

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.54 of 2002

Siria Chain @ Sridhar Das

....

Appellant

Mr. B.S. Das Parida, Advocate
(Amicus Curiae)

-versus-

State of Odisha

....

Respondent

Mr. A.P. Das, ASC

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

ORDER

12.05.2022

Order No.

- 13.
1. The present appeal is directed against the judgment dated 13th June, 2002 by the Sessions Judge, Khurda, Bhubaneswar in S.T. Case No.171 of 2000 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to imprisonment for life.
 2. During pendency of the present appeal, by an order dated 13th July, 2009, this Court enlarged the Appellant on bail. This Court heard the submissions of learned counsel for the parties.
 3. The case of the prosecution is that the deceased was residing in a hutment in Shanti Nagar, Bhubaneswar. The deceased was a resident of Puri Town and often visited Shanti Nagar where he befriended the deceased.
 4. At 1.45 am on the intervening night of 16/17th May, 1999 the accused came to the house of the deceased awakening him from sleep and challenged the deceased by accusing him of

stealing the Pudia (drugs wrapped in paper) of the accused. The deceased pleaded ignorance. There upon the accused asked the deceased to state on oath before the deity in the Trinath temple nearby. Both the accused and the deceased then went in front of the Trinath temple. While the deceased was taking oath, the accused whipped out a knife from his pocket and slit the right side neck from the throat onwards of the deceased. The accused then ran away towards the railway track.

5. The deceased fell down unconscious with a deep long wound on the neck. He rushed to the Capital Hospital, Bhubaneswar and from there was referred to the SCB Medical College and Hospital, Cuttack.

6. The deceased succumbed to his injury at 11 am on 17th May 1999 while receiving treatment at the SCB Medical College and Hospital. The wife of the deceased (PW 5) lodged an F.I.R. at Kharvela Nagar Police Station at 2.15 am on 17th May, 1999. Initially the F.I.R. was registered under Section 307 IPC and after the death of the deceased converted to Section 302 IPC.

7. The deceased was rushed to the operation theater where Dr. Bijaya Kumar Sahu (PW 10) treated him and referred him to SCB Medical College and Hospital, Cuttack. PW 10 also recorded the dying declaration of the deceased (Ext.13) at the operation theater where the deceased named the present accused as having inflicted the knife wound on his neck. PW 8 the doctor who treated the accused at SCB Medical College

sought to repair the injury of the deceased by cat gut. However, while receiving treatment, the deceased succumbed to the injury at around 11 am on 17th May 1999.

8. PW 9 conducted the post mortem of the deceased and he noticed the following injuries:

(i) One surgical stitched wound on the right side of the neck extending from mid-line in front above the thyroid cartilage directing to the right side upto a point at the middle of the right shoulder blade which was 5 cm lateral to the vertebral column and the wound measured 15 cm in length and contained 15 silk stitches and directed obliquely upwards tailing 2 cm to the left side. On opening the stitched wound, the margin was found sharply cut. The underlying structures of the wound were also sharply cut. The jugular vein was repaired by catgut. The injury was found deeper to shallow from right to left side.

(ii) One abrasion on the front of the left knee of size 1 cm x 2 cm.

(iii) One abrasion on the right side forehead above the superciliary arch of size 0.5 cm x 2.5 cm.

(iv) One abrasion below the right eye outer canthus of size 0.5 cm x 1 cm.

9. Injury No.(i) was opined to be sufficient in the ordinary course of nature to cause the death.

10. Apart from the above evidence, there was an evidence of the eye-witness Srinibas Naidu (PW 1). The trial court on analyzing the evidence, was satisfied that the prosecution had proved its case against the Appellant beyond all reasonable doubt and convicted him for the offence punishable under

Section 302 IPC. The trial court proceeded by the impugned judgment to convict the Appellant and sentenced him to life imprisonment.

11. This Court heard the submissions of learned counsel for the parties and has been taken through the evidence on record.

