

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.83 of 2005

Karpura Gauda

.... Appellant
Mr. Pulakesh Mohanty, Advocate

-Versus-

State of Odisha

.... Respondent
Mr. Sk. Zafarulla, ASC

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

**ORDER
31.03.2022**

R.K. Pattanaik,J

1. Present appeal is at the behest of the Appellant, who has assailed the correctness, legality and judicial propriety of the impugned judgment passed in Criminal Trial No.19 of 2003 by the learned Sessions Judge, Koraput-Jeypore for having been held guilty for offences punishable under Section(s) 302 and 307 IPC and sentenced him to undergo imprisonment for life on the grounds stated therein.

2. Precisely stated, the alleged incident is dated 31st August 2002. On that date, the informant, while was returning to his house at 6 A.M after attending nature's call, was informed about the incident, where after, he rushed to the spot and found his elder son aged

about 8 years and younger son of 5 years old lying dead with bleeding injuries and that the Appellant to be the author of the crime. After the above incident, an F.I.R. was lodged by the informant and as a result, Boriguma P.S. Case No.101 was registered under Section(s) 302 and 307 IPC and thereafter, investigation was commenced. After closure of investigation, charge sheet was submitted against the Appellant under the alleged offences to stand his trial in the court of law.

3. During and in course of the trial, prosecution examined as many as 19 witnesses and exhibited nearly 20 documents besides 07 material objects in order to prove its case, whereas, the Appellant as a means defence neither adduced oral nor documentary evidence to disprove the prosecution's claim. Considering the evidence on record, the learned court below arrived at a logical conclusion that the prosecution was able to successfully establish its case and consequently, held the Appellant guilty under Section(s) 302 and 307 IPC and convicted him thereunder, however, imposed sentence only for the offence of murder without any separate sentence for the offence of Section 307 IPC.

4. Heard Mr. Pulakesh Mohanty, learned counsel for the Appellant and Mr. Sk. Zafarulla, learned ASC appearing for the State.

5. According to learned counsel for the Appellant, the court below failed to examine and appreciate the materials on record and

erroneously passed the order of conviction and also sentence which deserves to be interfered with in the interest of justice. Mr. Mohanty made the Court to go through the evidence of the prosecution while advancing argument to the effect that the learned court below fell into gross error in arriving at a conclusion that the Appellant to be responsible for the alleged killings.

6. On the contrary, learned ASC contended that there is direct evidence on record to prove and establish the involvement of the Appellant. Mr. Zafarulla referring to the relevant evidence contended that the Appellant was the assailant and primarily responsible for the killing of the deceased children and therefore, the learned court below rightly appreciated it and convicted him. Its judgment therefore calls for no interference.

7. According to the evidence, P.W.1, who was present at the spot was assaulted by the Appellant for which he received injuries. P.W.1 further deposed that the Appellant went towards the house of one Purna Gouda holding an axe in his hand and after sometime, when he reached at the spot, saw one of the deceased, namely, Rabi lying dead on the road and shortly thereafter, found the dead body of his other son near the house of Purna Gouda. P.W.1 was cross-examined but his testimony could not be impeached. P.W.2 was also present near the spot and stated to have witnessed the Appellant with an axe in his hand carrying out assault on the deceased, namely, Subash and later on, she was informed about the

death of other deceased, namely, Purna Gouda after being assaulted by him. P.W. 3 deposed that the Appellant had held an axe and was on the verge of assaulting him but thereafter, villagers raised alarm for the Appellant having killed the both the children. P.W. 3 also deposed that the villagers chased the Appellant and caught hold of him. Both P.Ws.2 and 3 were cross-examined by the defence but nothing substantial could be elicited shaking their credibility. The informant has been examined as P.W.5 and deposed that while he was returning home, P.W.4 informed him about the incident and thereafter, found both his sons lying dead with bleeding injuries. Such evidence of P.W.5 received ample corroboration from P.W.4. In fact, according to P.W. 4, he was very much present at the spot and saw the Appellant assaulting the elder son of P.W.5 by means of an axe on his neck, face and head, where after, he shouted. P.Ws.1 to 4 identified the weapon of offence (MO.I). P.W.5 was also cross-examined. However, during such cross-examination, no material could be elicited to damage the version of P.W.5. One more witness, namely, P.W.7 also corroborated P.W.5 and deposed that the Appellant was chased, while he was trying to run away, the villagers could able to catch hold of him and on being interrogated, he disclosed about the killing of the children with the help of an axe. P.W.10 deposed that inquest was conducted in his immediate presence during which I.O. collected blood stained earth and other items from the spot. Over and above, P.W.12, the M.O. who conducted the post-mortem in respect of the body of Subash

deposed that during such examination found the external injuries which are hereunder:

- (i) incised wound of size 1" over outer angle of left eye;
- (ii) incised wound 1" over right malar area of cheek on right side cheek below the eye;
- (iii) incised wound 1" over right angle of mouth; and
- (iv) incised wound 3" x ½" over right cheek,

besides an internal injury of fracture and dislocation of both side mandible and all the above injuries held to be ante-mortem in nature with an opinion that it might have been caused by a sharp cutting weapon like axe. According to P.W.12, the cause of death of the deceased was due to the above injuries causing shock and hemorrhage. P.W. 12 proved the P.M. report as Ext.13 and his signature thereon as Ext.13/1.

