

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA NO.23 OF 2012

From the judgment of conviction and order of sentence dated 09.11.2012 passed by the learned Adhoc Additional Sessions Judge(Fast Track Court), Keonjhar in S.T. Case No.08/38 of 2011 arising out of G.R. Case No.921 of 2010 of the Court of learned S.D.J.M., Keonjhar.

Purna Chandra Naik @ Punia

Appellant

-versus-

State of Odisha

Respondent

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

For Appellant

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M/s. Susmita Pattanaik,
S.S. Pattanaik, Advocates.

For Respondent

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Ms. Samapika Mishra,
Additional Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE SASHIKANTA MISHRA

DATE OF HEARING : 10.11.2022 : DATE OF JUDGMENT:17.11.2022

D.Dash,J. The Appellants, by filing this Appeal, from inside the jail, has called in question the judgment of conviction and order of sentence dated 09.01.2012 passed by the learned Adhoc Additional Sessions Judge (Fast Track Court), Keonjhar in S.T. Case No.08/38 of 2011

arising out of G.R. Case No.921 of 2010 corresponding to Turumunga P.S/. Case No.70 of 2010 of the Court of learned S.D.J.M., Keonjhar.

By the same, the Appellant (accused) has been convicted for commission of offence under section-302 of the IPC and sentenced to undergo imprisonment for life and pay fine of Rs.5,000/- with the default stipulation to undergo simple imprisonment for six (6) months.

2. The prosecution case in short is that on 30.09.2010 around 11 pm to 12 mid night, the occurrence took place in the house of the accused at village Murusuan. The Deceased Manjulata had married the accused about three (3) months before the said incident. She was residing in the house of accused. On that day, both husband and wife(accused and the deceased) were in their bed room, when the attention of the father of the accused namely, Dusan (Informant-P.W.1) was drawn to the screaming of the deceased. He then tried to open the door to rescue her, but the door was found to have been bolted from inside. He thus was prevented from saving the situation. It is stated that shortly after that, the accused fled away from the place and then P.W.1 found the dead body of the deceased lying with multiple wounds, more particularly on her neck. One Farsa was also seen to be lying there. On 14.09.2010, around 8 am, the father of the accused

namely, Dusan (P.W.2) having lodged a written report before the Inspector-in-Charge, Turumunga P.S., the investigation commenced.

3. During investigation, inquest was held over the dead body of the deceased and the statements of the witnesses including that of the Informant (P.W.1) present were recorded. Postmortem examination over the dead body of the deceased was conducted on police requisition, incriminating articles including that Farsa was seized under seizure lists. The Doctor (P.W.3) conducting postmortem examination opined the injuries to be sufficient in ordinary course of nature to cause the death and that those injuries can be caused by the weapon(Farsa) that he examined. Being received finally, the charge-sheet was submitted placing the accused to face the trial for commission of offence under section-302 of the IPC.

4. Learned Sub-Divisional Judicial Magistrate, Keonjhar having taken cognizance of the offence, after observing the formalities committed the case to the Court of Sessions. That is how the trial commenced by framing charge against the accused for offence under section-302 of the IPC.

Accused took the plea of complete denial and false implication.

5. From the side of the prosecution in total six (6) witnesses have been examined. P.W.1 is the father of the accused and P.W.4 & 5 are the parents of the deceased (parent-in-laws of the accused), P.W. 3 and 6 are the Medical officer and Investigating Officer respectively. One Madhu Sudan Naik, who happens to be a co-villager of the accused has been examined as P.W.2. Besides the above, the prosecution has proved several documents such as Exts.1 to 13. The F.I.R. in the case has been admitted in evidence and marked as Ext.5. The inquest report and postmortem report have been proved as Exts.2 and 1 respectively. Various seizure lists showing seizure of incriminating articles have also been proved. The answer of the Doctor to the query made by the Investigating Officer as to user of that Farsa in causing the injuries noticed by him is Ext.2.

