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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 180 of 2000

Shyama Panasputia and others *Appellants*

-versus-

State of Orissa *Respondent*

Advocates appeared in the cases:

For Appellants : Mr. A. Tripathy, Advocate

For Respondent : Mr. Janmejaya Katikia,
Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

JUDGMENT
06.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 25th July 2000, passed by the learned Additional Sessions Judge, Jeypore in Sessions Case No.27 of 1998, convicting the Appellants for the offence punishable under Section 302 read with Section 149 of the IPC and sentencing each of them to undergo imprisonment for life.

2. At the outset, it must be mentioned that by the order dated 13th September 2000, the Appellants were enlarged on bail during the pendency of the present appeal.

3. There were six Appellants at the time of filing of this present appeal, who were arraigned in the trial Court as Accused numbers-1, 4, 6, 11, 12 and 13 respectively.

4. During the pendency of this present appeal, Appellant No.2- Podu Badnaik (A-4) and Appellant No.3- Duru Somara (A-6) had expired. Therefore, the present appeal continues as far as the Appellant Nos.1, 4, 5 and 6 i.e., A-1, A-11, A-12 and A-13 respectively.

5. The case of the prosecution is that one Hari Hantal, the informant (PW-1) on 12th January, 1998 went to the Subei weekly market in Mouza Tentulipadar, Koraput District. At around 5 pm, the deceased Dhana Hantal, the elder brother of PW-1 arrived there and they had their tiffin together. They then proceeded to their village on foot at about 5.20 pm. On the way, they reached the village Gunthaput at around 7 pm. The villagers of the said village were observing 'Pousa Purnima' and men and women were dancing together in that festival.

6. According to PW-1, all the accused persons were also participating in the said 'Dhemsas Nacha'. PW-1 and his elder brother, Dhana (the deceased) stopped to watch the dance for some time. Thereafter, PW-1 called his deceased brother to leave that place and return to their village. According to PW-1, on hearing this, the villagers of Gunthaput village became angry and

abused them alleging that they were calling the females of the village.

7. Thereafter, when the deceased and PW-1 left the village, fifteen to twenty of the villagers, including the accused persons, chased them. It must be noted here that as many as fifteen accused persons were sent up for trial.

8. While PW-1 and the deceased were running for their life, PW-1 was ahead of his deceased brother by a few steps. Then they reached at the Gudam Nala with the accused right behind them. The deceased then asked PW-1 to jump into the water first, which he did. Before the deceased could jump, the accused persons caught hold of him. From the other side of the Nala, PW-1 could see that Balaram Panasputia (A-12), Hari Panasputia (A-13), Duru Somara (A-6), Kamulu Duru (A-11), Bisu Budia, Podu Budia and others were assaulting the deceased with lathis and knife and the deceased was crying by saying that 'Balaram don't kill me spare me'. Six of the mob of fifteen chased PW-1 and threw lathis at him but, he fled away from the spot. PW-1 then narrated the entire incident to his parents Sashidhar Patnia, Kamulu Patnia and Haribandhu Khemudu.

9. At around 9 pm of that night, PW-1 along with other villagers and his parents left for village Gunthaput and reached there at 10 pm. They found the deceased sitting in front of the house of Bisu Budia. The accused Duru Samara (A-6) was making the deceased

Dhana to drink Pejo. They also found a rope had been tied around Dhana's neck and there was an injury on his head from where he was bleeding profusely. The deceased Dhana was unable to speak at that time.

10. The informant and others had gone to arrange a vehicle to shift the deceased to the hospital, but he breathed his last soon after their departure from the spot. Then, on the next day, a report was lodged in Nandapur Police Station (PS), where an FIR was registered. An inquest was held over the dead body by the Police OIC, namely, Chittaranjan Patra (PW-12) and the OIC seized the relevant articles as well.

11. A Test Identification Parade (TIP) was held at the Koraput District Jail, in which eight of the accused including the present four Appellants were identified by PW-1.

12. On completion of the investigation, a charge sheet was laid against the accused persons to which they pleaded not guilty and claimed trial.

13. Thirteen witnesses were examined by the prosecution and none for the defence. On an analysis of the evidence, the trial Court came to the conclusion that the prosecution had been able to prove the case against the six Appellants beyond all reasonable doubt, whereas the remaining accused persons got the benefit of

doubt and were acquitted as such. The present Appellants were sentenced in the manner indicated hereinbefore.

