

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.43 of 2007

Manas Pradhan

....

Appellant

Mr. S.K. Das Mohapatra, Advocate

-Versus-

State of Odisha

....

Respondent

Mr. J. Katikia, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

DATE OF JUDGMENT : 05.08.2022

R.K. Pattanaik, J

1. Instant appeal is filed by the Appellant assailing the impugned judgment dated 3rd April, 2007 passed in C.T. Sessions Case No.57 of 2006 by the learned Sessions Judge, Dhenkanal on the ground that the order of conviction and sentence for the offence under Section 302 IPC is untenable in law and therefore, liable to be set aside.

2. As per the prosecution case, the alleged incident took place on 24th October, 2005 at about 5.30 p.m. while the deceased and his cousin brother were sitting on the veranda of their house and talking to each other and at that point of time, the Appellant arrived by holding a kati and he suddenly gave a blow to the victim with that sharp edged weapon on to the neck causing his

instant death and thereafter, ran away and then the cousin of the deceased raised alarm to which the family members reached at the spot. After the above incident, F.I.R. was lodged by the brother of the deceased and accordingly, the case was registered and finally, the charge sheet was filed. The Appellant was committed to the Sessions Court for trial. During trial, prosecution examined 12 witnesses and exhibited 14 documents besides the material objects. The Appellant examined a single witness. Ultimately, considering the evidence on record, the learned court below found the Appellant guilty for having committed an offence punishable under Section 302 IPC and convicted him thereunder and awarded him a sentence of life imprisonment by the impugned judgment dated 3rd April, 2007.

3. The defence plea of the Appellant has been one of complete denial and false implication.

4. As far as the evidence on record is concerned, PW 1 is the eye witness being present at the spot. PW 2 is another witness before whom the Appellant said to have confessed for having killed the deceased. PW 3 is a witness to the incident besides PW 4, who is the wife of the deceased. The occurrence is dated 24th October, 2005. The postmortem of the deceased was conducted by PW 8 on the very same day of the incident. On the nature of injury, PW 8 deposed that he found a single incised wound of size 3" x 1 ½" width and 1" deep present over the neck. PW 8 described in detail the extent of injury received by the deceased and the cause of death. The opinion of PW 8 was that the injury was such which was sufficient in ordinary course to cause death. The

postmortem report was marked as Ext.5 through PW 8. The IO had sent the weapon of offence for examination and opinion of PW 8 to ascertain if the injury on the neck of the deceased was possible by it. PW 8 examined the weapon and finally submitted his opinion by stating that the incised wound on the neck of the deceased would be possible by the seized weapon which is marked as MO I. The said reply to the query of the IO has been marked as Ext.6. During cross-examination of PW 8, the defence questioned him as to if MO I was blood stained at the time of examination. In response, PW 8 deposed that MO I was not in a sealed condition at the time of him conducting the postmortem but subsequently found it to be while the same was received for the second time for the purpose of examination and opinion. The opinion of PW 8 suggested homicidal death which was on account of the alleged injury. PW 8 denied the suggestion that the incised wound on the neck of the victim could not have been possible by means of MO I. Nothing substantial could be elicited from PW 8 during cross-examination in order to discredit his opinion on the probable cause of death of deceased.

5. With regard to the evidence of PW 1, it is made to appear that he and the deceased were sitting on the veranda when the Appellant arrived carrying a Thenga and the weapon of offence and the latter asked his wife to dry the said Thenga in the hearth which was not obliged and suddenly thereafter, he gave a blow to the deceased with the help of Kati. The Appellant attempted to dispute the presence of PW 1 at the spot claiming that he could not have identified him as it was heavily dark due to a cloudy

weather. In fact, the learned court below rejected such plea of the Appellant. At that point of time, PW 4, who is the wife of PW 1, was cooking nearby. On a consideration of the evidence of PW 1, the learned court below found that he was barely couple of cubits away from the deceased when the assault happened and therefore, he could not have had any difficulty in identifying the Appellant even if there was darkness all around, which in the view of the Court, is not an unreasonable conclusion to reach at. Rather, PW 1 was found to be a natural witness and he described the incident being present at the spot. Immediately after the assault, PW 1 raised alarm responding which other witnesses arrived. That apart, PW 1 identified MO I which was held by the Appellant. The defence tried to create a dent in the evidence of PW 1 in that respect but rightly the learned court below rejected it overruling the possibility of involvement of any other individual except the Appellant. Immediately after the incident, the F.I.R. was lodged which further ruled out chance of false implication. It hardly appears to be a case of mistaken identity. In cross-examination, PW 1's wife, namely, PW4 though admitted that it was raining heavily at the relevant point of time and was not possible to see the face of each other, however, despite such elicitation by the defence, the identification of the Appellant cannot be doubted since he happens to be her brother-in-law by some relation. It is not the defence of the Appellant that somebody else was the author of the crime. No such specific stand was ever taken by the Appellant. Rather, the plea of the Appellant is one of denial simpliciter and false accusation. In addition to it, the manner in which the assault was carried out by

the Appellant matched the testimony of PW 1. The use of MO I and the way the Appellant carried out the assault stands fully corroborated by the evidence of PW 1 and PW 8. The other witnesses including PW 4 proved the involvement of the Appellant. The IO examined as PW 12 deposed that he visited the spot, prepared the spot map i.e. Ext.9 and held inquest over the body and prepared a report marked as Ext.7. PW 12 deposed that the weapon of offence was seized by PW 11 under Ext.1. PW 12 was cross-examined but except some suggestions being offered, nothing adverse could be elicited from him. The scribe of the F.I.R. is PW 5 and he proved it as Ext.2. PW 6 is a seizure witness in whose presence the wearing apparel and nail clippings of the Appellant were seized under Exts.3&4 respectively. PW 7 deposed that he was present nearby and hearing *hullah* of PW 1 ran to the spot and found the deceased lying dead on the veranda with a cut injury on his neck and on being asked, PW 1 informed him that the Appellant did it by means of a Kati and fled from there. Though PW 7 was cross-examined but again nothing could be extracted by the defence to make his version doubtful. PW 4 deposed that the Appellant had asked her to dry the Thenga in the fire of the hearth which she refused and suddenly the Appellant gave a blow to the deceased, who collapsed and instantly died. Further PW 4 deposed that she and her husband, namely, PW 1 shouted by saying "*Manas hani dei paleila*" (Manas hacked and left) responding which her mother-in-law and others arrived. Precisely above is the evidence which stares strongly at the Appellant suggesting his involvement in the incident.

6. The motive behind the incident is alleged to be on account of a grudge borne by the Appellant against the deceased on account of an earlier incident which had taken place sometime before. The incident which is alleged to be the cause behind the assault is almost 4 to 5 years old. In the considered view of the Court, the above reason appears to be quite remote. Nothing is in the record to show as to under what circumstances the Appellant lost the control and committed the alleged overt act. It is also not suggested to be an act of provocation or losing self-control by the Appellant due to some event that preceded the assault. In any case, even in absence of motive, the involvement of the Appellant is difficult to be disbelieved for the fact that there is direct evidence of his presence at the spot and giving blow to the deceased which is not only deposed by PW 1 but also PW 4. The other witnesses including PW 7 arrived at the spot shortly after the incident and they could learn from PWs 1 and 4 regarding the involvement of the Appellant. The law is well settled that when there is direct evidence, absence of motive pales into insignificance. It is at times difficult to conceive the intention of the assailant and the cause behind the crime being committed. In this connection, it would be profitable to quote the following decision in the case of ***Darbara Singh v. State of Punjab (2012) 10 SCC 476***, wherein, the Apex Court observed as under:

“9. So far as the issue of motive is concerned, it is a settled legal proposition that motive has great significance in a case involving circumstantial evidence, but where direct evidence is available, which is worth relying upon, motive loses its significance.....In a case where there is direct

evidence of witnesses which can be relied upon, the absence of motive cannot be a ground to reject the case. Under no circumstances, can motive take the place of the direct evidence available as proof...

