

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.31 of 2005

Chandra Khadia

....

Appellant

Mr. B.K. Ragada, Advocate

AFR

-Versus-

State of Odisha

....

Respondent

Mr. J. Katikia, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT :21.04.2022

R.K. Pattanaik, J.

1. Impugned judgment dated 21st December, 2004 passed in S.T. No.344/7 of 03-04 by the learned Adhoc Additional District and Sessions Judge (FTC), Sambalpur convicting the Appellant under Section 302 IPC and sentencing him for life imprisonment and to pay fine of Rs.5000/- in default to undergo simple imprisonment for two years is under challenge in the present appeal.

2. Heard Mr. B.K. Ragada, learned counsel for the Appellant and Mr. J. Katikia, learned AGA appearing for the State.

3. Mr. Ragada contends that the order of conviction cannot be sustained considering the discrepancies in the evidence. Mr. Katikia, on the other hand, would contend that the materials on record clearly proved the involvement of the Appellant. The further contention of Mr. Katikia is that the plea of alibi by the

Appellant does not deserve consideration. Lastly, Mr. Katikia contends that the impugned judgment dated 21st December, 2004, does not suffer from any legal infirmity and therefore, it should not be disturbed.

4. The alleged incident took place on 16th June, 2003. An FIR was lodged in connection with the incident. Consequent upon lodging of FIR, G.R. Case No.218 of 2003 was registered. At the end of investigation, the Appellant was charge sheeted under Section 302 IPC. Finally, the learned court below held that the Appellant to be the author of the crime and passed the order of conviction and sentenced him accordingly.

5. The plea of the Appellant is of alibi and false implication.

6. Prosecution adduced oral and documentary evidence. However, the Appellant led no defence evidence. The learned court below discussed the evidence on record and ultimately held that the involvement of the Appellant was fully established. The defence plea was rejected by the learned court below and then, the Appellant was convicted under Section 302 IPC.

7. As revealed from the record, P.W.1 lodged the FIR and deposed during trial that on the date of occurrence, while he was at home at about 10.30 P.M., P.W.4 informed him about the Appellant having killed the victims, whereafter, he went to the spot house with others and found one of the deceased, namely, Raj Khadia lying in the kitchen floor and was asking for water and the other victim, namely, Tahasil Khadia on the verandah of P.W.3. It is further deposed by P.W.1 that on being asked, the

deceased, namely, Tahasil Khadia told them being assaulted by the Appellant. According to P.W.1, the deceased persons had gone to the house of the Appellant and the incident happened on account of a family feud over a land dispute. P.W.1 proved the FIR as Ext.1. P.W.1 also deposed that he was at the spot when the IO, namely, P.W.11 arrived. In fact, P.W.1 is a Gramarakhi. P.W.1 was cross-examined but his testimony could not be dented. Likewise, P.W.2 deposed that he was at home and called by P.W.1 and with others went to the house of the Appellant and noticed that deceased, namely, Raj Khadia with injuries and found the other deceased, namely, Tahasil Khadia lying on the verandah of P.W.3 with multiple injuries and could learn that the Appellant assaulted both by means of a *bhujali*. P.W.2 proved the inquest reports in respect of the deceased as Ext.2&3 respectively. The defence cross-examined P.W.2 but nothing substantial could be elicited in order to discredit his testimony. P.W.2 also identified and proved the material objects, such as, M.Os. II, III & IV. The evidence of P.W.3 and P.W.4 also supported the version of prosecution. P.W.3 deposed that the victims had lunch with him and thereafter, proceeded to the house of the Appellant. P.W.3 even deposed that he witnessed the alleged incident during which the Appellant was found assaulting the deceased persons by means of a *bhujali* but out of fear, confined him in his house and after some time, the deceased, namely, Tahasil Khadia knocked the door and when it was opened, he fell on the ground and asked for water and also disclosed that the Appellant to have assaulted him. During cross-examination of P.W.3, nothing adverse could be elicited affecting

his credibility. Similar is the evidence of P.W.4. Both the deceased were alive when P.W.3 and P.W.4 and others reached at the spot. In fact, the deceased, namely, Tahasil Khadia informed P.W.3 and P.W.4 that the Appellant to have assaulted. Furthermore, P.W.6 deposed that the Appellant confessed before him about the incident. So to say, the Appellant had made extra-judicial confession before P.W.6. During cross-examination, P.W.6 admitted to be not a relation of the Appellant. Being an outsider and related to the Appellant, such claim of P.W.6 does appear to be reliable. P.W.7 also deposed in a similar fashion like P.W.1 for having visited the spot shortly after the alleged incident and he was also subjected to cross-examination but defence failed to elicit anything to discredit him.