6. The Trial Court accepting evidence of Doctor (P.W.3) and his report, Ext.1 and further taking into account the other evidence of the witnesses and the Police officer holding the inquest over the dead body has held the death of the deceased to be homicidal which in fact is not under challenge from the side of the defence and that has also been admitted by the accused.

Having said as above, the Trial Court has rightly proceeded to examine the evidence of P.W.1 who is the star witness to the prosecution. As per the prosecution case, the accused and his wife (deceased) were there in one room of the house where P.W.1, father of the accused i.e. the father-in-law of the deceased was the other man then residing too. The Trial Court has relied upon the evidence of P.W.1 and having said that the evidence of this witness though not par with his earlier statement, the same can be relied upon and as then in the circumstance the accused has not given any plausible explanation as to how the deceased sustained such fatal injuries for which she ultimately succumbed, the Trial Court has fastened the guilt upon the accused. The view of the Trial Court on the available evidence is that under the circumstances as required under section-106 of the Evidence Act, the accused has bound to provide explanation to the above effect as that was within his special knowledge. Accordingly, the accused has been convicted for the commission of offence under section-302 of the IPC and sentenced as aforestated.

7. Learned Counsel for the Appellant submitted that the Trial Court has completely erred in relying upon the evidence of P.W.1 and putting much of emphasis on the same in concluding that it is the accused who

is the perpetrator of the crime. He further submitted that when P.W. 2 has not supported the case of the prosecution and has resiled from the previous statement which was said to have recorded by the Investigating Officer in course of investigation which he has denied to have so stated, the Trial Court should have completely eschewed the evidence of that P.W.1 from the arena of consideration as here absolutely no such other material surfaces in the evidence of P.W. 1 to provide support to the prosecution case despite scathing cross-examination of the witness (P.W.1), he submitted that the Trial Court having taken a view as if the statement which the witness is said to have made before the Investigating Officer, is the substantive evidence has committed grave error in law. He further submitted that when the evidence of P.W.2 is discarded, there remains no proof in support of the fact so projected that the deceased and accused on that particular night were staying together in the house and that too in a room being bolted from inside and in that light the accused had fled away from the house. He, therefore, submitted that the Trial Court's finding the accused guilty for having committed the murder of his wife is not on the base erected through legal evidence, but is merely based on conjecture and surmises. According to him, the order of conviction is

not at all legal but may be a moral one and that is liable to be set at naught.

8. Learned Counsel for the State while supporting the ultimate conclusion of the Trial Court that the accused is guilty of commission of offence under section-302 of the IPC in causing the murder of his wife by intentional causing her death, however does not dispute the position that P.W.1 being the star witness for the prosecution has not supported the prosecution. He however, submitted that simply for that reason that P.W.1 has turned hostile when other circumstances are available in evidence that accused and deceased were staying together in the house and their relationship being that of husband and wife, when the accused is not coming forward with an explanation as to how the wife (deceased) sustained so many serious injuries on her person during that night in view of the difference between the accused and deceased that was going on for quite some time before the incident. The accused has been rightly found to have committed the offence under section-302 of the IPC.

9. Keeping in view the submissions made; We have carefully read the judgment passed by the Trial Court. We have also extensively travelled through the evidence adduced by the prosecution by

examining six witnesses and perused the documents admitted in evidence from the side of the prosecution and marked Exts. 1 to 13.

10. In view of the evidence of the Doctor (P.W.3) and the postmortem examination report, Ext.1, which has been proved through him with other evidence including that of the Investigating Officer holding inquest over the dead body noticing the injuries as available on record, the nature of death has to be said to be homicidal and that is also not under challenge.

