

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.68 of 2002

Raya @ B. Bhagirathi Nayak

Appellant

Mr. A.K. Mohanty, Advocate
(Amicus Curiae)

-versus-

State of Odisha

Respondent

Mr. A.P. Das, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

ORDER

12.05.2022

Order No.

13. 1. The present appeal is directed against the judgment dated 21st September, 2001 passed by the Additional Sessions Judge, Rairangpur, district Mayurbhanj in S.T. Case No.11/64 of 2001 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to imprisonment for life.
2. The case of the prosecution is that on 19th October, 2000 at around 7 am the deceased Kini Bewa went to the Bargimara field to tend the cows. Her son Jagabandhu Naik (PW 1) went to Hatbadada to bring some medicines as he was suffering from malaria. PW 1 stated that at around 2 pm as he was returning to village Bargimara on the way near the village Jodapokhari he found his mother and the accused, who happened to be his elder brother's son tending the cattle. He then saw the accused suddenly give lathi blows on the body of deceased Kini Bewa and she fell down. Thereafter the accused

dealt stone blows on the head of the deceased. PW 1 stated that he saw the occurrence at a distance of 20 feet. He objected to the assault but the accused chased him and out of fear PW 1 ran away to the village through a different route and disclosed the occurrence to his daughter (PW 2) and son. Thereafter, he disclosed the incident to other villagers. Hearing about the above occurrence, the witnesses went to the spot and found Kini Bewa lying dead. PW 2, the daughter of PW 1, spoke about the extra judicial confession made by the accused to her that he had killed the deceased.

3. In his deposition at the trial PW 1 disclosed that prior to the occurrence, there had been a quarrel between the deceased and the accused regarding landed properties. The FIR was registered on 19th October 2000 for the offence under Section 302 IPC. The accused was arrested on 20th October, 2000. On his statement, the stones and the lathi used for the commission of the crime, were recovered.

4. The post mortem of the deceased was conducted by Dr. Durga Madhab Dash (PW 6) who found the following external injuries on the dead body:

“(i) Dermises peeled off on left cheek and abdomen at places of size 2”x1”.

(ii) Lacerated and crushed injury at left ear 2/3rd of lower portion of left ear is crushed with fracture of mastoids process of left temporal bone.

(iii) Multiple crushed and lacerated wounds situated at temporal and parietal region of left side,

collectively measure 4"x4" with underline fracture of bones, through which brain matter has come out."

5. On dissection of the brain, the cavity was full of blood. The brain matter corresponding to injury (iii) was pierced with bone pieces. There was fracture of right parietal bone found with extradural haematoma. The cause of death was due to shock and hemorrhage on account of the above injuries.

6. In his cross-examination, PW 6 confirmed that "the injuries cannot be caused if anyone will fall on a stony place." He confirmed that the lathi shown to him could have caused the injuries.

7. 11 witnesses were examined for the prosecution. The accused examined himself as DW 1. The trial court on an analysis of the evidence found the testimony of PW 1 to be trustworthy and consistent. The extra judicial confession made by the accused to PW 2 was also viewed by the trial court as being true and voluntary. The recovery of the weapons of offence was also believed by the trial court.

8. In his deposition, the accused stated that he had a land dispute with PW 1. He denied having assaulted the deceased.

9. The trial court held that the prosecution had proved the guilt of the accused beyond all reasonable doubt and proceeded to convict him for the offence punishable under Section 302 IPC.

10. Learned counsel for the Appellant has taken to the Court through the depositions of PW 1 and PW 2 as well as medical evidence of PW 5. According to the learned counsel for the Appellant there was no motive for the crime and the evidence of PW 1 was inconsistent apart from not being trustworthy.

11. The Court has carefully perused the evidence on record. 7. In the cross-examination of PW 1 the answer elicited was that the accused had dealt two lathi blows on the head of the mother of PW 1 who happened to be the grandmother of the accused. Nothing was elicited in the cross-examination of PW 1 which could give rise to any doubt as regards the veracity of his statement. Although PW 1 was a related and an interested witness, he was believed by the trial court as his evidence was both consistent and reliable. Indeed, this Court too is of the view that the evidence of PW 1 is clear, cogent and trustworthy. Moreover, it is fully corroborated by the medical evidence of PW 1.

12. The evidence of PW 2 has also been believed by the trial Court. She is the daughter of PW 1 and cousin of the accused. Soon after the incident, when the accused returned with the cows she enquired about her grandmother. The accused confessed to her that he had killed the grandmother and then directed her to fasten the cows in the cowshed. PW 2 was cross-examined but nothing useful emerged for the accused.

13. The argument that there was no motive for the commission of the crime stands belied by the deposition of PW 1 who stated that just before the incident there was a quarrel between the accused and the grandmother about landed properties.

14. This is clearly not a crime as a result of sudden provocation as was suggested by the learned counsel for the Appellant. It appears that the accused rained multiple blows on the head of the deceased, who was unarmed and defenceless, causing multiple fractures and injuries which resulted in her instantaneous death.

15. For all the aforementioned reasons, the Court is of the view that the trial Court committed no error in convicting the accused and sentencing him to life imprisonment.

16. The Court finds no merit in the appeal and affirms the conviction and sentence passed by the trial court. Accordingly, the appeal is dismissed. The bail bonds of the Appellant are cancelled. He is directed to surrender forthwith and, in any event, not later than 31st May, 2022. If he fails to surrender, the IIC of Kabisuryanagar Police Station will take immediate steps to apprehend him and send him to custody in order to serve out the remaining sentence.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge