

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.64 of 2011

JCRLA No.63 of 2011

AND

JCRLA No.65 of 2011

From the judgment and order of sentence dated 23rd June, 2011 passed by the learned Additional Sessions Judge, Fast Track Court, Rourkela in Sessions Trial Case No.143/6 of 2010-2011.

Mahesh Pradhan

(In JCRLA No.64/2011)

Raju Pradhan

(In JCRLA No.63/2011)

Sunil Penthel

(In JCRLA No.65/2011)

.... ***Appellants***

-versus-

State of Odisha

.... ***Respondent***

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellants - Ms.Tapaswini Sinha
(Advocate in JCRLA No.64/2011)
Mrs.Prabhasi Nayak
(Advocate in JCRLA No.63/2011)
Smt.Sunanda Biswal
(Advocate in JCRLA No.65/2011)

For Respondent - Mr.Samresh Jena
Additional Standing Counsel
(In all the JCRLAs)

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 26.10.2022 : Date of Judgment: 28.10.2022

D.Dash,J. The Appellants, by filing these Appeals, from inside the jail, have assailed the judgment of conviction and order of sentence dated

23.06.2011 passed by the learned Additional Sessions Judge, Fast Track Court, Rourkela in S.T. Case No.143/6 of 2010-2011. The above three Appellants have been convicted for commission of offence under section 302/323/34 of the Indian Penal Code, 1860 ((for short, 'the IPC') and accordingly, each have been sentenced to undergo imprisonment for life and pay fine of Rs.2,000/- (rupees two thousand) with the default stipulation to undergo rigorous imprisonment for a period of one month for the offence under section 302 read with section 34 of the IPC and simple imprisonment for one month for the offence under section 323 read with section 34 of IPC.

2. The prosecution case, in short, is that on the 22nd Day of July, 2010 around 5.00 pm, the Informant, namely, Sarthak Naik (P.W.6) was working with his elder father Hadu Naik (the deceased) and his brother-in-law Suresh Dhibar (P.W.7) near the Railway Bridge of Sonaparbat.

It is stated that during then, the Appellants arrived there, abused them in filthy language and assaulted them by means of lathi. The Informant and his brother-in-law sustained bleeding injury on their head on account of said assault by the accused persons. It is further stated that the accused persons assaulted the deceased with boulder causing profuse bleeding from his stomach. They all were then admitted in the Government Hospital at Rourkela for treatment where Hadu Naik in course of treatment succumbed to the injuries.

The First Information Report, being lodged by Sarthak (P.W.6), Tangarpalli P.S. Case No.87 of 2010 was initially registered for commission of offence under section 341/294/323/307/506/34 of IPC, which stood converted to one under section 302 of the IPC in view of the death of Hadu in the hospital.

3. The accused persons faced the trial being charged for commission of offence under section 341/323/294/302/307 read with section 34 of IPC.

4. The plea of the accused persons in defence is that of complete denial.

5. The prosecution, in order to bring home the charges against the accused person in the trial, has examined in total nine witnesses. It has also proved the FIR admitted in evidence and marked Ext.5, post mortem report (Ext.6), injury reports (Exts.2 & 3), seizure lists etc.

6. The defence, being provided with the opportunity, have neither examined any witness from their side, nor proved any document in support of their defence.

7. The Trial Court, relying upon the evidence of the Doctor, who has conducted the post mortem examination over the dead body of the deceased examined as P.W.8 and other evidence, has held the death of Hadu to be homicidal.

Then coming to the complicity of the accused persons in the said incident, namely, Hadu Naik and injuries received by Sarthak and Suresh examined as P.Ws.6 and 7 respectively, the Trial Court has held them to have murdered Hadu and caused simple hurt to P.Ws.6 and 7 in furtherance of their common intention. The accused persons thus have been found guilty for commission of offence under section 302/323 with the aid of section 34 of IPC and have been sentenced as aforesaid.

8. We have heard Ms.Tapaswini Singh, Mrs.Prabhasi Nayak and Smt.Sunanda Biswal, learned counsels for the Appellants.

Mr.Samaresh Jena, learned Additional Standing Counsel advanced the submission in support of the finding of guilt returned by the Trial Court against the Appellants and so also the sentence so imposed thereunder.

9. Learned counsels for the Appellants submitted that the finding of conviction recorded by the Trial Court against the accused persons holding them guilty for commission of offence under section 302 read with section 34 of IPC is based on unjust and improper appreciation of evidence of the prosecution witnesses mainly P.Ws.6 & 7, who claim themselves to be the witnesses. They further submitted that when those two witnesses are very closely related to the deceased and have the enmity with the accused persons and thus having the interest to see that the prosecution at any cost succeeds in the long run, the Trial Court should not have so lightly accepted their version without putting those to strict scrutiny as they too have the natural instinct to exaggerate in falsely roping the accused persons. They submitted when their version do not tally with one another as regards the main allegation of assault upon the deceased when as the same shakes the foundation of the prosecution case, their evidence ought to have been doubted in so far as the participation of the accused persons in the said incident so as to hold that the prosecution has proved the charges against beyond reasonable doubt. They further submitted that the evidence of P.Ws.5 to 8 when read together do not inspire confidence in mind to come to a conclusion beyond reasonable doubt that these accused persons having assaulted the deceased have caused his death. They also submitted that when the evidence of above prosecution witnesses are not at all acceptable with regard to one part of the incident regarding the assault upon the deceased from the side of the accused persons, the other part of the

evidence of those witnesses as regards the accused persons assaulting P.Ws.6 & 7 ought not to have been held as acceptable since that part is so inextricably mixed up with the former part that those are inseparable.

10. Learned Additional Standing Counsel for the State submitted that the Trial Court did commit no mistake in accepting the version of P.Ws.6 and 7 to fasten the criminal liability upon the accused persons in committing the murder of deceased Hadu and voluntarily causing simple hurt to those witnesses. He submitted that the witnesses hail from the rural background and although some minor discrepancies appear in their evidence, those are of not such significance to adversely view the prosecution case. According to him, the prosecution, through clear, cogent and acceptable evidence, has established the happenings of the incident as well as the role played by these accused persons in the said incident as narrated in the FIR (Ext.5) beyond reasonable doubt and, therefore, the judgment of conviction and order of sentence are not liable to be interfered with.

11. Keeping in view the submissions made: We have carefully gone through the judgment passed by the Trial Court. We have also extensively travelled through the depositions of the witnesses examined from the side of the prosecution, i.e., P.Ws.1 to 9 as well as the documents admitted in evidence from its side marked Exts.1 to 12.

12. In the present case, there is no challenge to the fact that the deceased Hadu met a homicidal death resulting from the injuries which he had received.

13. Thus now in order to judge the sustainability of the finding of the Trial Court as to the complicity of the accused persons, in addressing the

rival submission, the evidence tendered by the prosecution are required to be analysed.

14. P.W.1 is the wife of the deceased. Although she has stated that accused Raju and Mahesh assaulted her husband by means of a stone under a bridge and accused Sunil assaulted her by a lathi, she has further stated that accused Mahesh and Raju had also assaulted her daughter. However, during cross-examination, she has stated to have not seen the assault on her husband and it is her version that she, being assaulted by accused Sunil, left the place and came to her house. In so far as the assault upon this witness and her daughter, there is no charge on that score and the prosecution too has also not proved said factum of sustaining of any injury by P.W.1 and her daughter. This shows that P.W.1, being not a witness to the occurrence, has gone to state so which is also not deriving support from the two other important witnesses; P.W.6 & 7 as also the FIR is silent on that score. Such conduct on the part of the prosecution rather puts the Court at guard to have a deeper scrutiny of the other evidence when the enmity is not denied.

P.W.6 is the witness, who claims to have seen the incident from the beginning till the end and he says to have also been injured in the said incident. It has been stated by him that at the relevant date and time at the particular place in the market where, he, P.W.7 and the deceased had gone to purchase soap; the accused persons arrived. He says that they assaulted him and his elder father, i.e., the deceased by lathi, iron rod and stone and then they too assaulted P.W.7, who happens to be his brother-in-law. This P.W.6 is none other than the Informant. The FIR has been admitted in evidence and marked Ext.5. It reveals from the narration in the FIR that the accused persons came to the spot which is near the Railway Bridge where they were working and there they abused

the deceased, P.Ws.6 & 7 by restraining them and then they have assaulted them by lathi. It also finds mention therein that P.Ws.6 & 7 sustained injuries on their head on account of the assault by the accused persons and they together assaulted the deceased with boulder and lathi. It has also been specifically indicated therein that when accused Mahesh was attempting to assault the deceased by means of boulder, P.Ws.6 & 7 having intervened, the situation as to that at the spot was saved from being fatal. Thus, there arises great variance on material aspects of the happening of the incident as stated in FIR and the evidence of P.W.6. The place of occurrence is also stated differently and is not so clarified in evidence even through the Investigating Officer examined as P.W.9 so as to say that the two places are so close that such discrepancy can be overlooked.

This being the evidence of P.W.6, now the evidence of P.W.7 needs little elaboration. It is his evidence that at the relevant time, he, P.W.6 and the deceased had gone to Kanarsu Basti to purchase soap for taking bath and when they were approaching the Nala to take bath, the incident took place as the accused persons arrived there and began to assault. This witness states that accused Mahesh assaulted the deceased by means of a stone and so he went unconscious and thereafter, he also assaulted P.W.7 when the other two accused persons, namely, Raju and Sunil assaulted P.W.6 by stone on his head and by fist blows. On a plain reading of the evidence of these two witnesses, there arises great variance and material discrepancies are noticed with regard to the role of these accused persons as stated by them in assaulting the deceased as well as those two witnesses (Pw 6 and 7). The version in the FIR runs quite inconsistent with the evidence of P.Ws.6 & 7 when also the exact place of incident is not established. In such state of affair in evidence

falling from these two witnesses, the prosecution squarely have not established beyond reasonable doubt as to which accused caused what injury upon the deceased and what was/were the seat of the injuries on the person of all.

15. When admittedly the parties were in enimical terms, such evidence of P.Ws.6 & 7 in a generalized manner without inspiring any confidence in mind as to which accused did exactly what in the incident at least in relation to the deceased, the Trial Court, in our view, is not right in holding the accused persons guilty for commission of offence under section 302/323 read with section 34 of IPC merely finding that there being the incident, the deceased has met his death having received the injuries. The evidence of PW 6 and 7 who are relatives of the deceased and have the animosity with the accused persons requiring stricter scrutiny fail to stand up to the legal test. That apart when according to them, the incident took place in a public place, the prosecution has also to share the blame for not citing any independent witness to provide corroboration to the evidence of P.W.6 and 7 so as to overlook the infirmities in their evidence as already pointed out moreso when no such acceptable explanation on that score has also been offered for the Court to ignore that aspect. For the aforesaid, We are of the view that prosecution has failed to prove through clear, cogent and acceptable evidence beyond reasonable doubt, the role these accused persons in the said incident.

16. Now, coming to the injuries sustained by P.Ws.6 & 7 as against the FIR version that the accused persons assaulted P.Ws.6 & 7 by means of lathi causing bleeding injuries on their head, the version of P.W.6 is running in the same vein with the exaggeration that the accused persons

so assaulted by means of a stone. At this stage, the evidence of P.W.7 is standing to the effect that accused Mahesh assaulted the deceased by a stone and he too assaulted him on his face when the other two, namely, Raju and Sunil assaulted him and the deceased by fist blows and they further assaulted P.W.6 by stone on his head as well as dealt fist blows which is not consistent with the evidence of P.W.6. The evidence being not consistent with one another especially as to the role of the accused persons in assaulting the deceased P.Ws.6 & 7, We are of the considered view that the finding of the Trial court that the prosecution has proved its case against the accused persons beyond reasonable doubt in causing the injuries on the deceased as well as P.Ws.6 & 7 cannot sustain. As a result, the judgment of conviction and order of sentence under challenge are liable to be set aside.

17. Resultantly, all the three Appeals stand allowed. The judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Fast Track Court, Rourkela in S.T. Case No.143/6 of 2010-2011 are hereby set aside. संयमिक नयने

Accused (Mahesh Pradhan), who is stated to be in custody, be set at liberty forthwith, if his detention is not required in any other case. Other accused persons, namely, Raju Pradhan and Sunil Penthel, being on bail, their bail bonds shall stand discharged.

**(D. Dash),
Judge.**

Dr.S.K Panigrahi, J I agree.

**(Dr.S.K.Panigrahi),
Judge.**

Basu