

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.5 of 2012

From the judgment of conviction and order of sentence dated 20.06.2005 and 21.06.2005 respectively passed by the learned Additional Sessions Judge, Jeypore in Criminal Trial No.24 of 2004.

Dullava Majhi

....

Appellant

-versus-

State of Odisha

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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Mr.Rabindranath Nayak
(Advocate)

For Respondent

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Mr.S.S. Kanungo
Additional Govt. Advocate

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 02.11.2022 : Date of Judgment:18.11.2022

D.Dash,J. The Appellant, by filing this Appeal, from inside the jail, has called in question the judgment of conviction and order of sentence dated 20.06.2005 and 21.06.2005 respectively passed by the learned Additional Sessions Judge, Jeypore in Criminal Trial No.24 of 2004 (Criminal Trial No.247 of 2004 of the learned Sessions Judge, Jeypore) arising out of G.R. Case No.173 of 2004 corresponding to Koraput Sadar P.S. Case No.12 of 2004 on the file of the learned S.D.J.M., Koraput.

The Appellant thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (for short, 'the IPC') and sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- (Rupees Ten Thousand) in default to undergo rigorous imprisonment for six months.

2. The prosecution case, in short, is that on 11.03.2004 around 1.00 p.m., the Officer-in-Charge of Koraput Sadar Police Station received an information in writing from one Dashi Majhi (P.W.1) that when he was in his house, it was around 8.00 p.m., his wife informed him that that their co-villager, namely, Laxman Majhi (deceased) was killed by his brother Dullava Majhi (accused). Having got this information, he immediately rushed to the house of Laxman, which is nearby and saw Laxman lying dead. The accused then, being asked, confessed to have committed the crime in stating that as Laxman, without any reason whatsoever scolded him; he being, not able to tolerate the abuses, had assaulted Laxman on his head by a brick causing fracture on his head and consequently, the death. He then also showed that piece of brick which was lying in front of the house. It is stated in the FIR that Laxman and Dullava had mortgaged their landed properties and with regard to the distribution of the mortgaged money so received, they were frequently having quarrel.

Receipt of above information, led to registration of Koraput Sadar P.S. Case No.12 of 2004 and the investigation commenced. The Investigating Officer (P.W.6), having proceeded to the spot, held the inquest over the dead body, seized the broken piece of brick and blood stained as well as sample earth. He also seized wearing apparels of the accused stained with blood. On police requisition, the post mortem

examination was held over the dead body of the deceased, the incriminating articles seized were sent for chemical examination and the report was obtained. On completion of the investigation, the accused was placed to face the trial for commission of offence under section 302 IPC.

3. The prosecution, in the Trial, has examined all together six witnesses. Besides the above, FIR (Ext.1), seizure lists (Exts.3, 4, 7 and 8), the post mortem report (Ext.5) and chemical examiner's report (Ext.10) have been proved.

4. The Trial Court, having taken into account the evidence of the Doctor (P.W.5) conducting the post mortem examination over the dead body of the Dullava (deceased) and his report (Ext.5) and other evidence including the evidence of the Investigating Officer, who had held the inquest over the dead body of the deceased, has concluded that the death of the deceased was homicidal, which in fact was not so challenged from the side of the prosecution. सत्यमेव जयते

Then, undertaking the exercise of examination of the evidence and upon their evaluation, it has been held that the prosecution has proved its case beyond reasonable doubt against the accused to have committed the murder Laxman by intentionally causing his death.

5. Mr.R.N. Nayak, learned counsel for the Appellant submitted that the prosecution in the case having not relied upon any direct evidence to connect the accused with the authorship of the injuries sustained by the deceased resulting his death, the Trial Court has erred in holding that through circumstantial evidence, the prosecution has established its case against the accused beyond reasonable doubt. According to him, the

extra judicial confession relied upon by the prosecution that soon after the incident, the accused had disclosed to have inflicted the injuries on the head of the deceased before P.W.1 & 4, ought not to have relied upon. He further submitted that when the extra judicial confession, as projected by the prosecution, is eschewed from consideration, the other circumstances indicated are no legal significance and even if these are accepted as those are, the chain is not at all getting completed to say that all other hypotheses other than the guilt of the accused stand ruled out.

6. Mr.S.S. Kanungo, learned Additional Government Advocate for the State submitted that the Trial court is right in accepting the evidence let in by the prosecution as to the extra judicial confession made by the accused soonafter the incident. According to him, that evidence itself, when in the present case, is believed and it is said that the accused has truly and voluntarily made the confession before P.Ws.1 & 4, the conviction has to stand. He submitted that these P.Ws.1 & 4 before whom it is said that the accused confessed to have inflicted the injuries on the head of the deceased by means of broken piece of brick, had no reason to falsely implicate the accused and there being all the reasons for the accused being the relation to repose confidence and faith upon them in stating the truth as to his role in respect of the deceased and, therefore, the finding of the Trial Court has to sustain. He fairly submitted that other than the evidence relating to the extra judicial confession, the circumstances, which have been taken by the Trial Court, being cumulatively viewed, do not go to complete the chain in every respect only indicating the guilt of the accused excluding the theory of innocence.

