

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.79 of 2006

Sarathi Banichor

....

Appellant

-versus-

State of Orissa

....

Respondent

Advocates, appeared in these cases:

For Appellant

:

Mr. Purna Chandra Behera
Advocate

For Respondent

:

Mr. J. Katikia,
Additional Government Advocate

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

**JUDGMENT
06.05.2022**

Dr. S. Muralidhar, CJ.

1. This appeal is directed against a judgment dated 5th June 2006 passed by the learned Additional Sessions Judge, Boudh in S.T. No.74 of 2005 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.10,000/- in default to undergo RI for a further two years.

2. It must be mentioned at the outset that the Appellant was enlarged on bail by an order dated 23rd February 2010 passed by this Court. A report was sought from the concerned IIC about the whereabouts of the Appellant. By a letter dated 7th February 2021,

the Officer-In-Charge (OIC), Harabhanga P.S. confirmed that the Appellant is alive and residing in his village and he is able to perform his daily works.

3. The case of the prosecution is that on 12th June 2005 at 10 PM while the Informant Dasarath Banichor (P.W.1) who happens to be the uncle of the Accused, was discussing with his son-in-law Hemanta Bagarty (P.W.5) on his verandah, his younger brother Krushna Banichor, the deceased, was taking his meal. The Accused Sarathi Banichor was sleeping on a cot in front of the house. After finishing food when the deceased Krushna went to wash his hands, the Accused suspecting that they were discussing against him, suddenly dealt a blow with a piece of wooden stick on the forehead of Krushna Banichor. Krushna received bleeding injuries and fell down. Though they administered water, Krushna could not be revived and died on the spot.

4. After arrest of the accused and completion of investigation, a charge sheet was led against him for the offence under Section 302 IPC. The Accused denied the charge and claimed trial. On behalf of the prosecution, six witnesses were examined. The defence adduced no evidence. This was a case based on eye-witness testimony. P.W.3, the widow of the deceased was the key witness for the prosecution. P.W.5, the son-in-law of the Informant was the other important witness.

5. The trial court found that the eye-witness testimony of P.W.3 was completely corroborated by the medical evidence in the form

of P.W.2 who conducted the postmortem of the deceased. Although the deceased, the accused and the informant were closely related and staying in close proximity, the testimonies of these witnesses were held to be trustworthy and consistent. Accordingly, it was held by the trial court that the prosecution had proved the guilt of the Appellant-Accused beyond all reasonable doubt.

6. This Court heard the submissions of Mr. Purna Chandra Behera, learned counsel appearing for the Appellant and Mr. J. Katikia, learned Additional Government Advocate (AGA) for the State.

7. This being a case of direct evidence, the eye-witness testimony is of utmost importance. The Court therefore takes up for discussion first the evidence of P.W.3, the widow of the deceased. The accused was the nephew of P.W.3. The Informant (P.W.1) was the elder brother of her husband. She clearly stated that in the month of Jestha about eight months previous to the date of deposition, P.W.1 had called them and the son-in-law after the death of his wife to discuss how the funeral ceremony expenses were to be shouldered. In the night, while the Informant was talking with his son-in-law Hemanta (P.W.5), the deceased was taking food sitting nearby. While the deceased was washing his hands, the Accused came there suddenly and dealt a blow on the forehead of the deceased with a piece of wood. As a result, the deceased sustained serious bleeding injuries and fell down. P.W.3

correctly identified the piece of wood (M.O.I) with which the Accused had assaulted the deceased.

8. P.W.3 was subjected to cross-examination. In her cross-examination, she stated that she found a single injury on the forehead of her husband. The dead body was lying with face downwards. The occurrence had taken place on a dark night. There was no electricity connection to the house of P.W.1, but at night he was burning Dibiri. She stated that in their locality they usually lit the Dibiri lamp at around 7pm in the night before going to bed. She admitted that pieces of wood like that of M.O.I are commonly available. She also mentioned that there was a partition of the joint family property between her husband and his brother. Both of them were selling properties falling to the respective shares. This was resented by the Accused who raised a strong protest. Otherwise, as regards the incident itself and the role of the accused, there was no answer elicited during the cross-examination of P.W.3 which could persuade the Court to disbelieve her testimony.

9. Next the Court takes up for discussion the evidence of Dr. Pravakar Bahinipati (P.W.2) who conducted the postmortem of the deceased. The injuries noticed by him were as under:

“(1) There was a bruise measuring 4cm x 4 cm of size on the right side of the scalp at the temporal region. There was fracture of the skull bone at the right side of the zygomatic process of maxilla and a depressed fracture of skull below the bruise of the scalp right side membranes of brain were intact. There was injury to the brain tissues below

the fracture side and there was ante mortem bleeding within the brain 5cm x 5cm.

(2) There was a lacerated wound around mouth and there was bleeding from the mouth.”

10. The injuries were stated to be ante mortem. He also examined the weapon of offence subsequently and confirmed that it could have been used to cause the injuries noticed earlier. The injury to the brain was sufficient to cause death due to coma. In his cross-examination, it emerged that apart from the external injuries, there were some fractures. The only answer was that such types of injuries would be possible if one fell violently from height of 30 to 40 feet. Therefore, this answer was of no assistance whatsoever to the defence.

11. It is well settled that even one eye-witness who is reliable and consistent is sufficient to prove the case of the prosecution in a case of direct evidence. P.W.3 fits this description rather well.

12. In *Mohamed Sugul Esa Mamasan Rer Alalah v. The King AIR 1946 PC 3*, Lord Goddard, speaking for the Board held:

“Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence.”

13. In *Vadivelu Thevar v. State of Madras AIR 1957 SC 614*, referring to *Mahomed Sugul*, the Supreme Court observed:

“On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following

propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

14. Quoting Section 134 of the Evidence Act, the Supreme Court in *Vadivelu Thevar* (*supra*) held that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated."

The Court proceeded to state:

"It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play.

The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.”

15. The Supreme Court in *Vadivelu Thevar (supra)* further noted:

“There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.”

16. In *Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793*, the Supreme Court observed:

"It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

17. In *Anil Phukan v. State of Assam* (1993) 3 SCC 282, the Supreme Court held:

"Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

18. Learned counsel for the Appellant sought to draw attention to the inconsistencies in the testimony of P.W.5 who was the brother-in-law of the Accused. He had gone to sleep when the occurrence happened and he stated that he suddenly heard a hullah at around 10 PM. He woke up and found that the deceased was lying dead in the outer courtyard of the Informant's house. He had heard that the Accused had murdered the deceased. Nothing much turns on the above testimony because the witness was in any event declared hostile. While to the Police he spoke as an eye-witness to the occurrence, before the Court he resiled from that version and made it appear that he had slept through the occurrence. The above testimony of P.W.5 in no way dilutes the convincing

testimony of P.W.3. P.W.4 also turned hostile and therefore, nothing much turns on that evidence as well.

19. Having heard learned counsel for the parties and having carefully examined the evidence on record, the Court is satisfied that the trial court has committed no error in convicting and sentencing the Appellant-Accused for the offence punishable under Section 302 IPC.

20. Accordingly, the appeal is dismissed. The bail bond of the Appellant is hereby cancelled. He is directed to surrender forthwith and, in any event, not later than 30th May 2022 failing which the IIC of the concerned Police Station will take steps to take him into custody for the purposes of serving out the remaining sentence. LCR be returned forthwith to the court concerned.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

*S.K. Guin/
Sr. Stenographer*