14. The case has rested on the testimony of the injured eye-witness, viz, PW-1. As regards the testimony of an injured eye witness, the legal position is well settled. In ***Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259***, the Supreme Court explained in detail the weight that should be attached to the deposition of an injured witness. It was held as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide *Ramlagan Singh v. State of Bihar*, AIR 1972 SC 2593; *Malkhan Singh v. State of Uttar Pradesh*, AIR 1975 SC 12; *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470; *Appabhai v. State of Gujarat*, AIR 1988 SC 696; *Bonkya v. State of Maharashtra*, (1995) 6 SCC 447; *Bhag Singh v. State of Punjab*, (1997) 7 SCC 712; *Mohar v. State of Uttar Pradesh*, (2002) 7 SCC 606(SCC p.606b-c); *Dinesh Kumar v. State of Rajasthan*, (2008) 8 SCC 270; *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477; *Annareddy Sambasiva Reddy v. State of Andhra Pradesh*, (2009) 12 SCC 546 and *Balraje v. State of Maharashtra*, (2010) 6 SCC 673.

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30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a

special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

15. Likewise in *Ramvilas v. State of Madhya Pradesh, (2016) 16 SCC 316*, it was pointed out that “evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses.”

16. In the present case, the injured eye witness PW 1 was subjected to a detailed cross-examination, in which, nothing much could be elicited to impinge on his credibility. The identity of the Appellants was also established at the TIP conducted in the presence of the Judicial Magistrate. It must be noted here that PWs- 4 to 8 turned hostile. However, the evidence of PWs-1 and 2 lend assurance to the Court as regards the truthfulness of their depositions.

17. The medical evidence in form of the deposition of Dr. Chandra Sekhar Nag (PW-10) revealed that the deceased had suffered as many as fifteen external injuries including contusions and four internal injuries including fractures of the scalp of the

temporal bone. The injuries were certified to be *ante mortem* in nature and the reason for the death.

18. The weapons of offence recovered from the accused were also shown to the doctor, who affirmed that the injuries could have been caused by such weapons. Nothing much could be gathered for the defence in the cross-examination of the doctor.

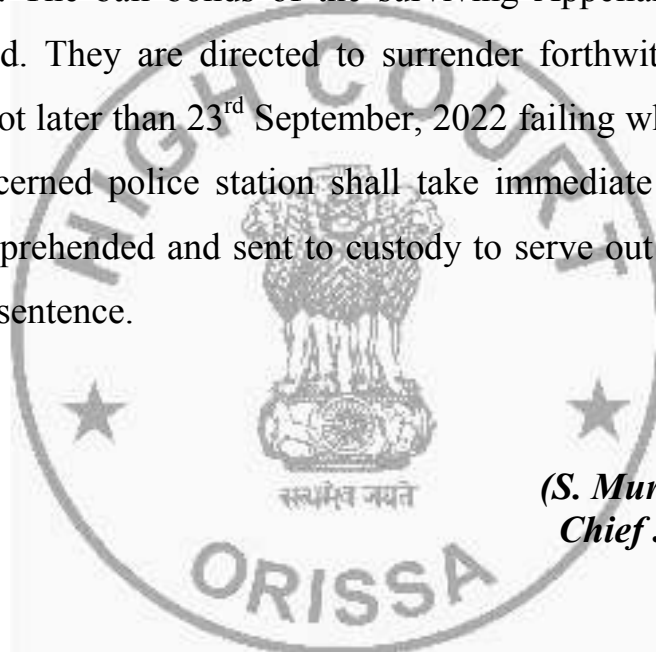
19. Therefore, we have the situation of an injured eye-witness being fully corroborated by the medical evidence. The other witnesses referred to by the trial Court are PW-2 and PW-3 who found the deceased with grievous injuries and thereto found the deceased with a rope tied to his neck, sitting in front of the house of Bisu Budia.

20. With the evidence being absolutely clear, the trial Court had no hesitation convicting the six accused persons for the offence punishable under Section 302 read with 149 of IPC and sentencing them to the manner indicated hereinbefore.

21. This Court has heard the submissions of learned counsel for the parties and has carefully perused the evidence on record. The Court finds that the analysis of the evidence of the trial Court is very thorough and no part of the evidence has been left undiscussed.

22. The Court is, therefore, satisfied that the prosecution, in the instance case, has been able to prove the guilt of all the Appellants for the offence committed beyond all reasonable doubt and that the trial Court had rightly convicted and sentenced them in the manner indicated hereinbefore.

23. 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 bonds of the surviving Appellants are hereby cancelled. They are directed to surrender forthwith and, in any event, not later than 23rd September, 2022 failing which the IIC of the concerned police station shall take immediate steps to have them apprehended and sent to custody to serve out the remainder of their sentence.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera/ Jr. Steno.