7. Keeping in view the submissions made, We have carefully read the judgment passed by the Trial Court. We have also perused the evidence of the prosecution witnesses, i.e., P.Ws.1 to 6 and have also travelled through the documents admitted in evidence and marked Exts.1 to 10.

8. It has been the settled position of law that even though extra judicial confession is a weak piece of evidence, it would dependent on the nature and circumstances, the time when confession is made and the credibility of the witnesses, who speak for such confession for being accepted to form the basis of conviction. The Court, however, is to find out whether a person, who claims that a confession was made before him is a person on whom accused could repose confidence

The extra judicial confession so as to fasten the guilt of the accused have to pass through the following tests:-

- “(i) is the witness proving the confession is generally credible?;
- (ii) is his relation with the accused of such nature that the latter could confide in him?;
- (iii) is there any motive for the witnesses to implicate the accused falsely in trying to save himself or someone else by laying the blame upon the accused?; and
- (iv) is the confessional statement consistent with other facts and circumstances.”

9. Keeping in view the aforesaid principles in mind, let us now proceed to examine the evidence on the score of extra judicial confession said to have been made by the accused before P.W.1 & 4.

10. Although it is said that P.W.1 is the cousin of the accused, the same appears to have been spoken in a general manner. It is his evidence that being informed by his wife, when he went to see Laxman in his house, accused Dullava disclosed that he had assaulted Laxman with a piece of brick on his head resulting his fall. The witness, having stated that the accused and deceased are uterine brother is, however, not stating that accused Dullava was very much present in the house when he saw the dead body. The conduct of this witness appears to be suspicious that when it was around 8.00 p.m., he saw deceased Laxman lying dead in his house, he has not gone anywhere nor has stated before any villager about the same. He has also not taken any step to inform the villagers and accordingly, has not proceeded to report the matter at the Police Station. The witness is neither indicating any such circumstance much less unavoidable, to have detained him from doing so in providing the explanation to remove the suspicion on that score. He has waited till the next morning when a meeting is said to have been convened. He further states that in that meeting, accused disclosed to have assaulted his brother. When he states that accused disclosed in the meeting regarding the manner of assault on his brother, nothing specific is further stated as to even how he came there and who had called him to be present.

P.W.3 is the other witness, who says that in the meeting, P.W.1 had disclosed regarding the killing of the deceased by the accused. He is, however, silent as to if in that meeting; accused was present and stated anything. This contradicts the evidence of P.W.1. However, P.W.2 has gone to state that he had convened a meeting being informed by P.W.1 and there, the accused disclosed to have killed his brother by assaulting on his head with a piece of brick.

When, We come to the evidence of P.W.4, it is seen that he was informed by P.W.1 only in the morning that the accused had killed his brother. He is silent as to if P.W.1 had stated before him that the accused had confessed before P.W.1 to have assaulted the deceased to death. When the witness stated that being asked by him, the accused disclosed that he had assaulted his brother by a brick on his head, he is not stating as to where and at, which place the accused was asked by him and he so disclosed. This witness is also silent as to who had convened the meeting and who had called the accused to that meeting or how he came. Nothing has been stated by all these witnesses as to how the accused could repose faith and confidence upon them to disclose this fact that he was the author of the injuries caused to the deceased resulting his death being aware of the consequences as to disbelieve by the witness, if any, before others. They are also silent as to if the accused had stated before them the reason for which he took such step.

Above being the evidence of the prosecution witnesses, We are not in a position to subscribe to the view taken by the Trial court that the same are quite consistent and reliable merely taking a cue from the fact that the accused had not offered any explanation during his statement recorded under section 313 Cr.P.C. The Trial Court, in our considered view, is not right to award the grace mark for that, in finally concluding that resultantly, the evidence of those witnesses thus achieve at the pass mark in the tests.

Having said above, We find that the other evidence available on record are of no avail to the prosecution to establish the charge against the accused. Accordingly, We hold that the judgment of conviction and

order of sentence passed by the Trial Court cannot be sustained and are liable to be set aside.

11. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 20.06.2005 and 21.06.2005 respectively passed by the learned Additional Sessions Judge, Jeypore in Criminal Trial No.24 of 2004 (Criminal Trial No.247 of 2004 on the file of the learned Sessions Judge, Jeypore) are hereby set aside.

The Appellant (accused person), being on bail by order dated 28.09.2015 passed by this Court in Misc. Case No.65 of 2015; the bail bonds shall stand discharged.

Dr.S.K Panigrahi, J I agree.

**(D. Dash),
Judge.**

**(Dr.S.K.Panigrahi),
Judge.**

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