

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.32 of 2007

AFR

Chandra Bhumia and Others **Appellants**

-versus-

State of Odisha **Respondent**

Advocates, appeared in this case:

For Appellant : Mr. B.C. Parija, Advocate

For Respondent : Mrs. Saswata Patnaik
Addl. Govt. Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT
19.09.2022

Dr. S. Muralidhar, CJ.

1. The present appeal is directed against a judgment dated 15th November, 2006 passed by the learned Adhoc Additional Sessions Judge (FTC), Malkangiri in Criminal Trial No.13 of 2005 convicting the Appellants for the offence punishable under Sections 302/34 IPC and sentencing them each to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.5000/- and in default to undergo RI for six months. The trial Court also convicted each of the Appellants for the offence under Section 201/34 IPC and sentenced them to undergo RI for seven years and to pay a fine of Rs.2,000/- each and in default to undergo RI for two months.

2. During pendency of the present appeal, Appellant No.3 (Guru Bhumia) expired, thus leaving Appellant Nos. 1 and 2 in the fray. By an order dated 12th December, 2018 noting that the Appellants had spent more than 13 years in custody, they were directed by this Court to be enlarged on bail.

3. This Court has heard the submissions of Mr. B.C. Parija, learned counsel appearing for the Appellants and Mrs. Saswata Patnaik, learned Additional Government Advocate for the State (Respondent).

4. The case of the prosecution is that around four years prior to the incident, the deceased Mangala Bhumia had picked up a quarrel with his elder brother Guru Bhumia (now dead) and Sukalu Bhumia, Accused No.2 (A2) regarding sharing of Mohula, Mango and tamarind trees situated on their landed property. On 4th March, 2005 Minari Bhumia (PW 9) the wife of late Mangala Bhumia along with the deceased and their children went to see a Jatraat village Temurupalli. Then they returned at 8 pm in the night. They heard from one Bhagirathi, the younger brother of PW 9 that Guru Bhumia had set fire to her hay-stack kept in the thatch of his house. On the next date i.e. on 5th March, 2005 at about 6 am in the morning, the deceased along with his son Hari (PW 8) went to pluck Mohula in the jungle. After sometime, PW 8 came running to the house crying and reported that when the deceased asked Sukalu Bhumia the reason for setting fire to the hay-stack, Sukalu and Guru Bhumia jointly assaulted the deceased

with kicks and fist blows. The deceased started shouting and on hearing his shouting, Chandra Bhumia (A1) arrived at the spot. Chandra and Sukalu then caught hold of the deceased. Guru tied the hands of the deceased by means of a rope and thereafter pulled him.

5. When the Panchayat of the village searched for the three accused, they could not be traced. Ultimately, they could find Sukalu and Chandra, who were interrogated in the Panchayat by Trinath Majhi (PW 5) and Hari Naik (PW 6) before whom both the said accused confessed that they along with Guru Bhumia had tied the hands of the deceased; had taken him to the Masanibhatta Dangar and assaulted him by means of a stone on his head, chest, back and neck thereby killing him; and had hidden the dead body in Temurghatnala. The dead body was then fished out of the nala.

6. Thereafter, PWs 5 and 6 accompanied PW 9 to the police station (PS). The FIR was registered and sent to the Maithili PS as PS Case No.17 dated 6th March, 2005. The case was investigated by Debendra Narayan Das (PW 10), who was the Officer-in-Charge (OIC) of Maithili PS who conducted the inquest over the dead body on visiting the spot. He found the dead body of the deceased lying in Kalighat in the village Sarathiguda. The hands and legs of the deceased had been tied separately and one wooden plank was also tied with a rope to the body. The OIC seized the ropes, the wooden lathi and sent the dead body for postmortem examination. The OIC examined witnesses and seized the wearing apparels of the deceased. On 8th March, 2005 the OIC

apprehended Sukalu and Chandra Bhumia and recorded their statements under Section 27 of the Indian Evidence Act. On the basis of the disclosure statement of Chandra Bhumia, he recovered a stone from the place of concealment in the Masanighat jungle. On 9th March, 2005 he arrested Guru Bhumia and seized his wearing apparels. On completion of the investigation, he submitted charge sheet against the accused Appellant under Sections 302/201 read with Section 34 IPC.

7. On behalf of the prosecution ten witnesses were examined and none for the defence. This being a case of circumstantial evidence, the trial Court, on analysis of the entire evidence came to the conclusion that each of the links in the chain of circumstances had been proved and that they formed a continuous chain that pointed unerringly to the guilt of the accused.

8. To begin with the Court would like to recapitulate the governing legal principles in a case of circumstantial evidence. In *State of Tamil Nadu v. Rajendran (1999) 8 SCC 679* the Supreme Court held:

"6.... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused."

9. In *Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681*, the Supreme Court held:

"12....The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

10. That the death was homicidal stands proved by Dr. H.K. Kar, the Medical Officer, CHC, Maithili (PW 2), who found the following external injuries and internal injuries:

“EXTERNAL INJURY:

- i) There is peeling of skin over right chest, left thigh and abdomen,
- ii) An injury of size 9 cm x 8 cm x 4 cm over left Orbit extending to left Zygomaticbone and there is fracture of bone of left orbit and left Zygomatic bone. The injury is anti-mortem in nature and sufficient to cause death in ordinary course of nature.
- iii) Abrasions were present over chest and back but size cannot be ascertained due to peeling of skin.
- iv) Ligature mark present over both wrist and ankle joint of both foots
- v) There is external haemorrhage from the ear.

INTERNAL INJURY:

On dissection, there is haemorrhage inside brain matter and external haemorrhage as a result of fracture of left orbit and left zygomatic bone. All organs are congested and swelling.”

11. PW 2 opined the cause of death to be shock as a result of haemorrhage inside the brain and external haemorrhage as a result of fracture of the left orbit and left Zygomatic bone. The medical evidence clearly proved that the death was homicidal.

12. The evidence of PWs 5 and 6 clearly show that Sukalu Bhumia admitted in the Panchayat that he and other two accused had murdered the deceased as a result of the land dispute between them and then concealed the body. To the same effect is the evidence of PW 6 Hari Naik. He said however, Sukalu and Chandra replied that they along with Guru Bhumia had taken the deceased to the forest and killed him there. PW 9, the wife of the deceased fully corroborated the above version of both the witnesses. PW 8 was the minor son of the deceased could clearly speak about Chandra, Sukalu and Guru Bhumia tying the deceased by means of rope and pulling him to the forest. None of the witnesses have been able to be shaken in cross-examination. Their testimonies clearly prove that the three accused worked together and killed their younger brother over a land dispute in the manner indicated hereinbefore.

13. The minor inconsistencies in the deposition of the child witness PW 8 has been held by the trial Court to not be material. The deviations made by him in the cross-examination were natural. The evidence of PW 8 also proved the circumstance of the deceased being last seen in the company of the three accused and not being seen thereafter.

14. As regards the recovery of weapon of assault, Samapat Pujhari (PW 7) is an independent witness. The weapon of assault, i.e., the stone which was brought out from behind a bush was stained with blood. This witness was again unshaken in cross-examination. Therefore, the recovery of weapon of offence at the instance of the accused stood proved.

15. When the stone was sent to the RFSL, Berhampur, it was shown to be stained with human blood. All of the circumstances collectively taken form a continuous chain, and point unerringly to the guilt of the accused and no one else.

16. The Court is satisfied that the trial Court has not erred in convicting the Appellants for the offence aforementioned and sentencing them in the manner indicated above. There is no merit in the present appeal and it is dismissed as such.

17. The bail bonds of the Appellant Nos. 1 and 2 are hereby cancelled. They are directed to surrender forthwith and, in any event, not later than 3rd October, 2022 failing which the IIC of the concerned police station will take immediate steps to have them arrested and brought back to custody to serve out the remainder of their sentence.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K.Jena/Secy.