8. P.W.12 also conducted the post-mortem over the dead body of the other victim, namely, Rabi and similarly found number of external injuries where are as follows:

- (i) incised wound 3" x ½" over malar area of cheek up to left nostril;
- (ii) incised wound of size 2" x ½" over left cheek up to left pinnae;
- (iii) incised wound 1 ½ " x ½" over right mandible;
- (iv) incised wound 1" x ½" over right angle of mandible;
- (v) incised wound ¼" over occiput;

(vi) incised wound ¼” over nap of neck.

That apart, P.W. 12 noticed fracture and dislocation of both left and right mandible and also fracture of left maxilla and as per his opinion, all the injuries to be ante mortem in nature and again might have been caused by an object like axe. The cause of death as deposed by P.W.12 was on account of shock and hemorrhage. Similarly, P.W.12 proved the P.M. report in respect of the deceased as Ext.14 and his signature on the same as Ext.14/1.

9. The weapon of offence i.e. axe which was seized was sent for examination to P.W.12, who further opined that the injuries found on the person of the deceased children could be possible with it. The report submitted by P.W.12 on the query sent by the IO has also been marked as Ext.15/1 and his signature thereon as Ext.15/2. P.W.12 was cross-examined on Ext.15/1, but again no extenuating material could be elicited by the defence. The wife of P.W.5 was examined as P.W.17 and she also narrated the alleged incident. The IO as P.W.19 deposed that he examined P.W.5 and other witnesses during investigation, visited the spot, prepared spot map, conducted inquest over the dead bodies and also prepared inquest reports marked as Exts.9 and 10. P.W.19 also deposed that he collected sample of blood stain from the spot where the bodies were lying and seized it as per Ext.11. P.W.19 apart from collecting other evidence made seizure of the weapon of offence i.e. MO 1. During investigation, as is deposed by P.W.19, the sons of the Appellant

had a quarrel with the deceased children about two months back and out of grudge, the alleged murder was committed. The defence cross-examined P.W.19 by suggesting that there was no motive behind the alleged incident. But, considering the direct and substantial evidence, the motive if any of the appellant becomes absolutely insignificant. The C.E. report stands marked as Ext.20 which indicated presence of human blood on the exhibits sent for examination. The above evidence on record led the learned court below to reach at a logical conclusion that the Appellant alone to be responsible for the alleged murder. According to this Court, such a conclusion is not misplaced at all rather received concurrence from the evidence on record.

10. The Court finds that the Appellant was caught at the spot by the villagers and was completely responsible for the alleged killings. P.W.5 as well as the ocular witnesses, namely, P.Ws.3, 4 and others satisfactorily proved the involvement of the Appellant and their evidence could not be disturbed despite being intensely cross-examined. The medical evidence also corroborated the prosecution case. The number of injuries both external and internal as proved by P.W.12 established that the Appellant with the help of the alleged axe gave repeated blows on to the vital parts of the victims which proved to be fatal. With the above conclusion and having examined the entire evidence, this Court does not find any wrong or infirmity in the order of conviction passed by the learned court below. The

involvement of the Appellant in the killing of innocent children is well established by the prosecution beyond any doubt. In such view of the matter, the Court finds no ground to take a different view than the one which has been expressed by the learned court below.

11. A pertinent question may arise for consideration regarding the motive of the Appellant in committing the crime. The evidence of P.W.5 does not reveal existence of any hostility between him and the appellant. Rather P.W.5 during cross-examination admitted about absence of any previous enmity with the Appellant. What then propelled the Appellant to commit the crime by taking away lives of two innocent children when there was no animosity proved to exist between both the sides? P.W.5 during cross-examination admitted that he had not confronted the Appellant the reason behind the killings even though they had prior cordial relationship before the incident. Such evidence of P.W.5 about not having any bitterness between the families is also revealed by P.W.17. The evidence against the Appellant is so direct and overwhelming but quite unusually, there appears no trace of any hostility and motive is not clear. As earlier mentioned, P.W.19 had disclosed about some incident of quarrel between the children of both sides. But, again what hinges the most, can such an incident of two months old be the reason to carry out and execute the killings? Admittedly, it is no case of any insanity of the Appellant being ever the defence during trial. Whether to accept and rely upon the evidence and to return a

verdict upholding the decision of the learned court below? The reply has to be in the affirmative in view of the direct evidence. There is no tenebrosity in the settled position of law that in case of lack of motive being acknowledged, it is of little concern and even pales into insignificance when the crime is proven by direct evidence. In plethora of decisions, the Supreme Court time and again reiterated the rule that motive not to be crucial if there is direct evidence of unimpeachable character on record. As it is known, Section 8 of the Indian Evidence Act, 1872 deals with the aspect of motive and its relevancy. Normally, there is motive behind every criminal act which is either disclosed or found hidden. If the motive is proved, the case of the Prosecution becomes easier to accept. But, where ocular evidence is clear and unblemished, establishment of motive is not *sine qua non* which is the settled position of law. In this regard, a reference may be had to a decision of the Supreme Court in the case of ***Gurucharan Singh v. state of Punjab 1963 AIR SC 340***, wherein, it is held that where positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. In ***Rajinder Kumar and another v. State of Punjab 1966 AIR SC 1322***, the Supreme Court held the view that motive is a relevant fact and its absence is also a circumstance which is relevant for assessing the evidence and a case is not at all weakened by the fact that motive is not established as it often happens that the accused himself knows what moved him to a certain course of action. In fact, the decision of the Supreme

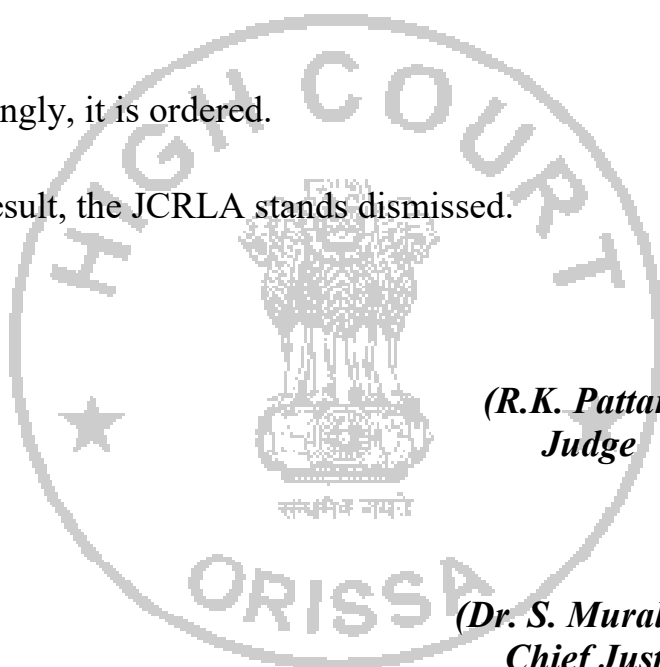
Court in *Shivaji Sahebrao Bobade and another v. State of Maharashtra AIR 1973 SC 2622* is a legal classicus on the point wherein it has been observed that proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Having discussed so far and without burdening the case with more citations, this Court is of the humble view that the direct evidence against the Appellant is not only overwhelming but also reliable and worthy of credence and hence, absence of motive assumes no significance.

12. Mr. Mohanty, learned counsel for the Appellant relied upon the following decisions of the Supreme Court, such as, *Shor v. State of U.P. and another 2020 SCC Online SC 626; Kokaiyabai Yadav v. State of Chhattisgarh (2017) 13 SCC 449; Jayantilal Verma v. State of M.P. 2020 SCC Online SC 944; and Rajendra Singh V. State of U.P. (2019) 73 OCR (SC) 419*. However, in the humble opinion of the Court, the above decisions are totally inapplicable to the present case. In *Shor* (supra), the Supreme Court was seized of a decision regarding pre-mature release of the convict, who had been in judicial custody for nearly 28 years. The decision in *Kokaiyabai Yadav* ibid similarly related to remission of sentence so also the case of *Rajendra Singh* (supra). The other case in *Jayantilal Verma* renders no help or assistance to the defence either. The Court after having gone through the above citations

holds that none is applicable. Thus, the Court arrives at an inescapable conclusion that the Appellant to be the author of the crime and no one else and in so far as appreciation of evidence is concerned, it has been properly evaluated by the learned court below. In other words, the order of conviction vis-à-vis the Appellant and also the sentence of life imprisonment is absolutely justified and in accordance with law and therefore, it need not be disturbed.

13. Accordingly, it is ordered.

14. In the result, the JCRLA stands dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

K.C. Bisoi