

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 54 of 2006

Sankar Pradhan

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates, appeared in this case:

For Appellant

:

Mr. D. Roy, Advocate

For Respondent

:

Mrs. Saswata Patnaik
Addl. Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

20.09.2022

Dr. S. Muralidhar, CJ.

1. The present appeal is directed against a judgment dated 15th February, 2006 passed by the learned Additional Sessions Judge, Boudh in S.T.No.13 of 2005 convicting the Appellant for the offence punishable under Sections 302 IPC and sentencing him to undergo rigorous imprisonment (RI) for life.

2. By an order dated 5th February, 2019 after noticing that the Appellant had been in custody for nearly fifteen years, he was enlarged on bail by this Court.

3. The case of the prosecution is that the deceased Bisakha Mesua was a spinster and was staying alone in her house. On the intervening night of 7th/8th July, 2004 the Appellant cut her throat by a sharp cutting weapon and committed her murder in her own house at village Sialijhuli while the deceased was pregnant. Biraja Mesua (PW 1), the brother of the deceased lodged a written report with the police. The case was investigated by Raghunath Das (PW 14), who was the Officer-in-Charge (OIC), Cantonment Police Station (PS) when PW 1 reached there and lodged the report.

4. PW 14 then visited the spot, seized the blood-stained earth, sample earth, one rope cot stained with blood. He held an inquest over the deadbody and thereafter sent it for post-mortem. He seized the wearing apparels of the deceased. On 11th July, 2004 he arrested the accused. Pursuant to the statement made by the accused in the presence of the witnesses, the blood-stained napkin concealed by him was recovered. PW 14 also gave a requisition on 26th July, 2004 following which the deceased was moved to the District Headquarters Hospital to dissect the limb of the fetus for the purpose of D.N.A. Test. He seized the nail-clipping, saliva, semen and blood sample of the accused and sent the same to the Central Forensic Science Laboratory, Calcutta through the J.M.F.C., Kantamal for the purpose of the D.N.A test. The blood-stained knife which was found at the spot was also sent for chemical examination. At that stage, PW 14 handed over the investigation of the case to Rama Chandra Swain (PW 15). The DNA Test report (Ext.20) was directly sent to the Court. It confirmed that the Appellant was the biological father and the

deceased was the biological mother of the foetus. The FSL test reports showed that the napkin contained the stain of human blood of Group B, and the stain on the iron knife was detected to be of human blood.

5. On conclusion of the investigation, a charge sheet was laid against the Appellant for the aforementioned offences. He pleaded not guilty and claimed trial. On behalf of the prosecution, fifteen witnesses were examined and none were examined for the defence.

6. This was a case based on circumstantial evidence. On analysis of the circumstances, the trial Court was satisfied that each of the links in the chain of circumstances stood established and pointed unerringly to the guilt of the accused.

7. This Court has heard the submission of Mr. D. Ray, learned counsel appearing for the Appellant and Mrs. Saswata Patnaik, learned Additional Government Advocate for the State-Respondent.

8. This being a case of circumstantial evidence, the law in this regard may be recapitulated. In *Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793*, the Court noted that the circumstances “must or should be” established and not “may be” established. It was stated that:

“19....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance

between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

In *Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116*, five principles were laid down to prove a case based on circumstantial evidence:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

9. PW 1 stated how the deceased had reported that she had become pregnant through the accused. This was reiterated by her in cross-examination. He further mentioned in the cross-examination that she had been pregnant twice prior to the occurrence. This was confirmed even by the grand-mother of the deceased Sushila Mahakuda (PW 2).

10. The other clinching piece of evidence following this is the DNA test report which established that the accused was the biological father and deceased, the biological mother of the foetus. The third circumstance was the recovery of the blood-stained knife (MO II), the blood-stained white pant (MO III) and the blood-stained napkin (MO I) recovered from the house of the accused. MO III was found to be stained with human blood of Group-B. It was also detected in the earth seized from the spot.

11. The medical evidence of Sustanta Kumar Garnaik (PW 11) who conducted the post-mortem found a cut wound present over the neck horizontally below the chin. The wound was ante-mortem in nature. The cut wound was opined to be homicidal in nature. It was produced by a sharp cutting weapon. This was another circumstance against the accused. The blood-stained napkin (MO I) again recovered at the instance of the accused was found to contain human blood of Group B. The motive for the crime was obviously the pregnancy of the deceased, who was living alone.

12. The Court is satisfied that each of the above links, which form a continuous chain of circumstances, have been satisfactorily proved by the prosecution. This Court concurs with the conclusion reached by the trial Court that the circumstances point to the Appellant, and him alone, as being guilty of the crime.

13. Having carefully analyzed the entire evidence, the Court is unable to come to a different conclusion. The appeal is accordingly, dismissed.

14. The bail bond of the Appellant is hereby cancelled. He is directed to surrender forthwith and, in any event, not later than 30th September, 2022 failing which the IIC of the concerned police station will take immediate steps to have him arrested and brought back to custody to serve out the remainder of his sentence.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K.Jena/Secy.