

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 281 of 1999

Dhadia @ Mandar Sahu

....

Appellant

-versus-

State of Orissa

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. Sudipta Panda, Advocate

For Respondent

:

Mrs. Saswata Patnaik
Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

15.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 27th September 1999, passed by the learned Additional Sessions Judge, Angul in S.T. Case No.120-A of 1998, convicting the Appellant for the offence punishable under Sections 302 and Section 201 of the IPC and sentencing him to undergo Rigorous Imprisonment (RI) for life for the offence punishable under Section 302 IPC and RI for three years for the offence punishable under Section 201 IPC. Both the sentences were directed to run concurrently.

2. The present Appellant was directed to be enlarged on bail by an order dated 23rd June, 2000.

3. It must be mentioned at the outset that four accused persons were sent up for trial, of which, the present Appellant was Accused No.1 (A-1). However, the trial Court, by the impugned Judgment, while convicting A-1 for the offence punishable under Sections 302/201 IPC, acquitted the remaining three accused persons on the ground of no evidence to connect them with the alleged crime.

4. The case of the prosecution was that the deceased, namely, Suphala Sahu was alleged to have committed suicide on the night of 27th March, 1998 at her house. The incident was reported at the Bantala Police Station (PS) on 28th March, 1998 in the morning by one Sadananda Sahu (PW-8), the elder brother of Kuna Sahu @ Umesh Ch. Sahu (PW-3), who is the husband of the deceased, Suphala Sahu. Braja Kishore Nayak, the Officer-In-Charge (OIC) (PW-15) at the Bantala PS took up the investigation of the case. On his directions, the ASI Bhramarbar Behera held an inquest over the dead body and then sent for postmortem examination to the District Headquarters Hospital (DHH), Angul. Dr. Gopal Krishna Tripathy (PW-11) conducted the postmortem and opined that the death was due to asphyxia. In particular, the ligature mark was found to be post-mortem in nature. On perusing the

postmortem report, the case was converted to Section 302 of IPC read with Section 201 of IPC.

5. On completion of the investigation, a charge sheet was laid against the four accused persons for the aforementioned offences. One accused, Ramesh Chandra Dehury was shown as an absconder.

6. The accused persons pleaded not guilty and claimed trial. As many as fifteen witnesses were examined on behalf of the prosecution and none on behalf of the defence.

7. On an analysis of the evidence, the trial Court came to the conclusion that the prosecution had proved its case against the Appellant for the murder of the deceased beyond all reasonable doubt. In course of the trial, the trial Court invoked the powers under Section 311 of Cr PC to examine one Trinath Pradhan (PW-13), who is the father of the deceased and Usha Pradhan (PW-14), who is the mother of the deceased.

8. Prior to the incident, the deceased had complained several times against the accused about his misbehaving with her after taking liquor. On one occasion, the accused even went to the village to create 'Golmal' with the deceased-daughter. Despite PW-13 complaining to the husband of the deceased, i.e., (PW-3),

he did not take any action to prevent his younger brother, i.e. the Appellant, from misbehaving with the deceased.

9. The evidence of PW-14 was to the same effect. The deceased complained to PW-14 that the accused would come to her bedroom at night and she resisted him several times. During this time, PW-3, the husband of the deceased, was at Cuttack where he ran a betel shop. Because of resistance shown by the deceased, the accused Appellant was not successful in his attempts.

10. When they (PW-13 & PW-14) went to the village of the deceased on receiving information about her death, they found injuries on several parts of her body, including face, chest and hands. Neither PW-8 nor the accused was present. The mother-in-law of the deceased, i.e., the mother of the present Appellant caught hold of the feet of PW-13 and PW-14 and requested them to save the Appellant from criminal liability as he was the author of the crime. On the fateful day, the present Appellant along with four to five persons had consumed liquor in an adjacent room and when the deceased protested, there was a hot exchange of words between her and the accused- Appellant, leading to her murder by the accused.

11. Mr. Sudipta Panda, learned counsel appearing for the Appellant submitted that this was a case of circumstantial evidence and each link of the chain of circumstances had to be

conclusively proved by the prosecution. The mere fact that the death was homicidal was not enough to prove the guilt of the present Appellant. The evidence of PWs-13 and 14 was in the nature of hearsay and was, therefore, inadmissible. Whatever they had heard was purportedly from PW-7, i.e., the mother of the accused- Appellant, who could not have confessed to what she had not seen. Further, PWs-13 and 14 had not spoken to anyone about these statements immediately after the commission of the death of the deceased either in writing or oral or even in the FIR drawn up by PW-15. They have deposed only at the trial on 21st August, 1999 more than nearly one and half years after the occurrence.

12. According to Mr. Panda, learned counsel for the Appellant, the trial Court erred in holding that the statement of PW-7 was a 'confessional' and was admissible as *res gestae* under Section 6 of the Indian Evidence Act. Reliance was placed on the decision in ***Gentela Vijayvardhan Rao v. State of A.P. (1996) 6 SCC 241*** to the effect that if the said statement has to be admissible as *res gestae* under Section 6 of the Indian Evidence Act, it should have been made either contemporaneously or soon after the incident.

13. The clinching pieces of evidence in the present case are that of the doctor who conducted the postmortem, i.e., PW-11. He found the abrasions over the medial canthus of left eye and right side of the nose, laceration of the angle of mouth, ligature mark over the

neck. Significantly, this ligature mark was opined to be 'post-mortem' in nature. In his opinion as to the cause of the death, PW 11 clearly stated, "the possibility of suicidal hanging is completely ruled out. My opinion that death is due to asphyxia is on account of forcibly closing of mouth and nose. That is squarely responsible to cause death in ordinary course of nature". He opined that the injury No.5 was post-mortem and death was as a result of asphyxia.