10. Motive in criminal cases based solely on the positive, clear, cogent and reliable ocular testimony of witnesses is not at all relevant. In such a fact situation, the mere absence of a strong motive to commit the crime cannot be of any assistance to the accused. The motive behind a crime is a relevant fact regarding which evidence may be led. The absence of motive is also a circumstance which may be relevant for assessing evidence. (vide: *Gurcharan Singh & another v. State of Punjab*, AIR 1956 SC 460; *Rajinder Kumar & another v. State of Punjab*, AIR 1966 SC 1322; *Datar Singh v. State of Punjab*, AIR 1974 SC 1193; and *Rajesh Govind Jagesha v. State of Maharastra*, AIR 2000 SC 160).

11. In *Sheo Shankar Singh v. State of Jharkhand & Anr.*, AIR 2011 SC 1403, while dealing with the issue of motive, this Court held as under:

“Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports

the eye witnesses. (see: Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55; Hari Shanker v. State of U.P., (1996) 9 SCC; and State of Uttar Pradesh v. Kishanpal and Ors., (2008) 16 SCC 73)''.

In the present case, even without any motive being established, the Court finds direct evidence against the Appellant, hence, it has become inconsequential and therefore, not worthy of any serious consideration.

7. Besides the above, the testimony of PW 2 further strengthens the prosecution case. As per PW 2, on the date of occurrence, when he was in his house and it was raining outside, the Appellant came running in a wet condition holding a blood stained Kati and asked him for water and revealed to him about the incident and then dropped the Kati on the floor and ran away. The said Kati was picked up by PW 2 and from his possession, it was seized by PW 11. In cross-examination, PW 2 reiterated his claim about the confession of the Appellant. Though PW 2 while under examination admitted that the Appellant was not in visiting term with him but then he had no axe to grind either and why would he depose falsehood and therefore, the Court finds no reason to disbelieve his version about the extra-judicial confession. According to PW 2, the Appellant was gasping for air and was finding it difficult to speak properly. But at the same time, PW 2 claimed that the Appellant confessed regarding his involvement in the incident. The sequel of events coupled with the testimony of PW 2 satisfies the Court that the version of the Appellant was spontaneous and truthful as it was made soon after the alleged assault. The Apex Court in ***Kishore Chand v. State of***

Himachal Pradesh AIR 1990 SC 2140 lucidly discussed the probative value of an extra-judicial confession, excerpt of which, is reproduced below:

“...An unambiguous extra-judicial confession possesses high probative value as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the court has to be satisfied that it is a voluntary one... Therefore, the court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose, the court must scrutinize all the relevant facts, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Sometimes it may not be possible to the witness to reproduce the actual words in which the confession was made...”

It is reiterated that no doubt PW 2 admitted of having no regular visit of the Appellant but then being known to the Appellant deposed about it which seems to be natural and also trustworthy. The Court does not find any reason to disbelieve the testimony of PW2 on the extra-judicial confession which is rather found to be a piece of corroborative evidence.

8. In view of the substantial evidence against the Appellant, the conclusion is irresistible that it was he who perpetrated the crime and killed the deceased. The finding vis-à-vis the guilt of the Appellant is based on evidence of unimpeachable character and therefore, the Court does not find any ground to defer with the view expressed by the court below which is accordingly upheld.

9. Hence, it is ordered.

10. In the result, the appeal stands dismissed. As a corollary, the impugned judgment dated 3rd April, 2007 passed in C.T. Sessions Case No.57 of 2006 by the learned Sessions Judge, Dhenkanal is hereby affirmed. Consequently, the Appellant's bail bond is cancelled and he is directed to surrender before the court below within seven days and in any case by 15th August, 2022 to undergo the sentence.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

KC Bisoi/Secretary