

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 80 of 1998

Achuta Kumar Nath

....

Appellant

-versus-

State of Orissa

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. D.P. Dhal, Senior Advocate

For Respondent

:

Mrs. Saswata Patnaik
Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

26.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 17th March 1998, passed by the learned Sessions Judge, Bolangir in Sessions Case No.34 of 1997, convicting the present Appellant for the offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life.

2. It must be stated at the outset that the present Appellant was sent up for trial along with two other accused. However, the said

two accused persons were acquitted under Section 232 Cr PC by an order dated 4th February, 1998 of the trial Court.

Case of the prosecution

3. The case of the prosecution is that on 17th April, 1996 at around 12.45 pm, Sampad Kumar Mishra (PW-8), who was the Sub-Inspector of Police (SI) at Bolangir Town Police Station (PS), received a telephonic call from an unknown person stating that a serious "Golmal" was going on in the Palace Line locality of Bolangir town. Entering this information in his Station Diary, PW-8 proceeded to the spot along with staff. When he arrived there at 1.15 pm, he found the dead body of the deceased, Ananta Nag, the elder brother of the Appellant, lying on the eastern side of the Bolangir-Titilagarh road at the Palace Line crossing in front of Sonal Electronics. He found the deceased having suffered multiple injuries on the head which had been inflicted by sharp cutting weapons. There was a pool of blood near the dead body. Since all the nearby shops were closed, nobody came forward for his enquiry. From the injuries, he understood that it was a case of murder by unknown persons and revealing commission of cognizable offence punishable under Section 302 IPC. Then he sent the report for registration of the case. As a result, PS Case No.52 of 1996 was registered for the offence punishable under Section 302 IPC.

4. On 16th August 1996, PW-8 handed over the investigation of the case to Suresh Chandra Parichha (PW-9), who then continued the investigation and finally submitted a charge sheet against three persons, i.e., the present Appellant, Chitta Ranjan Mohanty and Naresh Kumar Nag on 4th January, 1997.

5. The prosecution case was that both the deceased and the accused, who are brothers, were residents of the Palace Line locality in Bolangir town. Due to the differences between the deceased, his wife Ranjita Nath @ Brundabati Joshi (PW-7), on the one hand, and the parents of the deceased on the other, the deceased and PW-7 with their two daughters were staying in Chudapalli at the house of the parents of PW-7 for about nine months prior to the occurrence.

6. The Appellant had a television shop in the name and style of 'Sonal Electronics' by the side of the Bolangir-Titilagarh road in the Palace Line area. A few days prior to the occurrence, the Appellant had purchased an old TATA Mini-truck. The deceased demanded that the said Mini-truck should be registered in his name. The Appellant and his family members did not concede to that demand.

7. On 13th April 1996, the deceased left Chudapali in the morning informing his wife-PW-7 that he was going to drive the Mini-

truck. He also stated that in the event he took the vehicle outside Bolangir he would return the following day. When the deceased did not return to Chudapalli till 17th April 1996, the wife of the deceased (PW-7) became worried. On that day, she is stated to have left Chudapalli at around 10 am for Bolangir by bus. After reaching Bolangir, she is stated to have walked towards the house of the deceased from the bus stand. As she arrived near the Palace Line, she is stated to have seen the Appellant dealing sword blows on the deceased in front of his shop. As a result, the deceased sustained injuries and fell down. Out of fear, PW-7 rushed back to Chudapalli and disclosed to her father, Chakradhar Joshi (not examined) about the incident. It is stated that thereafter, PW-7 returned to Bolangir with her father. Her father learnt that that the dead body of the deceased had been taken to the District Headquarters Hospital (DHH), Bolangir for postmortem. Both PW-7 and her father are stated to have gone to the DHH, seen the dead body of the deceased from a distance and returned to Chudapalli.

8. The postmortem of the deceased was conducted by Dr. Purna Chandra Das (PW-10) at 5.30 pm on 17th April, 1996 at the DHH Bolangir. Meanwhile, on the same day at 4.30 pm, PW-8 seized a Pepsi bottle, blood-stained earth and sample earth from the spot and prepared a seizure list in the presence of one Jagannath Sindhria (PW-4). He seized the wearing apparels of the deceased.

9. PW-9, who took over the investigation from PW-8, is stated to have visited the spot and prepared the spot map on 24th August, 1996. He is stated to have arrested the Appellant on 8th October, 1996 and forwarded him to the Court on the following day. PW-9 ultimately submitted a charge sheet on 4th January, 1997.

10. The case of the defence was one of complete denial. In his examination under Section 313 Cr PC, the Appellant claimed that PW-7 and her father demanded Rs.25,000/- from him after the death of the deceased in connection with the marriage of the sister of PW-7. According to the Appellant, since he did not concede to that demand, PW-7 falsely implicated him.

Trial Court judgment

11. Ten witnesses were examined on behalf of the prosecution and none on behalf of the defence. On an analysis of the evidence, the trial Court concluded that the prosecution had been able to prove beyond all reasonable doubt its case against the Appellant for the offence punishable under Section 302 IPC and proceeded to sentence him in the manner indicated hereinbefore. The findings of the trial Court could be summarized as under:

(i) The death was homicidal as was made clear by the evidence of PW-10. His postmortem report revealed that there were as many

as fifteen incised injuries and four abrasions on the dead body of the deceased.

(ii) The case of the prosecution depended entirely on the ocular version of PW-7. Although the prosecution was not able to prove the motive for the commission of the crime, it was well settled that where there is a trustworthy eye-witness account, motive had little role to play.

(iii) Although the prosecution could not examine a single independent eye-witness other than PW-7, a conviction could be based even on a sole testimony of a single witness as long as the evidence was 'wholly reliable and trustworthy'.

(iv) There was nothing to prove that there was any inimical relationship between PW-7 and the Appellant. She could not be stated to be an 'interested witness'. She admitted to having received favours from the accused/Appellant.

(v) PW-7, withstood cross-examination and her version had not been discredited. There was nothing unnatural in PW-7 not seeking help from the outsiders or raising a protest on seeing her husband being attacked by the accused. She was a "less educated" woman from the rural background and, therefore, her omission to report the occurrence at the Office of the Superintendent of Police (SP), which was enroute Palace Line and the private bus stand and in the Town PS, situated near the private bus stand was understandable.

(vi) The examination by PW-8 of PW-7 at Chudapalli on 18th April, 1996 was neither belated nor unnatural. The testimony of PW-7 was found to be cogent, consistent and free from any material infirmity. Her evidence was corroborated by the medical evidence.

(vii) The evidence of the hostile witnesses PWs-1 to 3 was still relevant insofar as they stated that the dead body of the deceased was lying in front of the shop of the accused. The defence plea was that PW-7 learnt of the occurrence at Chudapalli from one Kamal Mishra, a maternal uncle of the deceased. This was not substantiated by the defence since no effort had been made to examine the said Kamal Mishra.

(viii) There was nothing on record to suggest that the deceased had been assaulted by a sharp cutting weapon by anyone else. The wounds on the deceased were because of the accused dealing repeated blows to the deceased with a sword.

Submissions on behalf of the Appellant

12. Mr. D.P. Dhal, learned Senior Counsel appearing for the Appellant, submitted that even if the conviction were to be based on the testimony of a single witness, such evidence must be of unimpeachable character. If such witness happens to be a close relative, then, it requires careful scrutiny considering the; (i) probabilities, (ii) previous statement and attending circumstances.

Reliance is placed on the decisions in *State of Punjab and Gurmej Singh v. Jit Singh AIR 1994 SC 549* and *Sunil Kumar v. State Government of NCT Delhi (2003) 11 SCC 367*.

13. Mr. Dhal pointed out numerous inconsistencies and improbabilities in the evidence of PW-7 that made her evidence untrustworthy. This will be dealt with subsequently in some detail. Relying on the decision in *Shankarlal Gyarasilal Dixit v. State of Maharashtra AIR 1981 SC 765*, he submitted that the working of the human mind is mysterious and, therefore, it may not be possible to find the precise answer to the question why PW-7 would falsely implicate the Appellant. Reliance is also placed on the decision in *Madkani Baja v. State of Orissa 1985 (I) OLR 421*.

14. Mr. Dhal pointed out that although the FIR was lodged on 17th April, 1996, it was sent to the Court of the S.D.J.M., only on 19th April, 1996 and there was no valid explanation for this delay. This rendered the prosecution case doubtful. Reliance is placed on the decision in *Amar Singh v. State of NCT Delhi 2020 II OLR SC 908*. The evidence of PW-10 as regards the time of the death was also shaky. Although in the postmortem report, it was stated that the death was between 12 to 18 hours prior to the postmortem examination, in re-examination, PW-10 stated that it was less than twelve hours and that the statement of the postmortem report was a mistake.

15. PW-10 also admitted that the incised wounds could have been caused by one or several weapons and that for causing abrasions, a hard and blunt weapon must have been used. The nature of the injuries shows that they were different kind of weapons and it is not possible that only one person had caused all of them. Reliance is placed on the decision in ***Omwati v. Mahendra Singh AIR 1998 SC 249***. Reliance is also placed on the decision in ***Padam Singh v. State of Uttar Pradesh 2000 SCC (Cri) 285***.

16. Mr. Dhal further pointed out that the first person to whom PW-7 was supposed to have disclosed what she saw in the evening of 17th April, 1996 was her father, Chakradhar Joshi. However, he was not examined. Likewise, the independent witnesses who ought to have been present at a crowded market place, were not examined. In these circumstances, it could not be said that the prosecution had proved its case against the Appellant beyond all reasonable doubt.

Submissions on behalf of the State

17. On the other hand, Mrs. Saswata Patnaik, learned AGA supported the judgment of the trial Court and submitted that the evidence of PW-7 was cogent and reliable and has been rightly believed by the trial Court. She submitted that PW-7 was a chance witness, who happened to be there when the crime took place and

her evidence has been fully corroborated by the medical evidence of PW-10. According to Mrs. Pattnaik, the trial Court has rightly held that given the educational status of PW-7, it was not surprising that she did not disclose the event immediately to the Police or even when she was returning to Bolangir with her father subsequently. There was no need for PW-7 to falsely implicate her own brother-in-law particularly when there was no previous enmity between them.

Analysis and reasons

18. The law in relation to interested and related witnesses is well settled. In ***Dalip Singh v. State of Punjab AIR 1953 SC 364*** it was held as follows:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

19. In ***Piara Singh v. State of Punjab AIR 1977 SC 2274*** the Supreme Court held:

"4. ...It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but

cannot be rejected merely on the ground of being partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

20. In ***Hari Obula Reddy v. The State of Andhra Pradesh (1981)***

3 SCC 675 the Supreme Court observed:

"13.... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

21. Again in ***Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498***, it was held:

"7...The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

22. In ***Gangabhavani v. Rayapati Venkat Reddy (2013) 15 SCC 298*** the Supreme Court held:

“...Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See *Anil Rai Vs. State of Bihar*, (2001) 7 SCC 318; *State of U.P. Vs. Jagdeo Singh*, (2003) 1 SCC 456; *Bhagalool Lodh & Anr. Vs. State of U.P.*, (2011) 13 SCC 206; *Dahari & Ors. Vs. State of U. P.*, (2012) 10 SCC 256; *Raju @ Balachandran & Ors. Vs. State of Tamil Nadu*, (2012) 12 SCC 701; *Gangabhavani Vs. Rayapati Venkat Reddy & Ors.*, (2013) 15 SCC 298; *Jodhan Vs. State of M.P.*, (2015) 11 SCC 52).”

23. Since the entire case of the prosecution rests only on the deposition of PW-7, her evidence requires very careful scrutiny. From the evidence of PW-7, it is seen that the deceased had left his house on 13th April, 1996 itself. She waited for about four days and on 17th April 1996, left Chudapalli by bus to Bolangir Town at around 10 am. She is supposed to have then walked from the bus stand in Bolangir towards the Palace Line and at a distance of 20 to 25 cubits from the shop of the Appellant, she is supposed to have seen him attack her husband with a sword.

24. If one looks at the spot map, it is clear that there were several shops in and around the shop in front of which the crime occurred and yet PW-7 cannot state whether the markets were open at the

time of the occurrence. This appears to be extremely unlikely. It appears to be a busy Chhak and a commercial locality with several shops. Yet PW-7 states in her cross-examination as under:

“12..... I did not raise any noise. I did not notice any one else in the vicinity at that time. I do not recollect if any pedestrian was present nearby. I do not recollect if there was transaction in the nearby shops at the time of occurrence.”

25. To the Court, this appears to be most unnatural and in fact unbelievable. The conduct of PW-7 after witnessing the event also is not properly explained. Even assuming that out of fear for her life, she rushed back to Chudapalli without lodging any information in the SP's Office or with the Town PS, which were all in the vicinity, it is surprising that she did not immediately go to the houses of her father's sister or the father's elder brother's daughter both of whom who lived in Bolangir Town PS. What is, however, even more inexplicable was when she returned with her father some time later to see the dead body of her deceased husband, neither PW-7 nor her father again informed the Police or anyone else about the incident. There was sufficient time gap after the occurrence by this time and the initial fear must have dissipated. In any event, it cannot be said that the father of PW-7 was also under an equal fear that prevented him from going to the Police to give the information. This conduct was indeed unnatural.

