

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No.85 of 2006

Guru @ Gura Gouda

.... ***Appellant***
Mr. S.C. Mekap, Advocate

-Versus-

State of Odisha

.... ***Respondent***
Mr. J. Katikia, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:04.05.2022

R.K. Pattanaik, J.

1. Impugned judgment dated 21st August, 2006 passed in Sessions Case No.157 of 2003 by the learned Sessions Judge, Kalahandi-Nuapada at Bhawanipatna is under challenge at the behest of the Appellant for having been convicted under Section 302 IPC and sentenced to undergo R.I. for life and pay a fine of Rs.5000/- in default to undergo R.I. for six months.

2. In the instant case, a report was lodged at the local PS for an incident dated 22nd May, 2003 alleging therein that the Appellant by means of an axe assaulted and killed the deceased. The facts in detail with regard to the occurrence were described in the F.I.R. As a result, a case was registered. After completion of investigation, charge sheet was submitted against the Appellant under Section 302 IPC for having intentionally caused murder of the victim. In course of trial, the prosecution adduced oral and documentary evidence. But, no defence evidence was

led from the side of the Appellant. Finally, the learned court below, considering the evidence of the prosecution and defence plea held the Appellant guilty and then, passed the impugned judgment dated 21st August, 2006.

3. Heard Mr. S.C. Mekap, learned counsel for the Appellant and Mr. J. Katikia, learned AGA for the State.

4. The informant, who is the brother of the deceased, lodged the F.I.R. on 22nd May, 2006 stating that on that day at about 2.00 p.m., the Appellant had an exchange of words with the deceased at a place in the village, where after, the alleged incident happened during which the former assaulted the latter by means of an axe.

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

6. As far as the evidence is concerned, the informant as P.W.1 deposed that at the time of alleged incident, while he was engaged in preparing cakes in the house of one Ganga Gouda, at that time, his son, namely, P.W.8 informed him about the Appellant to have killed the deceased in front of the house of one Dambu Gouda, later to which, he went to the spot and found the victim lying dead with bleeding injuries on his left side neck and back and the weapon of offence was lying by the side of the dead body. While under examination, P.W.1 identified the axe and proved it as M.O.I. It has been further deposed by P.W.1 that the police arrived in the night but conducted inquest over the dead body on the next day morning in his presence and others and also seized M.O.I and thereafter, sent the dead body for *postmortem*.

P.W.1 is not an occurrence witness and he was informed about it by P.W.8. After having learnt about the incident, P.W.1 rushed to the spot and found the dead body of the deceased. During cross-examination, P.W.1 elicited that P.W.8 had loudly shouted on seeing the incident while standing near the spot which is at a distance of 150 ft. from the house of Ganga Gouda. P.W.1 demonstrated during trial about the distance between the houses of Ganga Gouda and P.W.3. From the above elicitation, it appears that the spot to be at a close distance from the house where P.W.1 had been engaged. P.W.1 further elicited that one Ghasi Gouda and three others went to the P.S. but he and the village Gramrakhi remained at the spot in the night. P.W.1 appears to be a natural witness and responded in a manner which was normally expected from him. Furthermore, P.W.2 is the wife of the victim and she deposed that on the day of occurrence, the Appellant had come to their house and then, both left together and sometime later, P.W.3 shouted by taking her name and informing that the Appellant had killed the deceased. As per P.W.2, she had seen the Appellant running away from the spot, whereas, her deceased husband was found lying dead at the spot with bleeding injuries on his neck and left side back. P.W.2 also identified M.O.I and deposed that it was found near the body of her husband. P.W.2 further deposed that the police reached near the spot in the night, however, the inquest over the body was conducted next day morning. P.W.2 during cross-examination reiterated the facts without any variation. In fact, P.W.2's evidence is in consonance with P.W.1. Again the evidence of P.W.2 does appear to be quite natural. Despite being fully cross-

examined, nothing could really be extracted to discredit the testimony of P.W.1 and also that of P.W.2. In so far as P.W.3 is concerned, she initially claimed to be present near the spot having witnessed the assault but was declared hostile. Therefore, prosecution had to examine P.W.3 during which she however admitted to have stated to the police that the deceased was followed by the Appellant carrying an axe with him and then, dealt a blow on his neck for which he fell down. During such examination, P.W.3 further admitted that she out of fear had shouted loudly and at that time, P.W.8 was present in close proximity. But a different story was portrayed by P.W.3 during cross-examination by the defence and only claimed to have found the dead body near the spot, while she was returning from the village *nala*. Nevertheless, while under examination by the prosecution, P.W.3 clearly admitted to have stated to the police regarding her presence at the spot and having witnessed the alleged assault. Despite the fact that P.W.3 flipped the other way, but the prosecution was anyhow successful in bringing out the above facts as having been disclosed by her before the police. The other ocular witness, namely, P.W.8 deposed that he too had witnessed the Appellant assaulting the deceased by an axe first on to his neck followed by a second blow after which he fell down and died instantly. P.W.8 further deposed that the house of P.W.3 is at a distance of 20 cubits from their house and having witnessed the assault, he shouted to inform his father about it. P.W.8 was cross-examined but his testimony could not be shattered. P.W.4 deposed that he had rushed to the spot after P.W.3 shouted claiming that the deceased was killed by the

