

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 22 of 2003

Babi@ Bibekananda Behera

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. Soubhagya Ranjan Jena

Advocate

Mr. Amit Kumar Nath

Advocate

For Respondent

:

**Mr. Janmejaya Katikia,
Additional Government Advocate**

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

JUDGMENT

08.08.2022

Dr. S. Muralidhar, CJ.

1. This is an appeal directed against the judgment dated 15th January 2003, passed by the Additional Sessions Judge, Angul in Sessions Trial No. 339 of 2001/ 25 of 2001, convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentencing him to undergo Rigorous Imprisonment (RI) for life. The Appellant was by the same judgment acquitted of the offence punishable under Sections 25 and 27 of the Arms Act.

2. It must also be mentioned here that by the impugned Judgment, the trial Court acquitted the co-accused Raju@ Rajendra Dehury.

3. The case of the prosecution was that on 4th December, 2000 while the deceased Manoranjan Pradhan was proceeding in a cycle, the co-accused Raju@ Rajendra Dehury stopped the deceased and the present Appellant fired the gun.

4. The informant- Hrudananda Behera (PW-4) was at that point in time, proceeding to the village when he noticed that Raju had detained the deceased and the present Appellant fired on him. Then the deceased fell down on the ground with bleeding injuries. The informant (PW-4) ran away from the spot out of fear while the accused persons fled away towards the forest. PW-4 then informed his employer and both of them returned to the spot. When PW-4 gave water to the deceased, the latter told him that the present Appellant had fired at him and that the co-accused Raju had come with him. PW-4 stated that he was the one who got the FIR scribed and then signed on it.

5. Relying on the eye-witness testimony of PW-4 and interpreting the dying declaration made by the deceased to him prior to his death, the trial Court concluded that it was the Appellant who fired the gun and killed the deceased. As far as the co-accused was concerned, apart from the prosecution stating that he came along with the Appellant, there was nothing to show that the Appellant conspired with him. In other words, it was held that the

mere presence of the co-accused would not be enough to attract the offence punishable under Section 120-B of the IPC.

6. This Court has heard the submissions of Mr. Soubhagya Ranjan Jena and Mr. Amit Kumar Nath, learned counsel for the Appellant and Mr. Janmejaya Katikia, learned Additional Government Advocate for the State.

7. One of the submissions made was that PW-4, in his cross-examination, admitted that Chita Ranjan Pradhan (PW-5) had scribed the report while looking to the report scribed by the IO and that he merely signed on the FIR which already stood scribed.

8. The precise language used in the cross-examination of PW-4 in this regard reads as under:

“After burning the deadbody being called by the I.O., I went to the P.S. the I.O. told to write that Raju caught the deceased and Bobby fired, as per instruction of I.O. the F.I.R. was scribed and I signed on it. Chittaranjan copied out from the paper which was written by the I.O. and I signed on it. xxx xxx xxx”

9. There is a difference between the word ‘instruction’ and the word ‘dictation’. Preparing the FIR on the ‘instructions’ of the IO is not the same as FIR being written on the ‘dictation’ of the IO. Apart from this, the only other criticism of PW-4 was that he was related to the deceased as brother-in-law and therefore, his evidence is not trustworthy.

10. Although PW-4 might be a related witness, he does not necessarily become an 'interested witness'. This distinction was brought out clearly in *State of Rajasthan v. Kalki (1981) 2 SCC 752*, where it was explained as under:

“7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a “highly interested” witness because she “is the wife of the deceased”, and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an ‘interested’ witness. She is related to the deceased. ‘Related’ is not equivalent to ‘interested’. A witness may be called ‘interested’ only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be ‘interested’. In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents.”

11. This legal position was reiterated in *State of Uttar Pradesh v. Kishanpal (2008) 16 SCC 73*. While the Court has to be cautious in accepting such evidence, it has to ensure that it is corroborated in material particulars by other independent witnesses.

12. The evidence of Dr. Manas Ranjan Samantaray (PW-10) is relevant. He noticed the following external injuries present over the dead body:

“i) Punctured wound having depth 1/4" over flexor aspect of right arm.

ii) Two punctured wounds depth 1 1/2" over ulna border of right fore arm with fracture of right ulna.

iii) 5 punctured wounds over anterior and lateral aspect of left arm.

iv) One punctured wound depth 1" over extensor surface of left arm.

v) One punctured wound depth 1/2" over top of left shoulder.

vi) One punctured wound depth 1 and 1/2" over deltoid region of left arm.

vii) Two punctured wounds 1" depth each over left scapular region.

viii) 6 numbers of punctured wound out of which 2 wounds having depth 1 and 1/2" over left side of neck.

ix) 3 numbers of punctured wounds 2" apart over posterial axillary line of left axilla.

x) One punctured wound on left side of anterial abdominal wall.”

13. There were numerous internal injuries as well. The opinion of PW-10 was that the death of the deceased was due to shock and external haemorrhage due to the injuries on the left side of the neck, and vital organs like lung, duodenum and transverse colon. The above medical evidence therefore, completely corroborates the narration of the events leading to the death of the deceased.

14. The credibility of either PW-4 or PW-10 could not be shaken in cross-examination. Therefore, the eye-witness testimony of PW-4 is fully corroborated by the medical evidence.

15. It is next submitted that the prosecution failed to prove any motive for the crime and therefore, the crucial aspect of the case of the prosecution remains unproved.

16. This is a case based on direct evidence. In fact, the case of the prosecution rests on the eye-witness testimony of PW-4 who was found to be cogent and consistent. His evidence has been fully corroborated by the medical evidence. In a case of direct evidence like the present one the question of motive is not relevant. In other words, in a case based on direct evidence, absence of motive would not result in the accused being given the benefit of doubt. In *Bikau Pandey v. State of Bihar* (2003) 12 SCC 616 it was stated that absence of motive “is of no consequence and pales into insignificance when direct evidence establishes the crime.” Again in *State of U.P. v. Kishanpal* (2008) 16 SCC 73 it was held as under:

"39...The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if

the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

17. The above legal position was reiterated in ***Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91*** where it was held:

"24...It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance."

18. This Court is unable to find any error having been committed by the trial Court in proceeding to convict and sentencing the Appellant in the manner indicated hereinbefore.

19. Consequently, there is no merit in this appeal and it is accordingly dismissed but, in the circumstances with no orders as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge