{3}$ " x scalp depth over right mastoid region being placed obliquely behind the right ear.

ii. One lacerated wound 1" x $\frac{1}{3}$ " x scalp depth over same area 1" apart below the previous injury.

iii. Lacerated wound 1" cutting the pinna of the right ear which corresponds to injury no.1."

7. Further on dissection, there was a fracture of the mastoid bone in 3 pieces with hematoma underneath. The opinion of PW 10 was that death might be due to shock by injury to the mastoid region. According to him, the injuries were possible either by a heavy blow or by falling on some stony substance with force. He stated: "Injury may be caused by blow given by the wooden stick shown to me now (M.O.I)." In his cross-examination PW 10 stated that the injuries found on the dead body can be possible if more than one stroke given by M.O.I.

8. PW 1 was the doctor who first attended the deceased when she was taken to him by the accused. He was the Assistant Surgeon at the Aruha Primary Health Centre (PHC). At around 1.30 am of 28th June, 1998 the injured was brought to him to be examined. According to him, he advised the accused to take the patient to the hospital outdoor, so that he could examine her. When after a while, he went outdoors, he found the patient dead. However, the attendant had put a bandage on the head of the patient. When during the trial, he was asked to identify the accused, PW 1 stated "but I cannot identify the accused person in the dock as the same Jayaram Sahoo."

9. Since it was a medico legal case PW 1 asked the accused to keep the dead body in the PHC till the next morning, so that he could intimate the fact to the police. However, the next morning he found the accused "to have removed the dead body without my knowledge". In the cross-examination PW 1 stated that he remembered this particular aspect since it was peculiar that the accused had removed the dead body without the knowledge of PW 1.

10. This was more or less corroborated by PW 2 who was the attendant at the PHC. In his cross examination he admitted not having made any statement before the Police regarding the incident.

11. As many as four witnesses i.e. PWs 6, 7, 8 and 9 who were listed as witnesses did not support the case of the prosecution. This will be discussed in some detail thereafter.

12. DW 1, the first defence witness, stated that the road on which the accident took place was a rough road full of potholes that had bushy growths on both sides. DW 1 stated that the accused had come to his house around 8 pm leaving the bicycle as well as the deceased at the spot.

13. The Trial Court on an analysis of the evidence came to the following conclusions:

"1) The accused was greedy for money. Being a young man, he was repeatedly asking for money to his mother-in-law through his wife. When he was satisfied that his mother-in-law was not in a position to supply him money further, he thought of putting an end to the life of the victim.

2) He left the injured and his bicycle at the spot in an evening hour and came to village Jhatiapara by walking to fetch water.

3) He insisted on giving at stitches on a dead person's wounds.

4) He left the P.H.C. in the night hours along with the dead body in spite of the fact that P.W.1 wanted him to stay in the P.H.C. till the next morning and till the police was called.

5) P.W. 10, the doctor, opined that the injuries might have been possible by successive blows by an object like MO I or by a heavy fall."

14. This Court has heard the submissions of Ms. Swetlana Das, learned counsel for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the State (Respondent).

15. This being a case of circumstantial evidence, it is necessary to recapitulate the law in this regard. In ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, the five golden principles to be adhered to in a case of circumstantial evidence have been explained as under:

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved.' It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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."

16. In the first instant, it must be noted that the fact of the death was homicidal has itself not been properly established by the prosecution. The evidence of PW 10, the doctor who conducted the post-mortem reveals three injuries noted hereinbefore which do not reveal any concerted attempt by the accused to attack the deceased in order to kill her. The doctor does not rule out the possibility of the injury to the mastoid bone being caused by fall "on some stoney substance with force".

17. Ms. Swetlana Das, learned counsel for the Appellant has placed before the Court medical literature in the form of an article published in the journal of Neurological Surgery, 2016 Oct, 77 (5): 419-429 under the title "*Treatment of Temporal Bone Fractures*" authored by Rodney C. Diaz, Brian Cervenka and Hilary A. Brodie, wherein it is stated as under:

"In the largest series of temporal bone fractures reported to date, 31% of temporal bone fractures in the general population were caused by road traffic accidents, followed by assaults and falls, Pedestrian injuries, bicycle accidents, gunshot wounds, all terrain vehicle accidents, sports injuries, and miscellaneous injuries accounted for 25% of case. In children, road traffic accidents and falls are the most common causes, each accounting for 30 to 50%. Males are three to four times more prone to trauma than females. Bilateral temporal bone fractures are sustainable by 8 to 29% of patients."