What makes it even more mysterious is the failure of the prosecution to examine the father of PW-7, Sri Chakradhar Joshi.

26. The fact that PW-7 may be a rustic woman, who is not well-educated still does not explain why she would not raise any hullah or disclose the occurrence to anyone else particularly, the Police, till such time PW-8 himself met her. Her failure to narrate the incident at the earliest opportunity raises serious doubts about the veracity of her version. In similar circumstances in *State of Orissa v. Brahmananda Nanda* AIR 1976 SC 2488 the Supreme Court observed:

“2...The evidence suffers from serious infirmities which have been discussed in detail by the High Court. It is not necessary to reiterate them, but it will be sufficient if we refer only to one infirmity which, in our opinion, is of the most serious character. Though according to this witness, she saw the murderous assault on Hrudananda by the respondent and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of 13th June, 1969 and yet she did not come out with the name of the respondent until the morning of 15th June, 1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than 15th June, 1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to

be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the Club House which was just opposite to the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection with the case and had also visited her house on 14th June, 1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to A.S.I. Madan Das and should have waited till the morning of 15th June, 1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of witness.”

27. Again, in *Panda Nana Kare v. State of Maharashtra AIR 1979 SC 697* the Supreme Court observed:

“7. The explanation of P.W. 7 for his concealing the name of the assailant before the two Doctors and Kherappa is that as the accused was his sister's husband, he did not want to implicate him and then only later he felt that he should tell the truth. The trial court observed that even if this version is true the evidence of the witnesses cannot be acted upon. We entirely agree with the view taken by the trial court.”

28. It is even more strange that PW-8 does not disclose how he came to examine PW-7 in Chudapalli on the following day without getting a hint from anyone else about her presence at the scene of occurrence. The trial Court has sought to explain this by

saying that since PW-7 was a near relative, he went to examine her. However, he does not appear to have examined any other witness including the neighbouring shop-keepers.

29. It is significant that PW-8 had initially examined PW-2, who had a vegetable shop and PW-3, who had a grocery shop. Those witnesses obviously had indicated that the attack was not just by one person but by more than one and which is why the chargesheet was laid against three persons. With both these witnesses turning hostile, the absence of any independent witness to corroborate the version of PW-7 assumes significance. It changes the entire narrative of the prosecution. Whereas the initial prosecution case was that the crime had been committed by three persons, it suddenly converted into a crime at just the evidence of one of them. That makes the case of the prosecution extremely weak. If indeed PW-7 had seen more than one person attack her husband, then there is no valid explanation why she would implicate only the present Appellant. Moreover, given the number of injuries on the body of the deceased, it is unlikely to be the work of a single individual.

30. The trial Court has correctly observed that the motive for the commission of the crime has not been explained. Particularly, since the Appellant is known to have helped his deceased brother on several occasions including with the criminal cases against the deceased, it is indeed a mystery that PW-7 has still chosen to

implicate the Appellant. The following observation of the Supreme Court in *Shankarlal Gyarsilal Dixit v. State of Maharashtra* (*supra*) is indeed relevant in these circumstances.

"33. Our judgment will raise a legitimate query: If the Appellant was not present in his house at the material time then why did so many people conspire to involve him falsely. The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes to spin stories out of strong suspicion."

31. Likewise in *Madkami Baja v. State of Orissa* (*supra*), it was observed as under:

"8. But mysterious is the working of human mind and it is not always possible for an accused person to say as to how and why a case has been foisted against him and some witnesses have come forward to depose against him."

32. A reading of the evidence of PW-7 does not leave the Court with the feeling that she is speaking the entire truth. Her conduct after the occurrence appears to be unnatural and raises far more questions than have been satisfactorily answered by the prosecution.

33. The number of injuries inflicted on the body of the deceased and the reply that was given to the questions put to PW-10 in his

cross-examination does make it appear that the crime could not have been committed just by one person. In ***Omwati v. Mahendra Singh*** (*supra*), in somewhat similar circumstances, the Supreme Court observed thus:

“9. The High Court has sent for the weapon and also examined Dr. R.N.Katiyar, an expert who opined that the injuries on the body of the deceased could not be caused by a single blow of the hasiya. the said doctor stated that the post mortem examination report does not show that the injury was caused by more than one blow. Considering the fact that as many as seventeen incised wounds were found on the body of Raj Kumar Singh, the High Court found it difficult to believe that he was assaulted by only one assailant with a sharp cutting weapon. The High Court opined that there were more than one assailant armed with the such sharp cutting weapons. The opinion of the High Court cannot be considered to be totally baseless or perverse.”