14. PW-11 was subjected to an extensive cross-examination, but far from causing any doubt it only reinforced his opinion. In particular, the following answers given by him in the cross-examination are relevant:

"I did not notice any finger mark in injury No.3 of P.M. examination report. If one stops nose and mouth by means of hand, then finger impression may come. But if one uses cloth and other things finger impression cannot be possible to cause asphyxia. I did not find any injury in other parts of the body of the deceased except face. Regarding injuries in the person of the deceased in other parts of the body depends on the force used at the relevant time. I mean ligature mark postmortem in nature means that the deceased was killed and thereafter hanged in the room. The ligature mark noticed is below the thyroid in a continuous process for which nut mark could not be visible. If one tightens the rope in the neck before death then ligature mark may appear. Multiple ligature marks may be possible. But one ligature mark would be anti-mortem and the subsequent ligature mark must be postmortem if the person is hanged after murder by means of a rope."

15. The Court is satisfied that this was a case of homicidal death and not one of suicide and, the medical evidence is clear and cogent in this regard. This was backed up by the evidence of Dr. Anjana Prusty (PW-12), who conducted the postmortem examination jointly with PW-11 and concurred with the opinion expressed in the postmortem report.

16. As regards the evidence of the PWs-13 and 14, the Court finds that while they did not disclose what was told to them by PW-7 to others, this is not surprising given the sensitivity of the matter. However, their deposition was natural as to their daughter who complained to them about the behaviour of the accused with her. When this was seen with the evidence of PW-3, who was the husband of the deceased, running a betel shop in Cuttack, it explains that he was unable to control the accused, who was his younger brother. It is significant that the deceased had no problems with her husband, in fact, PW-3 clearly stated as under:

"3..... I asked my family members as to why the deceased hanged herself. They simply replied that the deceased died by hanging herself. But they could not say anything the reason as to why the deceased in that manner."

17. He also admits that the child, born to him and the deceased, had died in spite of medical treatment and thereafter, the deceased had not conceived for a period of one month. It was pointed out by Mrs. Saswata Patnaik, learned Additional Government

Advocate for the State that in the postmortem report, given by PW-11, there is a mention that the uterus contained a gestation sac with a small embryo size of 6 to 8 weeks.

18. Turning now to the evidence of PW-7, even if one discards the confession made by her to PWs-13 and 14 as "hearsay evidence", the fact remains that it was made to them soon after the incident on the following day when they reached the village of the accused. However, the trial Court did not recall PW-7 for her to be cross-examined on these aspects and, therefore, not much weight can be attached to the so-called statements of PW-7 to PWs-13 and 14.

19. The Court is of the view that the circumstances that have been proved by the prosecution are as follows:

- (i) The deceased and her husband were not together at the time of the crime when the husband was running a betel shop at Cuttack.
- (ii) The accused was very much present in the house and had a room adjacent to that of the deceased in the house where both lived.
- (iii) The deceased did complaint to her parents about the misbehaviour of the accused with her in the absence of her husband on several occasions.

(iv) The death of the deceased was not suicidal but homicidal as clearly proved by the medical evidence.

(v) The burden fell on the accused to show the circumstances under which the death of the deceased occurred. Section 106 of the Indian Evidence Act is relevant in this context. In ***State of W.B. v. Mir Mohammad Omar, AIR 2000 SC 2988*** it was held as under:

“36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

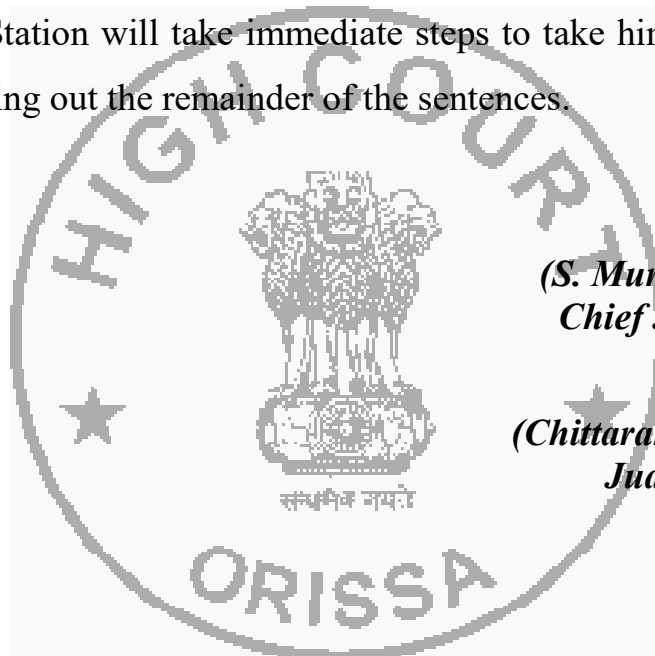
37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

(vi) The accused tried to project the death as one of suicide by hanging and, therefore, tried to conceal the evidence of crime.

20. All of the above circumstances form a continuous chain and unerringly point to the guilt of the accused-Appellant. The Court is, therefore, satisfied that no error has been committed by the trial

Court to convict the present Appellant for the offences punishable under Sections 302 read with Section 201 IPC.

21. Therefore, there is no merit in the present appeal and it is accordingly dismissed but, in the circumstances with no order as to costs. The bail bond of the Appellant is hereby cancelled. He is directed to surrender forthwith and, in any event, not later than 30th September, 2022 failing which, the IIC of the concerned Police Station will take immediate steps to take him into custody for serving out the remainder of the sentences.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera/ Jr. Steno.