

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.87 of 2006

Gobardhan Pradhan

....

Appellant

Ms. Ruchi Rajgharia, Amicus Curiae
-versus-

State of Orissa

....

Respondent

Mr. J. Katikia, Additional Government Advocate

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

JUDGMENT

09.03.2022

1. This appeal is directed against the judgment dated 24th June 2006 passed by the Sessions Judge, Kalahandi-Nuapada at Bhawanipatna in Sessions Case No.75 of 2005 convicting the Appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- and in default to undergo R.I. for six months.

2. This Court has heard the submissions of Ms. Ruchi Rajgharia, learned Amicus Curiae appearing for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the Respondent-State.

3. Bikram Pradhan (PW-1), the brother of the accused lodged as FIR with the Officer-in-Charge of Kesinga Police Station alleging that on 12th April 2005 when he had gone to Rupra Bazar for selling Gud, one Biranchi Majhi of his village informed him that his mother had fallen down and that his presence was urgently required. When he came to the house, he found that his mother had suffered a head injury and his father Nrupa Pradhan (PW-2) informed him that the accused at around 9.30 am had assaulted his mother with a walking stick and when it was broken assaulted her on her with a stone. The accused was also

said to have pelted a stone towards his father who tried to intervene. The deceased died soon after the arrival of PW-1.

4. The accused admitted that he had assaulted his mother with a stick and a stone, but pleaded that he was not in his proper senses at that time.

5. What transpired on the eventful day has come through the evidence of PW-3, the wife of the accused. She stated that at around 9 am on the date of the incident, the accused after taking his bath informed her that he would go to village Gidhamal. The deceased is said to have objected to it and advised the accused to do some work to feed his family. The accused was said to have got annoyed and stated that the old woman was always raising objections. He assaulted her with her own walking stick which then got broken. The deceased fell down crying, hearing which PW-2 sought to intercede. The accused nevertheless pelted a stone and assaulted the deceased with a stone on the right side of the ear. He then left the place and sat under a tree. The deceased was placed on a cot and information was given to PW-1 who arrived and gave her some water. Thereafter, the deceased died. This is more or less corroborated by PW-2.

6. The Doctor (PW-6) conducted the post mortem examination of the dead body of the deceased. He found one lacerated injury of size 5" x 3" on the right temporal region of the head just behind the ear and a fracture of the right temporal bone through which the brain matter was exposed. There was a bruise on the right scapular region and abrasion on the right side of the knee. He examined the three stones and the two broken pieces of the stick and opined that the injuries on the deceased might have been caused by them.

7. The strange part of the case was that even in his statement under Section 313 Cr PC, the accused admitted to having assaulted his mother and causing her injuries. The trial court concluded that the death was homicidal. A concerted effort was made before the trial court on behalf of the accused to urge that Section 84 IPC was attracted by arguing that the accused was insane at the time of the incident and was not capable of knowing the nature of his acts. Reliance was placed on the evidence of PW-2 who, in his cross-examination, stated that in his childhood, the accused would get fits and when in an irritated frame of mind would lift and throw his own child. It was stated that the accused at times lost control over himself. PW-2 admitted that the accused was unable to continue his treatment on account of poverty. This was corroborated by PW-3 who stated that from the date of her marriage to him, she found the accused behaving like a mad man.

8. According to the trial court, the crucial point in time when insanity had to be established was when the crime was actually committed. Since there was no evidence of the state of the mind of the accused immediately preceding or subsequent to the commission of offence, the trial court was not prepared to accept the plea of insanity.

9. Having heard the submissions of learned Amicus Curiae and the learned A.G.A., the Court is of the view that the plea of the accused that Section 84 of the IPC attracted merited more serious consideration at the hands of the trial court. Nothing precluded the trial court from getting an evaluation done of the accused even at the stage of trial. This was perhaps a case of lost opportunity.

10. The Court finds that the doctor (PW-6) described “both the injuries” suffered by the deceased to be “simple in nature”. The fact also remains that the accused did not use any dangerous weapons. He first used the walking stick of the deceased herself and later a stone locally available. Clearly, he acted out of sudden provocation when his mother tried to dissuade him from going to the village. He did not try to flee after attacking her. He is also not shown to have any history of criminal behaviour.

11. On an overall appreciation of the entire evidence, the Court is of the view that the case of the accused would stand covered under Section 304 Part-2 IPC. The accused has spent over 15 years in custody. The conviction of the accused is therefore converted from one under Section 302 IPC to Section 304 Part-2 IPC and the sentence awarded to the accused is also modified to the period already undergone. The entire fine amount and the default sentence is waived. The Appellant-Convict shall be released forthwith unless wanted in some other case.

12. The appeal is disposed of in the above terms.

13. An urgent certified copy of this judgment be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge