

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No.75 of 2003

Raibu Chattar

.... ***Appellant***
Mr. S.R. Mohapatra, Advocate

-Versus-

State of Odisha

.... ***Respondent***
Mr. Sk. Zafarulla, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

Order No.

ORDER
12.05.2022

07.

R.K. Pattanaik, J

1. Instant appeal under Section 374 (2) of the Criminal Procedure Code, 1973 at the behest of the Appellant is directed against the impugned judgment dated 3rd October, 2002 passed in S.T. Case No.8 of 2000 by the learned Sessions Judge, Mayurbhanj, Baripada on the grounds *inter alia* that the order of conviction under Section 302 IPC is untenable in law and hence, liable to be interfered with and set aside.

2. In the present case, an F.I.R. dated 15th August, 1999 was lodged by the informant later to which Raruan P.S. Case No.52 was registered under Section(s) 302 and 201 read with 34 IPC for an undated incident. In fact, the informant wife alleged in the F.I.R. that the deceased husband was murdered by someone and after having killed him, dumped his body in a well. In other words, the victim's wife after having found the body of her husband suspected him to have been killed by some unknown miscreant and described other details related to the incident in the

F.I.R. After registration of Raruan P.S. Case No.52, investigation was conducted and finally, charge sheet under Section(s) 302, 114 and 201 read with 34 IPC was submitted against the Appellant and two others. Thereafter, the trial commenced, during and in course of which, the Prosecution examined fourteen witnesses and exhibited nearly ten documents besides two material objects. At last, the learned court below, considering the evidence of the prosecution and defence plea reached at a conclusion that the Appellant alone to be responsible for the death of the deceased and acquitted two others of all the charges. So to say, the Appellant only was found guilty for having committed murder of the victim and accordingly, sentenced with life imprisonment.

3. Heard Mr. S.R. Mohapatra, learned counsel for the Appellant and Mr. Sk. Zafarulla, learned ASC for the State.

4. The defence plea of the Appellant has been one of pure denial.

5. Mr. Mohapatra contends that the learned court below fell into serious error in convicting the Appellant under Section 302 IPC without properly appreciating the evidence on record. It is contended that the F.I.R. was lodged against unknown and the so called body of the victim was recovered after about one and half months from the time of his missing and it was beyond recognition. It is further contended that only a skeletal body was recovered from the well which though stated to have been identified but the cause of death could not be confirmed. Mr. Mohapatra made the Court to go through the evidence of PWs 1, 2, 7&8 along with PW 12 and contended that the evidence on

record failed to prove and establish the involvement of the Appellant. It is further contended that the evidence of the material witnesses, namely, PWs 2 and 8 do not inspire confidence so as to indicate that it was the Appellant, who was responsible for the death of the victim. On the aforesaid grounds, Mr. Mohapatra urged the Court that the evidence is totally insufficient to prove the guilt of the Appellant, however, learned court below erred in facts and law and ultimately, passed the order of conviction which calls for immediate interference. In other words, the contention of Mr. Mohapatra is that the impugned judgment dated 3rd October, 2002 suffers from legal infirmity.

6. Per contra, Mr. Zafarulla, learned ASC would contend that the evidence of the witness, namely, PW2, if considered, would make to appear that he was present at the time, when the victim was allegedly assaulted by the Appellant which again received corroboration from PW 8 and as to the identification of the body, it could be possible from the wearing apparels of the victim. It is further contended that the deceased was found in the company of the Appellant and was being assaulted which was directly witnessed by PWs 2 and 8 and some time thereafter, the dead body was recovered and considering such evidence, the learned court below rightly held the Appellant guilty.

7. The F.I.R. was lodged after about one and half months of the disappearance of the victim. As revealed from the F.I.R., after missing of the deceased, the informant searched for him but later to the body being found, the incident was reported. Strangely enough, though the victim went missing but the informant wife

did not report about it to the local police rather remained silent for so long except followed by a brief search. It has been claimed by the informant that all of them searched for the deceased, whose body at last was found in the well. Admittedly, there has been delay in lodging of the F.I.R. Almost after one and half months, the body of the victim stated to have been recovered. In fact, it was quite unusual on the part of the informant and other family members of the deceased not to lodge any report with the police immediately after he went missing. Anyhow, to appreciate the version of the Prosecution, the entire evidence on record is required to be examined primarily to ascertain whether the Appellant was really responsible for the alleged incident.

8. PW1 is the wife of the victim and she deposed that her husband took *handia* and thereafter, left but did not return home, where after, despite being searched, could not be traced and after about one and half months learnt about his death when his dead body was found inside a well being dumped in a gunny bag. PW1 deposed that she identified the body of the deceased and had noticed injuries on his body. In cross-examination, PW1 claimed that she searched for her husband for nearly four to five days and had also informed the Gramrakhi and local police but it has not been confirmed by any evidence. PW1, while being cross-examined, elicited that the dead body was in a decomposed condition and was lying in a gunny bag and due to bad smell, she and other witnesses could go near the body. PW1 also elicited that the flesh had already detached from the skeleton, whereas, eyes, ear and other organs were not found intact and the fact that the police informed the body to be that of her husband. From

such evidence of PW1, it appears that she had been to the spot and seen the dead body but it was just a skeleton without any flesh and still managed to claim that it was the body of her husband. It seems that PW1 identified the body by looking at the wearing apparels which were found near the spot. As to the evidence of PW2, it was deposed by him that about three years back, he had been to the house of PW8 during a festival and at the relevant point of time was sitting on the *veranda* after taking *handia* and had seen the deceased been to the house of the Appellant and had threatened the latter to cut him into pieces and repeated it. As deposed by PW2, the Appellant pushed the deceased inside his own house while the latter was found shouting for being attacked, where after, he was not untraceable till the time the dead body was recovered. PW2 claimed not to have visited the spot where the body of the deceased was found. In fact, from the evidence of PW2, it is suggested that he had been to the village where the house of his wife's sister is situated and during the day time at about 3 p.m., witnessed the incident, during which, the Appellant allegedly assaulted the victim by taking him inside his house. Such incident though was noticed by PW2, he did not disclose it to anyone. It appears that only after the body of the deceased was recovered and report was lodged, PW2 claimed about the incident. In course of cross-examination, PW2 claimed that he left for his house in the evening after the alleged incident and never visited the village again. PW2 also elicited that he could not identify the dead body that of the victim after it was recovered. PW3 is a witness who was present at the time when the dead body was removed from the well and according to him, PW1 and her son were called to identify the

body and such identification was made in the presence of the police. PW3, however, declared hostile and was examined by the prosecution under Section 154 of the Indian Evidence Act. In course of such examination, PW3 admitted about the seizure of the axe and blade made by the police under a seizure list and proved it as Ext.2 and his signature thereon as Ext.2/1. On being cross-examined by the defence, PW3 elicited as to how the body was found inside the well leading to its removal. Similarly, PW 4 is a witness to the seizure of the weapons of offence, namely, the axe and blade, such as, MO I and MO II respectively. However, both PW3&4 being the seizure witnesses did not support the recovery of MOs I&II, rather, turned hostile. In course of cross-examination by the defence, such seizure was denied, inasmuch as, PW4 claimed that the police obtained his signature and that of PW3 on blank papers. PW8 is the only material witness and he deposed that on the date of occurrence, the deceased had given threat to the Appellant and by then, he was engaged in cooking and could notice it since his house is situated close to the Appellants'. Like PW2, PW 8 narrated the incident as to how the victim was taken inside the house of the Appellant and was assaulted. According to PW 8, he also heard the victim shouting while being attacked. In cross-examination, PW8 elicited that PW2 had come to his house for taking food and after his departure, he went to sleep. It was claimed by PW8 that he anticipated death of the deceased, while being assaulted by the Appellant, which was informed to the IO, namely, PW12, which was again challenged by the defence. PW12 was confronted about the above claim of PW 8 that he anticipated the death of the victim, while being cross-examined. But PW12 admitted the