Appellant and on reaching there, found the body of the victim lying with bleeding injuries on neck and waist. So the presence of P.W.3 stood confirmed by P.W.4. Indeed, P.W.3 and P.W.8 are the direct witnesses, who informed others including P.W.1 about the incident. The Court does not find any conflict in the evidence of P.W.1 and P.W.8 which rather appear to be steady, spontaneous and consistent. P.W.12 conducted the *postmortem* over the dead body had found one incised wound on the left side neck with one more on the back side and opined that the first injury to be sufficient in ordinary course to cause death and the death in the present case was due to severe haemorrhage. The *postmortem* report was proved as Ext.6 by P.W.12. Apart from the above, P.W.12 had examined the weapon of offence produced before him on 27th May, 2003 and submitted an opinion to the effect that the injuries found on the deceased could have been caused by it. P.W.12 proved the report with regard to examination of M.O.I as Ext.7/1. During cross-examination, P.W.12 further revealed that the injury on the neck of the deceased was penetrating one and denied the suggestion that both the injuries could not have been caused by a single weapon. The testimony of P.W.12 matched the evidence of P.W.8 and others vis-a-vis the type of injuries. P.W.14 being the IO proved the spot map as Ext.9 and deposed that he seized M.O.I which was lying by the side of the dead body and prepared a seizure list under Ext.1. P.W.14 also deposed that he arrested the Appellant on the same day and seized some wearing apparels under Ext.12 and sent the dead body for *postmortem* along with a query under Ext.7 for opinion with respect to the weapon of offence. The

evidence of P.W.12 on the nature of injuries considerably received corroboration from P.W.8 and others, who had been to the spot shortly after the alleged incident. In particular, there appears no reason for anyone to doubt the credibility of P.W.8, who was physically present at the spot, when the Appellant carried out the assault on the deceased.

7. The evidence of P.W.8 was sought to be assailed on the number of blows being received by the deceased in juxtaposition to the statement he had made before P.W.14. But, it was rejected by the learned court below by placing reliance on a decision of the Apex Court in *Jaswant Singh v. State of Haryana 2000(2) Crimes 150 (SC)*. In the considered view of the Court, even otherwise, it would not be a ground to discredit the testimony of P.W.8 for the fact that it does not really amount contradiction.

8. As already discussed, the alleged assault was witnessed by P.W.8 so also P.W.3, who though resiled from her statement but clearly admitted it of having shared with the police on being confronted by the prosecution. The immediate reaction of P.W.3 and P.W.8 on seeing the assault is an act of spontaneity. The evidence of P.W.3 and P.W.8 are indeed relevant in view Section 6 of the Indian Evidence Act, 1872 considering their instant reactions to the situation apart from being the direct witnesses to the assault. As earlier discussed, the nature and extent of injuries on the person of the victim as described by the ocular witnesses and others clearly tallied with the medical evidence led through P.W.12. Regarding the plea of false implication, it has to fall flat as none of the examined witnesses including P.W.8 did have any

axe to grind against the Appellant. The motive of the Appellant was of course not really discernible. It might be because of the argument the Appellant had with the deceased just before the incident or could be for any other reason. In certain situations, intention may be developed instantly and in that case, motive would have to take a back seat. As we know, motive is always known to the accused and at times, it is difficult to unearth. But in case of direct evidence, absence of motive carries no importance which has also been taken judicial notice of by the court below by citing a decision of Apex Court in ***Mulakh Raj v. Satish Kumar and others (1992) 5 OCR (SC) 320***. It is also not a case where suddenly the assault was caused while in an altercation, but the Appellant some time later brought out an axe and followed the deceased and on reaching the spot, executed it intentionally. So, causing death of the victim is no less than an act of murder and cannot by any stretch of imagination be treated as a culpable homicide of lesser degree. On the plea of alibi, it stands unsubstantiated by evidence, which rather, pales into insignificance owing to the direct and positive evidence. Having examined the material on record, the Court is of the final view that the evidence led by the prosecution proved its case beyond all reasonable doubt. In other words, the Appellant has rightly been found guilty for having committed murder of the deceased and therefore, the order of conviction suffers from no legal infirmity.

9. Accordingly, it is ordered.

10. In the result, the JCRLA stands dismissed. As a corollary, the impugned judgment dated 21st August, 2006 promulgated in Sessions Case No.157 of 2003 by the learned Sessions Judge, Kalahandi-Nuapada at Bhawanipatna is 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



TUDU