18. This is more or less consistent with the view expressed by PW 10 that the fracture at the mastoid bone on the right ear of the deceased could have been caused as a result of the fall on the stone filled road with force. The evidence of DW 1 assumes some importance in this context. He explains the conditions of the road on which the accused and the deceased were coming on a cycle. It must be recalled here that the accused went to the house of PW 1, who was related to him, to report to him that there was an accident in which the cycle on which he was carrying his wife on the pillion was knocked down. The accused had come to him around 8 pm on 21st June, 1998 leaving the deceased and the bicycle at the spot. DW 1 accompanied the accused to bring the wife from the spot. At around 8.30 pm the accused took her to the PHC. DW 1 stated as under:

"Rankari hill stands at a distance of about 2 furlongs from the spot of occurrence. Gada hill also stands at a distance of about 2 miles from the spot of occurrence. The road on which the accident took place is a rough road of the panchayat full of pot holes. There are bushy thorny growth on both sides of the road."

19. There was no cross-examination of DW 1 on this aspect. There was nothing elicited in his cross examination to doubt the veracity or credibility of the evidence of DW 1. The possibility of the fracture of the mastoid bone which was the fatal injury, being caused as a result of the cycle accident, was therefore, not ruled out.

20. Even DW 2 states that the road in village Jhatiapara is 'rocky'. In the cross-examination he states that the roads were even before February, 1977 and not thereafter. Therefore, the condition of the road was such as would cause injuries to someone falling on it, even from moving on a bicycle. The Court is, therefore, not satisfied that the death was homicidal or that it was the accused to cause the fatal injury to the deceased.

21. The prosecution sought to rely on the extra judicial confession stated to have been made by the accused in the presence of PW 5 as well as PWs 7, 8 and 9. PWs 7 to 9 were declared hostile as they did not support the case of prosecution. The evidence in this regard of PW 5, Ranjan Sahoo, who happened to be related to the deceased, is neither convincing nor truthful. In any event, it has not been corroborated by any independent witness. The unreliability of PW 5 becomes evident from the fact that while PW 5 maintained that he had told the police about the extrajudicial confession made to him by the accused, PW 11 the IO stated in his cross-examination "Ranjan Sahoo did not state before me that the accused confessed before him to have beaten his wife to death." The link of extra judicial confession by the accused to PW 5 has not been proved in any convincing manner by the prosecution.

22. Interestingly, each of the hostile witnesses talks of accused coming to their houses and reporting that his wife was lying injured along the road side as a result of the cycle accident and how they helped to remove her to the hospital. In his cross-

examination PW 8 states that the road on which the accused was passing by his bicycle is really a rough road with boulders on both sides. PW 9 states "the injured was alive and was groaning" when they reached her.

23. An important link in the chain of circumstances is the recovery of M.O.I, the weapon of offence. It is seen from the evidence of PW 11 the Investigating Officer (IO) that the recovery was made while in custody but not in presence of any independent witnesses, who have been examined. In other words, apart from the evidence of PW 11 there is no other reliable evidence regarding such recovery. M.O.I being a 'wooden handle' is obviously a commonly available object. PW 11 states "no blood stain was noticed" on M.O.I at the time of recovery.

24. The following answers given by PW 11 in his cross-examination regarding the recovery indeed throw grave doubts on its acceptability and credibility. He states: "As per case diary I recorded the statement of the accused at 5 PM and made recovery at 5.30 PM. I have taken the L.T.I. of the accused at the last page of the statement sheet which runs into 3 sheets. I have not taken the L.T.I. on each and every sheet. Village- Jhatiapada is about 15 KMs from the Dharmasala Police station, but I have not mentioned the same. I have not taken the signature of witnesses on the statement sheet of confession made by the accused. It is not a fact that Jhatiapada is 40 KMs from police station. The P.S. and the village Jhatiapada are connected by motorable muffsil road. The place of recovery is the cow-dung pit of Sananda Sahu."

25. Therefore, yet another important link of chain of circumstances viz., the recovery of alleged weapon of offence in the instance of the accused cannot be said to have been conclusively proved.