33. PW-10 is candid in the cross-examination when he states as under:

"10. It is a fact that incised wounds on the deceased could have been caused by one weapon or several. I cannot deny to the suggestion that several weapons might have been used. It is a fact that blows were dealt and injuries were inflicted from different angles and directions. It is a fact that injury No.(ii) could have been caused by sharp cutting weapon of the type used for sacrificing goats and sheep.”

34. He further states as under:

"14. From the nature of injuries it cannot be said if the same were inflicted by one person or more than one person."

35. The trial Court appears to have completely overlooked the fact that initially the case was against three persons with two having been acquitted under Section 232 Cr.P.C. and that having completely altered the case of the prosecution.

36. This Court being an appellate Court, requires to be even more circumspect when it examines the evidence as was explained in *Padam Singh v. State of Uttar Pradesh* (*supra*) with the following words:

"2. ...It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court like the trial Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubts as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding conviction."

37. Once the Court comes to the conclusion that the evidence of PW-7 is not entirely trustworthy or reliable, then the entire case of the prosecution has to fail. No doubt, the crime is a ghastly one but, the Court has to be satisfied that the guilt of the accused is proved by the prosecution beyond all reasonable doubt. In *Padam Singh v. State of Uttar Pradesh* (supra), the Supreme Court explained what the duty of the appellate Court while examining a trial Court judgment on conviction was:

“2. ...It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court like the trial Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubts as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all

relevant and material circumstances, before upholding conviction.”

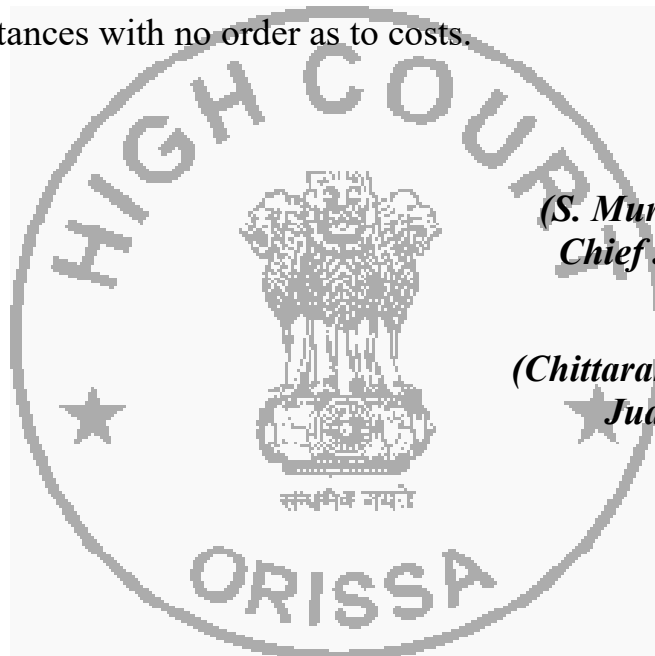
38. The graver the crime, the higher the degree of proof. As was explained in *Arjun Marik v. State of Bihar 1994 SCC Supp. (2) SCC 372*:

“14. In *Masalti v. State of U.P. AIR 1965 SC 202* it was observed that it is perfectly true that in a murder trial when an accused person stands charged with the commission of an offence punishable under Section 302, he stands the risk of being subjected to the highest penalty prescribed by the IPC; and naturally judicial approach in dealing with such cases has to be cautious, circumspect and careful. In dealing with such appeals or reference proceedings where the question of confirming a death sentence is involved the Court has to deal with the matter carefully and to examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death.

15. We are also aware of the fact that as a rule of practice, in appeal against conviction for offence of murder Supreme Court is slow to disturb a concurrent finding of fact unless it is shown that the finding is manifestly erroneous, clearly unreasonable, unjust or illegal or violative of some fundamental rule of procedure or natural justice. Further it has also to be remembered that in a murder case which is cruel and revolting it becomes all the more necessary for the Court to scrutinise the evidence with more than ordinary care lest the shocking nature of the crime might induct instinctive reaction against a dispassionate judicial scrutiny of the evidence in law.”

39. For the aforementioned reasons, the Court is not satisfied that in the present case, the prosecution has been able to prove its case against the Appellant beyond all reasonable doubt. Accordingly, the impugned judgment of the trial Court is hereby set aside. The Appellant is acquitted of the offence punishable under Section 302 IPC. His bail bonds stand discharged.

40. The appeal is allowed in the above terms but, in the circumstances with no order as to costs.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera/ Jr. Steno.