

IN THE HIGH COURT OF ORISSA AT CUTTACK**JCRLA No.72 of 2005**

Govinda Chandra Tripathy ***Appellant***
-versus-
State of Orissa ***Respondent***

Appeared in this case:

For Appellant : Mr. B.K. Ragada
Advocate

For Respondent : Mr. J. Katikia
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

JUDGMENT
31.03.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against a judgment and order of conviction dated 14th February 2005 passed by the learned Additional Sessions Judge (FTC), Bolangir in Sessions Case No.92-B/8 of 2003 convicting the Appellant for the offences under Sections 302 and 307 IPC and sentencing him to undergo rigorous imprisonment (RI) for life for the offence under Section 302 IPC and to RI for five years and to pay a fine of Rs.3000/- and in default to undergo further RI for six months for the

offence under Section 307 IPC. The sentences were to run concurrently.

2. The case of the prosecution is that the deceased Rajeswari Mishra was the wife of the Appellant. Soon after the marriage with the Appellant was subjected to cruelty on account of demand of dowry by the Appellant and other members of his family. Consequently, the deceased went to live with her mother Smt. Kuni Mishra (P.W.19).

3. On 8th April 2003 at around 12.30PM, the Appellant entered to the house of P.W.19 while P.W.19 and the deceased were arranging for Mangala Puja. The Appellant entered the house armed with a *Tabli* (axe) and threatened to kill P.W.19 and the deceased. He first dealt a *Tabli* blow on P.W.19. As a result of which she sustained bleeding injury. The deceased then came and protested. The Appellant then dealt a blow on the left hand of the deceased by means of the *Tabli* causing a bleeding injury. He dealt another blow to the head and to the face of the deceased. The deceased fell down on the ground. The Appellant then dealt two other blows on the head of P.W.19 who fell down and became senseless.

4. Panchanan Mishra (P.W.1), the father of the deceased who was running a cycle repairing shop at around 12.30PM had gone to collect leaves for his goats. On the way, Dibya Sahu and Siba Tripathy informed him that the accused had killed his daughter.

When he reached home he found his daughter and wife lying on the ground with bleeding injuries. He gave a complaint to the Police on the basis of which the FIR was registered. By the time his daughter was taken to the Bolangir hospital, she was dead. P.W.19 was taken to the Burla hospital where she underwent treatment.

5. Narendra Kumar Sarangi (P.W.22) was the Officer-in-Charge of Loisingha Police Station (PS). He took up the investigation, examined the Complainant, visited the spot where he found P.W.19 lying unconscious and the deceased also lying there in bleeding condition. After arranging to remove them to the Bolangir hospital, he searched for the accused and found him at the Jagannath Temple of village Jogisarda. He arrested the accused on 8th April 2003 at 2.30 pm. On 8th April 2003, he also seized the wearing apparels of the deceased. Pursuant to the statement made by the accused under Section 27 of the Evidence Act, the weapon of offence which was kept concealed by him was recovered from the roof of Surubabu Tripathy. At around 3 pm, P.W.22 he received information that the deceased had succumbed to her injuries at the District Headquarters Hospital, Bolangir. On the next date, he conducted an inquest.

6. The postmortem of the deceased was conducted on 9th April 2003 by Dr. Ananantaram Meher (P.W.18). The injuries found by him on her person were as under:

- (i) One incised wound of size 3" x ½" x bone depth over medial aspect of left forearm

- (ii) One incised wound of size 4" x 1" x bone depth over medial aspect of left wrist joint
- (iii) One incised wound of size 5" x 3" x bone depth over occipital region of left side of skull
- (iv) One incised wound of size 5" x ¾" x bone depth over left side of face with compound fracture of mandible and left maxilla
- (v) One incised wound of size 6" x 1" x bone depth over occipital region of right side of skull with compound fracture of the skull bone of the underlying wound with effusion of blood of extradural and subdural spaces and the brain underlying wound was bruised
- (vi) One incised wound of size 1" x ½" x muscle depth over left deltoid area of arm
- (vii) One incised wound of size 2" x ½" x muscle depth just below medial 2/3rd of left cavity

7. He opined that the injuries (i) to (v) were grievous and ante mortem in nature. Injuries (vi) and (vii) were simple. All injuries were possible by a sharp cutting weapon. The injuries to the brain were opined to him to be sufficient to cause death in the ordinary course. Later, on 7th July 2003, when the *Tabli* was examined by him, he opined that the injuries on the body were possible by the said *Tabli* (MO I). In his cross-examination, P.W.18 stated that Injury (iii) by itself was enough to cause death.

8. As far as P.W.19 is concerned, she was examined by Dr. Manorama Satpathy (P.W.21) who noticed the following injuries on her:

- (1) One incised wound 4" x 2" x brain depth fracturing left frontal region present longitudinally on frontal region.
- (2) Incised wound of size 5" x 2" x brain depth fracturing the left frontal region present parallel to inj. 1 extending to frontal region to occipital region.
- (3) Compound comminuted fracture present over occipital region. Brain matter bulging from the wound."

9. P.W.21 too confirmed that the above injuries were grievous in nature and might have been caused by the sharp cutting weapon and was sufficient in the ordinary course to cause death.

10. On completion of the investigation a charge sheet was laid against the accused, who denied his guilt and claimed trial. Twenty-two witnesses were examined for the prosecution. There was no witness for the defence.

11. The star witness from the prosecution was P.W.19 who was an injured eye witness. The trial court found her evidence to be cogent, clear and reliable. The trial court found her eye witness testimony to be fully corroborated by the medical evidence. The scientific evidence in the form of the chemical examination report Exts.16 and 17 also corroborated it. The pant of the Appellant contained human blood of Group B which tallied with the blood group of the stained earth as well as the blood extensively smeared by four strands of hair collected from sharp edge of *Tabli*. The hairs collected from the sharp edge of the *Tabli* tallied

with the sample hair of the deceased with respect to their morphological and microscopic characteristics.

12. The trial court also discussed the evidence of other PWs many of whom were residents of the village who had seen the accused entered the house of P.W.19 and emerged thereafter with the *Tabli* in his hand. The trial court on analyzing the entire evidence found that the guilt of the accused for the offences under Sections 302 and 307 IPC had been proved beyond reasonable doubt by the prosecution. The trial court accordingly proceeded to convict the accused and sentenced him in the manner indicated hereinbefore.

13 This Court has heard the submissions of Mr. Ragada, learned counsel appearing for the Appellant and Mr. Katikia, learned Additional Government Advocate for the prosecution.

14. Mr. Ragada tried to project the case as an assault on the deceased by the accused due to sudden and grave provocation. According to him, while the accused was assaulting his mother-in-law, his wife intervened and she was really not the intended target. He submits that the motive for the offence was not established. He urges the Court since the Appellant has already served over seven years of imprisonment, the offences should be converted to one under Section 304 Part-2 IPC and the Appellant should be sentenced to the period already undergone by him.

15. Mr. Katikia, learned A.G.A. on the other hand submits that this is a case of direct evidence where proof of motive is not crucial. The occurrence had taken place in broad day light with no doubt about the assailant. Although P.W.19 was a related witness, she was an injured witness and had spoken clearly and cogently about the crime. Relying on the decisions in *Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259*; *Sadakat Kotwar v. State of Jharkhand 2021 SCC OnLine SC 1046* and *Ramvilas v. State of Madhya Pradesh (2016) 16 SCC 316*, he submitted that there was no ground made out for interference with the impugned judgment of the trial court.

16. It is settled position in law that even the evidence given one injured eye witness amply corroborated by the medical evidence is more than sufficient to base a finding of guilt. It is not the number of witnesses examined but the quality of the evidence that matters. As pointed out in *Ramvilas v. State of Madhya Pradesh* (supra), "evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witness."

17. The Court has carefully perused the evidence of P.W.19, the mother of the deceased who was severely injured in the incident. In fact, the injuries suffered by her were also capable of causing death as they were all on the brain and she also suffered compound comminuted fracture over occipital region. In her cross-examination, nothing much was able to be elicited by the

defence. What emerged is that at the time of incident there was already a case under Section 498-A IPC instituted by the deceased against her husband the Appellant. It is a fact that mother was examined 10 days after the incident but that was because she was undergoing treatment. Although Mr. Ragada seeks to project that there was a delayed examination of P.W.19 even after her return from the hospital, her narration of events has been clear, consistent and she remained unshaken during the extensive cross-examination. There was no basis to disbelieve P.W.19.

18. In *Abdul Sayeed v. State of Madhya Pradesh* (*supra*), the Supreme Court discussed the issue regarding the evidentiary status of an injured witness and in that process observed as under:

"Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

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30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured

witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

19. In the present case, the medical evidence as well as the forensic evidence fully corroborate the ocular evidence of the injured eye witness thus strengthening the case of the prosecution.

20. The Court finds no grounds whatsoever made out for interference with the impugned judgment of the trial court and affirms the conviction of the Appellant for the offences under Sections 302 and 307 IPC. There is no occasion therefore to interfere with the sentences awarded either for the aforementioned offences by the trial court.

21. The appeal is accordingly dismissed, but with no orders as to costs. The bail bonds of the Appellant shall stand discharged and it is directed to take him to custody forthwith if he does not surrender within two weeks from today.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

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