fact that PW8 had never stated before him about the alleged incident and about shouting of the victim and that he had in fact anticipated the death of the deceased. Interestingly, neither PW2 nor PW8 ever disclosed anyone about the alleged incident of assault. Furthermore, the dead body was found in a decomposed condition for having been recovered after about one and half months of the missing of the victim. PW12 deposed that on 14th August, 1999, while he was OIC of Raruan P.S. received information at 5.30 pm regarding a dead body floating in a well, where after, he proceeded to the spot and removed it. PW12 further deposed that he found the dead body wrapped in a gunny bag tied with iron wire and was floating on the surface of water. PW12 narrated the details of the inquest and investigation conducted by him and also about the arrest of the Appellant. PW12 examined PW8 and other witnesses during investigation and recorded their statements. It was revealed during cross-examination that PW12 recorded the statements of PW8 and three others. After having considered the above evidence, the question is, whether, it would be proper to arrive at a conclusion that the Appellant was alone the author of the crime? The evidence is circumstantial in nature. As stated earlier, PWs2 and 8 claimed to have noticed the deceased to have been picked up and assaulted by the Appellant which was long before the recovery of the dead body. It is not that the Appellant was last seen with the deceased just before the dead body was found. The missing of the deceased was about one and half months old by the time his dead body was recovered. Though, the evidence of PW1 and others regarding identification of the body appears to be appreciable but the material as to the cause of death as well as

involvement of the Appellant is still found to be deficient. As already mentioned, only a skeletal body was retrieved which was without any flesh. As to the cause of death of the victim, it could not be ascertained in view of the fact that the body had already decomposed. Under what circumstances, the deceased died, whether, it was on account of any injuries received could not be duly confirmed by any medical evidence. No doubt, from the fact that the body was wrapped in a gunny bag at the time of being found in the well, it can well be said that the victim probably met with a homicidal death. But, whether, for that, the Appellant has to be held responsible? The learned court below though found certain incriminating materials but in the opinion of the Court, the same cannot be held as sufficient to conclude that the Appellant to be the assailant. As it appears, the evidence of PWs 2 and 8 have influenced the decision of the learned court below. However, the Court is of the view that the evidence of PWs 2 and 8 with regard to the alleged incident even if accepted at its face value, that by itself would be inadequate to fix the culpability against the Appellant especially when the body of the victim was recovered nearly after one and half months. The weapons of offence, namely, MOs I and II, even though recovered, it was of no valuable assistance for the fact that no medical evidence could be brought on record to confirm the cause of death of the victim. In any case, PWs 3 & 4 did not support the seizure of MOs I & II.

9. As is well settled law, all the incriminating circumstances appearing against the accused must form a chain so as to unerringly suggest his complicity. In fact, the Supreme Court in *Padala Veera Reddy v. State of Andhra Pradesh and others* AIR 1990 SC 79 concluded that;
CRLA No.75 of 2003

- (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; and
- (iv) that the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

10. A reference may be made to a judgment of the Supreme Court in *Sharad Virdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622*, wherein, it is held that while dealing with circumstantial evidence, onus is always on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. In the case at hand, except the fact that the body was recovered and identified by PW1 and few others and from the attending circumstances, it could be realized that the victim suffered a homicidal death and notwithstanding the fact that long before such recovery of the body, PWs 2 and 8 claimed to have had an occasion to witness an incident during which the victim was assaulted, the Court is still not inclined to subscribe the view that the death of the deceased had been on account of the involvement of the Appellant. In fact, the conclusion is that the evidence on record is so remote that by accepting the same, it

would not be safe to hold the Appellant to be responsible for the alleged incident. Rather, the conclusion would be that whatever incriminating materials have been made available, if all are put in place, do not form a complete connecting chain to suggest the complicity of the Appellant.

11. Therefore, the Court is of the view that in absence of any such cogent and credible evidence, the order of conviction directed against the Appellant cannot be sustained. In other words, it may fair enough to reach at a logical conclusion that the Prosecution cannot be said to have proved its case beyond all reasonable doubt.

12. Accordingly, it is ordered.

13. In the result, the appeal stands allowed. As a necessary corollary, the impugned judgment dated 3rd October, 2002 passed in S.T. Case No.8 of 2000 by the learned Sessions Judge, Mayurbhanj, Baripada is hereby set aside. Consequently, the bail bond of the Appellant stands discharged and he is directed to be set at liberty forthwith.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

k.c. bisoi