

IN THE HIGH COURT OF ORISSA AT CUTTACK**JCRLA No. 101 of 2004**

Khakha @ Minaketan Kharsel **Appellant**
-versus-
State of Orissa **Respondent**

Appeared in this case:

For the Appellant : Mr. Brajendu Kumar Sinha, Advocate
Ms. Anita Sahu, Advocate
For the Respondent : Mr. Janmejaya Katikia,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

JUDGMENT
10.05.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment and order dated 26th June 2004, passed by the learned Additional Sessions Judge, Sambalpur in Sessions Trial Case No.168/3 of 2002-2003, convicting the present Appellant for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentencing him to undergo imprisonment for life and pay a fine of Rs.2,000/- and in default to undergo rigorous imprisonment for two months.

2. The case of the prosecution is that the deceased Rankamani Behera, a member of Scheduled Caste, was nominated as Khajuria by the villagers of Sarigidihi and Saletikirapada for collection and

sale of Khajuri Rasa for the year 2001-02. To facilitate the extraction of the date palm juice, the deceased had put up a hut at Saletikirapada and was staying there. The accused/Appellant and his father, Lalita Kharshel, who were the previous lessees for extracting Khajuri Rasa, frequently came to the spot and tried to create disturbance.

3. On 23rd October 2001 at around 6.30 pm, the Appellant came to the spot and attacked the deceased Rankamani with a Katuri and murdered him by giving several blows on his neck and mouth. Purusottam (PW-1), who witnessed the incident, left the place out of fear and informed the matter to his co-villagers viz., Bhakta, Kumuda and Binod (PWs 2, 3 and 4 respectively).

4. PWs 2, 3 and 4 along with PW 1 went to Ghanashyam (PW-10) who happened to be the son-in-law of the deceased. They narrated the entire incident. Thereafter, all of them came back to the spot and found the deceased lying dead. PW-10 lodged the FIR (Ext-14). On conclusion of the investigation, a charge sheet was filed by the Investigating Officer (IO) against the present Appellant for the offences punishable under Section 302 of IPC read with Section 3(2)(v) of the S.C. & S.T. Prevention of Atrocities Act (POA Act). The Appellant denied the charges and claimed trial.

5. Eleven witnesses were examined for the prosecution and none for the defence.

6. PW-1 was the star and sole witness to the said incident. His description of the events was fully corroborated by the medical evidence of Dr. Upendra Kumar Sahu (PW-8) who conducted the postmortem of the deceased. However, the Trial Court acquitted the Appellant of the offence punishable under Section 3(2)(v) of the POA Act.

7. Mr. Brajendu Kumar Sinha, learned counsel and Miss Anita Sahu, learned counsel appeared for the Appellant and Mr. Janmejaya Katikia, learned Additional Government Advocate (AGA) appeared for the State.

8. On behalf of the Appellant, it was contended that the testimony of the sole eye-witness PW-1 was not reliable or consistent and it was unsafe to base the conviction of the Appellant only on such evidence. It was submitted that in his cross-examination, PW-1 has stated as under:

"I cannot say the week day of the incident. It was a dark fortnight. I saw accused coming out from his house with a Katari at a distance of 200 ft. I have also witnessed the incident for giving blows by standing at distance of 200 ft."

He further stated that:

"accused used the katari, but I cannot definitely say if MO-I was that Katari used by the accused."

9. According to the learned counsel for the Appellant, standing at a distance of 200 ft it could not have been possible for PW-1 to correctly identify the accused. It is further submitted that there was

no other credible evidence as PWs-2, 3, 4 and 7 were not witnesses to the incident but had heard PW-1 describing what happened. Thirdly, it is submitted that the prosecution has failed to prove the motive for the crime. Lastly, it was submitted that the recovery of the weapon used in the offence at the instance of the Appellant is doubtful. According to the IO, the weapon was brought out and produced by PWs-2 and 3 on the pointing out of the accused whereas PWs-2 and 3 themselves claimed that it was the accused himself who produced the weapon before the IO.

10. It is then submitted that PW-8 who conducted the Postmortem, admitted in his cross-examination that he had failed to mention in the PM Report that the injuries were possible by a Katari. Consequently, the recovery of the Katari itself was doubtful. Lastly, it is submitted that once the Appellant had acquitted for the offence under Section 3(2)(v) of the POA Act, he could not have, on the same evidence, been convicted for the offence under Section 302 of the IPC.

11. Mr. Janmejaya Katikia, learned AGA submitted that the eye-witness's testimony was fully corroborated to the medical evidence. The PWs-2 and 3 were the witnesses to the recovery of the weapon, i.e., the Katari, used for committing the offence. As far as the motive is concerned, the evidence of PW-10 was relevant. It is submitted that PWs-2 and 3 have fully supported the version of the PW-1. As regards the night being dark when the occurrence took place, the deposition of the PW-2 makes it clear that at the time of the said incident, it was not so dark. The injuries

found on the body of the deceased, fully corroborated the testimony of the eye-witness.

12. The above submissions have been considered. The star witness of the prosecution is of course, PW-1. He is no doubt a related witness. But the law in this regard is well settled that even a single eye-witness, whose veracity cannot be doubted, is sufficient to bring home the guilt of an accused. In *Vahula Bhushan@ Vahuna Krishnan v. State of Tamil Nadu 1989 Supp (1) SCC 232* is instructive in this regard. It was held as under in the said Judgment:

"7.....It has been urged on behalf of the appellant that the courts below should not have convicted the accused on the sole testimony of PW 1 as the same was not corroborated by the evidence of any other witness. This contention is unsustainable inasmuch as there is no rule of law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if believed. The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case, the conviction can be made on the testimony of such a single witness."

13. Recently this Court in *Babulal Sahu v. State of Odisha (2022) 85 OCR 695*, held likewise.

14. PW-1 was otherwise clear and cogent and despite extensive cross-examination, nothing has been elicited from him which could give rise to doubts as to the credibility of his testimony. It is further seen that the occurrence took place on 23rd October, 2001

at around 6.30 pm and the deceased died on the spot. The medical evidence of PW-8 fully corroborated the ocular testimony of PW-1. PW-8, on examining the Katuri (MO-I) opined that the four injuries mentioned in the PM Report could have been inflicted by it.

15. Further, the Chemical Examination Report (Ext-19) showed that:

"the wearing apparels of the deceased marked by the Biological Division of SFSL as E,F,G and the wearing apparel of the accused marked as H carries **Human blood of Group-'A'**. Though the Iron Katuri (Weapon of offence), Stained earth, Bamboo Lathi (Marked by the Biological Division of SFSL as A, B, and D respectively) were carrying **human blood**, but no conclusive opinion on the grouping could not have been given."

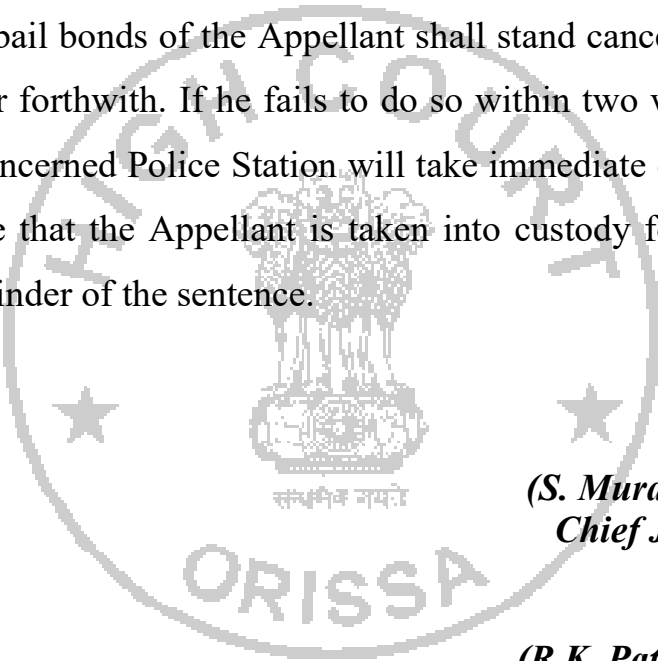
16. Although in a case of direct evidence such as the present one, motive is not a determinative factor, it has been explained that in the previous year, it was the accused and his father who had taken the particular tree on lease whereas in the year in which the murder took place, it was with the deceased and this led to a lot of resentment.

17. This Court is satisfied that there is no material inconsistency in the version of PW-1 which can give rise to a reasonable suspicion of the guilt of the accused. On the contrary, the deposition has completely corroborated both by the medical and forensic evidence, all of which are against the Appellant. This Court has no manner of doubt, upon perusing the well-reasoned judgment of the

trial Court in light off the evidence on record, that it is the Appellant who is guilty of the offence punishable under Section 302 of the IPC for causing the murder of the deceased.

18. For the aforementioned reasons, the Court finds no grounds made out for interference with the well-reasoned order of the Trial Court. The appeal is dismissed but, in the circumstances, with no orders as to costs.

19. The bail bonds of the Appellant shall stand cancelled. He shall surrender forthwith. If he fails to do so within two weeks, the IIC of the concerned Police Station will take immediate effective steps to ensure that the Appellant is taken into custody for serving out the remainder of the sentence.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, flanked by two stars. Below the capital is the motto 'सत्यमेव जयते' (Satyameva Jayate). The word 'ORISSA' is written in a semi-circle at the bottom. The words 'HIGH COURT' are written in a semi-circle at the top.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S. Behera