26. The trial Court appears to have drawn adverse inference against the accused by his act of leaving the injured and the bicycle at the spot in the evening hour, insisting on giving stitches on a dead person and leaving him in the PHC in the night hours and removing the dead body against the advice of PW 1. These three circumstances really do not point unmistakably to the guilt of the accused.

27. When the evidence of DW 1 is carefully examined, it appears that the accused was anxious about not getting proper treatment at the PHC for his wife. It is not uncommon for villagers to have anxiety about the treatment being given in a government health facility particularly when a near relative is in a critical condition. With the accused having taken the deceased to the PHC at 8.30 and only an attendant (PW 2) being present to give stitches on the wounds, clearly the accused must have been anxious about his wife not getting proper treatment. From PW 1's evidence, it is clear that he was at his residence and it is only at 1.30 AM on the morning of 28th June, 1998 that he attended to the deceased. If the accident took place at about 8 PM, as seen from the evidence of PWs 6, 7, 8 and 9, clearly the deceased must have lost a lot of blood and must have already been in a critical condition. This

must have put paid to all hopes that the accused might have had to save his wife. Far from drawing any adverse inference for his having taken away the dead body of his wife, the trial Court should have understood that it is not a totally unnatural behaviour particularly when the possibility of having his wife rescued at the government health facility virtually vanished for the accused.

28. The other circumstance which seem to have persuaded by the trial Court was 'motive'. The conclusion is drawn by the trial Court is that the 'accused is greedy for money'. However, the evidence in this regard, is quite shaky. If one carefully examines the evidence of PW 4 the mother of the deceased, she in fact states that "after marriage myself and the accused had good relation. Jayaram and Saria both approaching for money and whenever I had money had paid. Saria had given birth to a child." Although she denies in her cross examination that she had not told the police about Saria telling her that unless she pays she will be beaten by the accused, PW 11, the IO, in his cross-examination stated as under:

"P.W.-4 did not state before me that Saria wanted her to pay some money and unless the money is paid she would be beaten by the accused P.W.-5."

29. The other witness cited on the aspect of motive is PW 3, the brother of the deceased. Even in regard to his evidence, PW 11 states in his cross-examination as under:

"P.W.-3 did not state before me that accused Jairam was persuading his mother-in-law to sell away her property and stay with him with the money."

30. None of the PWs, therefore, is able to categorically state that the accused demanded money from the deceased and was threatening to kill her if she did not bring money.

31. In a case based on circumstantial evidence, motive is indeed an important link in the chain of circumstances. As explained by the Supreme Court in *Shivaji Chinatappa Patil v. State of Maharashtra*, AIR 2021 SC 1249, it forms an important link to complete the chain of circumstances and failure to prove motive would be a failure to prove the case of the prosecution.

32. In a recent decision dated 25th February, 2022 in Criminal Appeal No.285 of 2022 (*Nandu Singh v. State of Madhya Pradesh*) (now Chhatisgarh) 2022 LiveLaw (SC) 229, the Supreme Court explained as under:

"10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

11. In *Anwar Ali vs. State of Himachal Pradesh*, (2020) 10 SCC 166, this Court made the legal position clear in following words:-

24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it

is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri v. State of Bihar* that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu*, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under: (Babu case, SCC pp. 200-01)

“25. In *State of U.P. v. Kishanpal*, this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)

‘38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or ex-cited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot

be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar v. State of T.N.*)”

12. In the subsequent decision in ***Shivaji Chintappa Patil vs. State of Maharashtra***, this Court relied upon the decision in Anwar Ali¹ and observed as under:

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive... ..”

33. In the present case, the prosecution has failed to prove the motive for the crime and, therefore, yet another important link of chain of circumstances has not been established by the prosecution. The result is that neither are the circumstances relied upon by the prosecution of a conclusive nature nor do they exclude every possible hypothesis except the one to be proved. Further the chain of evidence is not so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. It does not unerringly point to the guilt of the accused.

34. For all of the aforesaid reasons, the Court is not satisfied that the prosecution case proved beyond unreasonable doubt that it is the accused who had caused the homicidal death of the deceased. The Court is unable to agree with the trial Court regarding the guilt of the accused. Resultantly, the accused is acquitted of the offence under Section 302 IPC.

35. The impugned judgment of the trial Court is hereby set aside. The bail bonds of the accused are discharged.

36. The appeal is allowed in the above terms.



(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/PA