11. The F.I.R. in the case has been lodged by the father of the accused, who has come to the dock as P.W.1. The P.W.1 has stated that he had lodged the F.I.R. which had been written by one person as per his request. Who is that person is of course not stated nor it is the evidence of the Investigating Officer P.W.6 that he had enquired from P.W.1 as regards the person who had scribed the F.I.R. and identified him. This P.W.1 is not saying that whatever he had stated to that person have been reduced into writing and that he had found to have been correctly been written down. No such step has been taken from the side of the Investigating Officer to ascertain the scribe of the F.I.R. in citing him as a prosecution witness to prove that P.W.1 has so stated before him and that he truly and correctly had reduced into

writing. The P.W. 1 is an illiterate person and it is said that the F.I.R. contains his thumb impression. This too has not been stated by P.W.1 that he had put the thumb impression in the F.I.R., Ext.5. As already stated that scribe of the F.I.R. having not been examined, the endorsement in the Ext.5 while taking the thumb impression of the P.W.1 has not been proved. This P.W.1 has not at all supported the prosecution case. It is his evidence that on the next day, he came to know about the incident. The witness having been permitted to be cross-examined by the learned Public Prosecutor, it is seen that except confronting him with what he had stated in his statement recorded under section-161 of the Code of Criminal Procedure, nothing more has been put to the witness to elicit some evidence from his lips tending to support of the prosecution. The witness having been confronted with the previous statement during cross-examination has gone to deny to have so stated before the Investigating Officer. On the other hand, the defence witnesses have stated that accused used to sleep in the shop house and on the relevant night, he was also there having gone to the shop after taking dinner and had not returned in the night. P.W.1's version no doubt before the Police is that when the deceased and accused were sleeping together in the room, he heard

screaming of the deceased and immediately having attempted to open the door, could not do so as it was bolted from inside and he thus failed to make all attempt to rescue the deceased. He had further stated before the Police that some time thereafter the accused ran away from the house and didn't return, when he saw the dead body of the deceased lying with multiple wounds including those on neck. The witness having deposed in Court during trial on oath, that he had not given such statement before the Police, that version being the prior statement in course of investigation, it cannot be taken as substantive evidence and thus cannot be so utilized. As already stated no further material has been brought out from this witness during cross-examination by the prosecution in support the prosecution case. The Trial Court is found to have gone completely wrong in placing reliance upon the evidence of the witness P.W.1 in saying that the statement before the Police can be taken into consideration in view of the proviso to section-162(1) of the Code of Criminal Procedure which can be sustained. In this context, he had relied upon the decision in case of ***Bhagaban Dash Vrs. NCT of Delhi***; 2011 (Crl. LJ) 2903 (SC). The placitum having been quoted, it appears that the Trial Court has not gone to read the said judgment of the Apex Court to ascertain the facts and circumstances under which

the same had been rendered. In that particular case on one aspect, the witness had resiled from her earlier statement, when the other aspect had come from the lips of that witness. So holding that the principle *falsus in uno falsus in omnibus* has no application in India, the Court had undertaken the exercise to separate the grains from the chaffs.

Here, We are however dealing the evidence of P.W.2 being faced with a different situation altogether. He has not stated anything in Court as to whatever it was there in the statement recorded under section-161 Cr.P.C. so also in the F.I.R., which had not been so proved to be the version of P.W.1 at that time.

12. The evidence of P.W.1 when is of no avail to the prosecution, no other evidence remain with us that the deceased was in the house of the night with his wife and therefore, the question of his offering any explanation much less as plausible as to how the deceased received the injuries does not stand as the legal requirement since here the burden of proof is not shifting from prosecution to the shoulder of the accused by way of the principles envisaged in section-106 of the Evidence Act coming into play. The Trial Court's finding of guilt of the accused thus is not found to be on a legal base created through legally acceptable evidence. Accordingly, We find that the judgment of conviction

holding the accused guilty for commission of offence under section-302 of the IPC cannot be sustained.

13. In the wake of aforesaid, the Appeal stands allowed. The judgment of conviction and order of sentence passed by the learned Adhoc Additional Sessions Judge (Fast Track Court), Keonjhar in S.T. Case No.08/38 of 2011 are hereby set aside. The Appellant (accused) be set at liberty forthwith in case his detention is not so required in any other case.

Mr.Sashikanta Mishra, J.

I Agree.

*(D. Dash),
Judge.*

*(Sashikanta Mishra),
Judge.*