8. P.W.10 conducted the postmortem over the dead body of the deceased, namely, Raj Khadia and found number of incised wounds and opined that all the external and internal injuries could be possible by means of *bhujali* blows. Similarly, P.W.10, while holding postmortem over the body of deceased, namely, Tahasil Khadia noticed multiple injuries. P.W.10 indicated the details of the internal and external injuries in the P.M. reports, such as, Exts.11 and 12 respectively. According to P.W.10, all the injuries to be *ante mortem* in nature and might have been caused by a sharp cutting weapon like *bhujali*. During cross-examination, P.W.10 revealed that the weapon of offence i.e. M.O.V was produced before him on 21st July, 2003 for examination and opinion and thereafter, the reports under Exts.15 and 16 were prepared.

9. The prosecution case received corroboration from the medical evidence led through P.W.10. Besides the above, IO as P.W.11 deposed regarding the investigation and collection of incriminating materials. P.W.11 recovered the weapon offence from the Appellant and seized it under Ext.8. The chemical examination report has been proved as Ext.22 and serology report as Ext.23. During cross-examination of P.W.11, nothing adverse could be elicited either. If the evidence on record is read as a whole, there appears no escape from the conclusion that the Appellant carried out the assault killing both the deceased.

10. What was the motive of the Appellant? P.W. 4 claimed about existence of a land dispute between the parties. As to what transpired during the incident which led to the assault on the deceased persons by the Appellant is not available. There is no evidence to show whether there was any altercation between both the sides over any issue relating to the land dispute whereafter the Appellant committed the alleged mischief. At times, motive is not ascertained or difficult to be unearthed. As law is well settled, absence of motive is a circumstance for consideration and may even weaken the prosecution case but it could disappear or lose its relevance when there is direct evidence. In the ***State of Haryana v. Sher Singh AIR 1981 SC 1021***, the Supreme Court held that prosecution is not bound to prove motive in a criminal case which is normally known to the perpetrator of the crime only and may not be known to others. Further, in ***Gurucharan Singh v. State of Punjab AIR 1971 SC 1656***, it is observed by the Supreme Court that where positive evidence against the

accused is clear, cogent and reliable, motive is of no importance. In view of the above position of law, question of motive and its absence becomes immaterial, if the evidence, direct or circumstantial, is otherwise reliable and trustworthy. In the instant case, the evidence of P.W.3 and P.W.4 besides others as none turned hostile clearly proved the occurrence and direct involvement of the Appellant. The oral testimony of P.Ws. 3 and P.W.4 and others, who had been to the spot, is found to be quite natural and spontaneous besides being reliable and therefore, the Court is of the considered view that such evidence is sufficient to accept the version of the prosecution. The material witnesses did not have any enmity to depose falsely against the Appellant. No such convincing evidence has either been elicited by the defence. All the witnesses including P.W.1 had no axe to grind against the Appellant and their evidence found to be independent and worthy of credence. That apart, the testimony of P.W.6 assumes no less importance before whom the Appellant said to have confessed. P.W.6 is an outsider and not related to the Appellant. There is also no ground to doubt the credibility in the claim of P.W.6 in so far as the extra-judicial confession is concerned. The prosecution evidence is rather found to be direct and reliable proving the involvement of the Appellant.

11. Regarding the plea of alibi, the Court finds it to be worthy of outright rejection. In this regard, there is no evidence led by the Appellant. The law on the plea of alibi is that the burden lies heavily on the accused and strict proof is required to establish it. Mr. Katikia cited a decision in the case of *Dudh Nath Pandey v.*

State of U.P. (1981) 2 SCC 167 while contending that the plea of alibi of the Appellant must fail in absence of any evidence being adduced. In the decision (*supra*), it is held that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of occurrence by reason of him being present at another place and it can only succeed by proving that he was at a far away distance from the spot and could not be present when the crime was committed. Another decision of the Supreme Court in *Binoy Kumar Singh v. State of Bihar (1997) 1 SCC 283* is placed reliance on by Mr. Katikia, wherein, it has been held that the plea of alibi is an exception which is relevant in view of Section 11 of the Indian Evidence Act, 1882 and the burden to prove it, is over the accused. In the case of the Appellant, he was rather found present at the spot which is well proved by evidence and hence, a plea which has been raised only for the sake of it, shall have to fail.

12. Having regard to the evidence on record, the Court arrives at an inescapable conclusion that the Appellant alone to have perpetrated the crime during which the deceased persons were assaulted brutally resulting in their death. As a consequence, the prosecution can be said to have proved the case beyond all reasonable doubt and therefore, the order of conviction merits no interference.

13. Accordingly, it is ordered.

14. In the result, the JCRLA stands dismissed. As a consequence, the impugned judgment dated 21st December, 2004 passed in S.T.

No.344/7 of 03-04 by the learned Adhoc Additional District and Sessions Judge (FTC), Sambalpur is hereby affirmed. Consequently, the bail bond of the Appellant stands cancelled and he is directed to surrender forthwith to serve the sentence.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice



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