12. The first submission of learned counsel for the Appellant is that PW 1 was admittedly a liquor addict and his evidence has therefore to be treated with great caution. The Court has carefully perused the deposition of PW 1. At the relevant time, he was sleeping on the trolley rickshaw in the street in front of his house next to the Trinath temple. He witnessed the accused take the deceased to the crossing near the temple and witnessed the accused slit the throat of the deceased with a knife and then run away. No doubt PW 1 admitted in his examination in chief that he drinks but there is no suggestion put to him that he was in a drunken state when the incident happened or that because of his drunkenness he was not able to correctly appreciate what he was witnessing. Therefore, it is futile to contend that because PW 1 happens to be an alcoholic he should be disbelieved. On the contrary, PW 1 gave clear and cogent answers in his cross examination and there was not a single answer elicited by the defence which could discredit his testimony. He appears to be a natural and chance witness who had no axe to grind as far as the accused is concerned.

13. PW 10 the doctor who recorded the dying declaration of the deceased also has spoken clearly about what he recorded in the form of a dying declaration. He, in fact, read it over and

explained it to the deceased in Oriya and got it confirmed by him. The deceased was categorical in his dying declaration that he was attacked by the accused with a knife.

14. Again PW 10 was subject to cross examination but nothing substantial emerged therein to discredit his testimony. There is no answer therein that could even remotely assist the case of the Appellant. In the considered view of the Court, the above two pieces of evidence i.e. PW 1 and PW 10 are more than sufficient to bring home the guilt of the accused.

15. Learned counsel for the Appellant sought to argue that weapons of offence were not recovered and that there was no motive for the crime at all. Relying on the judgment of *Jawahar Lal v. State of Punjab AIR 1983 SC 284* he argued that at best this could be a cases of culpable homicidal not amounting to murder punishable under part 2 of Section 304 IPC.

14. The Court is unable to agree with the above submission. This is not a case of sudden provocation at all. As the facts unravel, the accused alleged that the deceased had stolen his 'pudia'; the accused then insisted upon the deceased going with him to the Trinath temple to take an oath there; while the deceased, unarmed, was taking such oath, the accused who had come prepared with a knife pulled it out and slit the throat of the deceased. This was a clearly a preplanned murder and not at the spur of the moment.

15. Although it was argued that the fatal injury was in fact a single injury and that the deceased succumbed to it only

following day at around 11 am while undergoing treatment, the fact remains that it was on the vital part of the body and with a deadly weapon, whereas the deceased was totally unarmed and defenceless.

16. The facts in *Jawahar Lal* indicate that the deceased in that case was not the intended target of the accused at all. The facts there revealed that it was one Amrit Singh who was getting pinned down for being murdered and the deceased happened to be accompanying him and got killed in the bargain. Therefore, the killing of the deceased i.e. Darshan Singh in that case was not a planned killing at all. On the other hand, in the case at hand, the accused came prepared with a knife intending to kill the accused and that is how after falsely accusing him of stealing his pudia and taking him to the temple, while the deceased in the process of taking oath, the accused pulled out knife in a flash and slit the neck/throat of the deceased. Consequently, the Court is not satisfied that the ingredients of either 304 part I or part II stand fulfilled in the present case. In other words, it is not open to the accused to plead that the case is one of culpable homicide not amounting to murder and that there was no intention to cause the death of the deceased.

17. The Court is satisfied that the trial court has committed no error in holding that the prosecution has proved the case against the accused beyond reasonable doubt. The trial court judgment does not call for interference. The appeal is accordingly dismissed. The bail bond of the accused is cancelled. He is directed to surrender forthwith and in any event not later than 31st May, 2022. If he fails to do so, the IIC

of the concerned police station will take steps for taking the accused Appellant into custody in order to serve the remaining sentence.

17. The appeal is dismissed in the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge



KC Bisoi