

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.66 of 2007

Arjun Jayapuria

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates, appeared in this case:

For Appellant

:

Mr. B.K. Ragada, Advocate

For Respondent

:

**Mr. J. Katikia
Addl. Govt. Advocate**

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

24.09.2022

Dr. S. Muralidhar, CJ.

1. This is an appeal directed against a judgment dated 7th May, 2007 passed by the learned Additional Sessions Judge, Sambalpur in Session Trial No.30/18 of 2005 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.10,000/- and to undergo RI in default for one year.

2. The case of the prosecution is that a telephonic information was received on 27th October, 2004 at a person at village Kusanpuri

was moving with a cut head of a women. The Officer-in-Charge (OIC) of Sasan Police Station (PS), Mr. Pradip Kumar Sahoo (PW 13) made entry in the station diary and then proceeded to village Kusanpuri. When he reached the village at around 12 noon, he received a written report from one Suratha Jayapurua (PW 4), who happened to be the grand-son of the deceased Ainthapatri Jayapurua. PW 4 stated that at around 10 am while he was at his house, his mother Jastobantia Jayapurua (PW 1), who had gone for a bath with the deceased, rushed back into the house and disclosed to PW 4 her son that the present Appellant, the uncle of PW 4 and the youngest son of the deceased had killed the deceased by means of a katari. Along with PW 4 his father Dalaganjan Jaypurua (PW 4) was also present.

3. Hearing the above information from PW 1, both PWs 4 and 7 then rushed to the spot i.e. near a tube well and found the Appellant giving successive blows to the neck of the deceased by means of a katari and the deceased was lying in a critical condition.

4. PW 13 reached the spot. He found that the head of the body had been completely severed and the present Appellant was sitting near the dead body holding Katari. PW 13 then seized the sample earth, the blood stained earth, conducted inquest over the dead body by joining the head with the body. He examined the inquest witnesses and then sent the body for post-mortem. He seized the weapon of offence from the Appellant and arrested him. He also

seized the wearing apparels of the Appellant. On conclusion of the investigation, charge sheet was led against the Appellant, who pleaded not guilty and claimed trial.

5. Thirteen witnesses were examined for the prosecution and non for the defence. The trial Court on an analysis of the evidence came to the conclusion that the prosecution had been able to prove the case of the Appellant beyond all reasonable doubt and proceeded to convict and sentence him in the manner indicated here-in-before.

6. This Court has heard the submissions of Mr. B.K. Ragada, learned counsel for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the Respondent (State).

7. There are three eyewitnesses put forth by the prosecution. PW 1 is a daughter-in-law of the deceased, who accompanied the deceased to Maltijorato take bath. He states that on the way to Jora, she went to the shop of one Prafulla who purchasing shop power and at that time the deceased was standing near a peepal tree. When PW 1 returned from the shop she did not find the deceased near the tree. When she reached near the tube well, she noticed that Appellant giving successive blows on the neck of the deceased by means of a katari. Seeing this PW 1 rushed to her house and informed her husband (PW 7). In cross examination the witness reiterated that she had seen the accused in giving successive blows on the neck of the deceased by means of a katari

and that she had seen it from a distance of two-three feet. She also confirmed that on the same she had been examined by the Investigating Officer (IO). She denied the suggestion that her husband i.e. PW 7 had committed the murder and that they had falsely implicated the Appellant.

8. The Court finds the evidence of PW 1 to be natural and probable. She was a direct eyewitness to the occurrence and her evidence remained unshaken in cross examination. There was absolutely no need for her to falsely implicate the present appellant particularly since there is no enmity between them.

9. Turning now to the evidence of PW 4 who is a grand-son of the deceased, he is very clear about witnessing the Appellant assault his grand-mother by means of successive blows to her neck with akatari.

10. Mr. Ragada, learned counsel for the Appellant sought to point out that in her cross examination this witness stated “I have not been examined by the police during the course of investigation for at any point of time. For the first time, I have stated regarding the occurrence in Court today and had not disclosed about the occurrence anybody else.” However, as pointed out by Mr. Katikia, learned Additional Government Advocate, PW 13 in his deposition confirmed that PW 4 was in fact examined by him on the date of the incident itself. It is likely that this witness did not understand what was exactly being asked in the cross-

examination. Apart from this, there is nothing in the cross examination that raises any doubt as to the truthfulness of the witness.

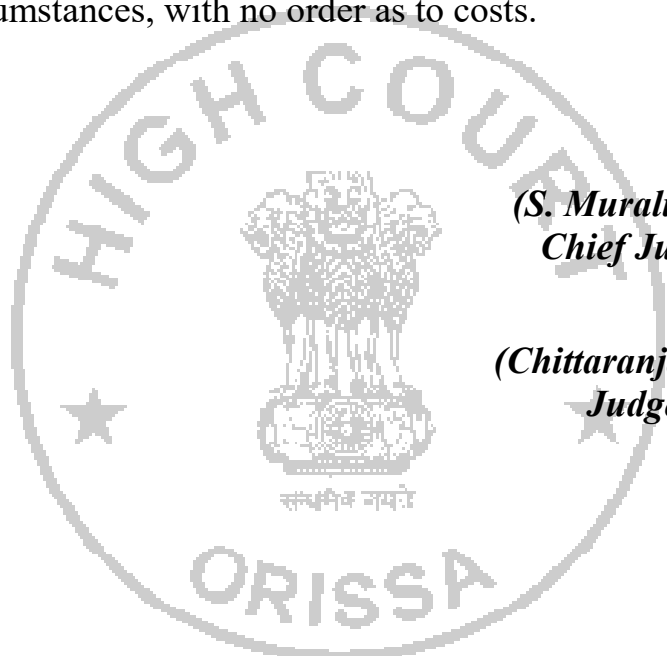
11. The next witness PW 7 the elder son of the deceased, who again witnessed along with his son PW 4 the assault on the deceased by the present Appellant with a Katari. This witness explained in cross-examination the seemingly inconsistent statement whether the accused and the deceased were staying with the family of PW 7 as a joint family or, as suggested by PW 1 they were having a joint mess. He explained how the deceased was staying with her elder son i.e. PW 7 while taking her food with the present Appellant. In any event, this does not appear to be such an important aspect of the matter when the essential aspect the evidence of the three eyewitnesses i.e. PWs 1, 4 and 7 is examined viz, their witnessing the assault of the deceased by the Appellant. The consistent versions of PWs 1, 4 and 7 have been corroborated by independent witnesses like PW 2 who reached the spot after hearing of the assault and found the body of the deceased lying at the spot with her head completely severed and the Appellant standing near the dead body. PW 3 was the witness to the inquest and also states likewise.

12. The medical evidence and the serological evidence also corroborate the eyewitness testimonies.

13. Having examined the evidence afresh with the assistance of learned counsel for the parties and having perused the impugned judgment of the learned trial Court, the Court is satisfied that the prosecution has been able to prove the case against the Appellant beyond all reasonable doubt.

14. The impugned judgment suffers from no legal infirmity which calls for interference. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

S.K.Jena/Secy.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge