

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No.121 of 2005

Kudhi @ Kandra Singh

.... ***Appellant***
Mr. B.L.Tripathy, Advocate

-Versus-

State of Odisha

.... ***Respondent***
Mrs.S.Pattanaik, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
12.05.2022

07.

R.K. Pattanaik, J.

1. Instant appeal is filed by the Appellant questioning the legality of the impugned judgment dated 13th May, 2005 passed in S.T. Case No.113 of 1999 by the learned Sessions Judge, Sundargarh for having been convicted under Section 302 IPC followed by a sentence of life imprisonment and fine of Rs.5,000/- (rupees five thousand) with a default sentence of six months R.I. on the grounds *inter alia* that the same is not tenable in law and therefore, deserves to be interfered with.

2. In fact, an F.I.R. was lodged on 7th December, 1998 by the informant vis-a-vis the incident describing the circumstances leading to the death of the victim. Later to the report being lodged, K. Balanga P.S. Case No. 29 was registered under Section 302 IPC. As made to reveal from the record, the Appellant to be a co-villager and the victim was the informant's wife who was murdered during the night of 6th December, 1998.

As per the narrative, the informant and the deceased had been to a weekly market and thereafter, she returned with her mother, whereas, he stayed back and on reaching home at 8 P.M. found her missing and on the next day morning, her dead body was found lying on the backside of the house of one Raghu Singh, where after, the incident was reported to the police. Upon lodging of the F.I.R. and case being registered under Section 302IPC, investigation was commenced which finally culminated in the filing of charge sheet against the Appellant for having caused the murder of the victim.

3. In fact, the prosecution, in course of trial, examined fifteen witnesses and exhibited equal number of documents. The defence, however, led no evidence. The plea of the Appellant was one of pure denial. The Appellant completely denied his involvement in the alleged incident and claimed that he was falsely implicated. The learned court below considering the evidence of the prosecution and defence plea reached at a conclusion that the Appellant to be the author of crime and none else and accordingly, convicted him under Section 302 IPC. The Appellant challenged the conviction and sentence directed by the court below on the ground that the evidence was deficient. To examine the claim of the Appellant, the evidence on record is to be gone through and scrutinized.

4. As far as the prosecution case is concerned, it is based on extra-judicial confession of the Appellant; the medical evidence as to the cause of death; the evidence with regard to the victim being found in the company of the Appellant soon before her

death. As to the evidence on record, P.W. 8 deposed that while he was sitting near a bonfire, at that time, noticed the Appellant in the company of the deceased. According to P.W.8, the Appellant indeed confessed before him by claiming that he took the deceased with him for consuming 'handia' and thereafter, committed murder after sexually assaulting her. As revealed by P.W.8, the Appellant confessed to strangulated the victim and then, dragged her body and dumped it near the spot. Such evidence of P.W. 8 was challenged by the defence on the ground that it was highly improbable and cannot therefore be relied upon. In fact, from the evidence on record, it appears that P.W.8 is related to the Appellant. P.W. 8 was elaborately cross-examined by the defence but nothing could be elicited from him in order to discredit his testimony leave alone regarding the extra-judicial confession. No evidence is elicited from P.W.8 so as to suggest him of having inimically disposed of towards the Appellant. In fact, P.W. 8 was having no axe to grind against the Appellant. Though, P.W. 8 was subjected to cross-examination by the defence but nothing could be suggested regarding presence of any kind of hostility between him and the Appellant. The Court does not find any reason to doubt the claim of P.W.8 with regard to the confession made before him by the Appellant. The presence of the Appellant at the spot which was noticed by P.W.8 and thereafter, the extra-judicial confession made by him appears to be a worthy piece of evidence which has remained unshaken. Again, there is nothing to suspect the conduct of P.W.8, whose testimony is rather found to be natural and spontaneous. Since, the Appellant is related to P.W.8, it was quite probable for the former to confess before the latter and

therefore, it was absolutely justified on the part of the learned court below to rely upon such evidence. Apart from that, the confession of the Appellant as to the manner in which he caused the death of the victim receives corroboration from medical evidence. P.W. 9 is the M.O., who conducted the *postmortem* over the dead body of the victim, noticed multiple injuries on her body and at last had the opinion that her cause of death to be Asphyxia or Traumatic Asphyxia or combination of both and most probably it was due to throttling of neck and direct violence on the chest wall causing cardiac respiratory failure. P.W. 9 proved the P.M. report as Ext.4 and his signature thereon as Ext. 4/1. Of course, P.W. 9 did not find any sign of sexual violence but it is unlikely to demolish the entire of the claim. From the evidence, it appears that the deceased and the Appellant had been together for taking *handia* and during that time, the incident happened. Notwithstanding absence of any evidence regarding rape, the confession of the Appellant before P.W.8 narrating the manner in which the victim was assaulted received ample corroboration from the medical evidence led through P.W.9. That apart, the deceased was last seen in the company of the Appellant which was deposed by P.W.8, who appears to be a credible witness. In fact, in the night of the alleged occurrence, the Appellant was found to be with the deceased and thereafter, on the next day morning, her dead body was found lying near the spot and therefore, it was for the Appellant to explain as to what happened the previous night. Without doubt, the medical evidence conspicuously suggests that the victim had a homicidal death. In fact, having appreciated the evidence on record, the Court finds that all the

incriminating materials starting from the deceased being found with the Appellant till the latter's extra-judicial confession before P.W.8 do form a complete chain so as to unerringly suggest the involvement of the Appellant. In other words, the Court finds no error having been committed by the learned court below in arriving at a conclusion regarding the guilt of the Appellant, who appears to be the assailant and none else and therefore, the order of conviction cannot be said to suffer from any legal infirmity.

5. Accordingly, it is ordered.

6. In the result, the Appeal stands dismissed. As a corollary, the impugned judgment dated 13th May, 2005 passed in S.T. Case No. 113 of 1999 by the learned Sessions Judge, Sundargarh is hereby affirmed. Consequently, the bail bonds vis-a-vis the Appellant stand cancelled and he is directed to surrender forthwith within 15 days and in any case, not later than 31st May, 2022. If he fails to do so, the IIC of the concerned PS will take immediate steps to have him apprehended in order to serve the remainder of the sentence.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice