

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA NO. 20 OF 2011

From the judgment of conviction and order of sentence dated 27.11.2010 and 29.11.2010 respectively passed by the learned Additional Sessions Judge(Fast Track Court), Jeypore in Criminal Trial No.87 of 2009.

<i>Majhi Bingi</i>	:::	<i>Appellant</i>
<i>-versus-</i>		
<i>State of Odisha</i>	:::	<i>Respondent</i>

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

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For Appellant :::: Mr. Biswajit Nayak, Advocates.

For Respondent :::: Mr.Soubhagya Ketan Nayak,
Additional Government Advocate.

CORAM:
MR. JUSTICE D.DASH
DR. JUSTICE S.K.PANIGRAHI

DATE OF HEARING : 31.10.2022 : DATE OF JUDGMENT:03.11.2022

D.Dash,J. The Appellant, by filing this Appeal, from inside the jail, has questioned the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge (Fast Track Court), Jeypore in Criminal Trial No.87 of 2009 (C.T. No.108 of 2009 of Sessions Judge) arising out of G.R. case No.72 of 2009 corresponding to Pottangi P.S. Case No.07 of 2009 on the file of Sub-Divisional Judicial Magistrate, Koraput.

The Appellant (accused) thereunder has been found guilty for committing the offence under Section 302 of the IPC in causing murder of Khara Sania and his wife Khara Paiti by intentionally causing their death. Accordingly, he has been sentenced to undergo imprisonment for life.

2. On 06.02.2009 around 8 pm, one Khara Laki (P.W.1) of village: Badamarla under the Pottangi Police Station lodged a written report before the Inspector-In-Charge, Pottangi Police Station stating therein that his uncle, Khara Sania & aunt, Khara Paiti were being suspected by the accused of practising witchcraft. The accused thus was entertaining the belief that for such evil craft under their command, they were responsible for the swellings over his arms and legs.

In the evening of 06.02.2009, when that Khara Laki visited his uncle's house, he had seen accused quarrelling with Sania accusing of using black magic against him and was then threatening to take away his life. He (Khara Laki) then intervened and asked the accused as to why he was leveling such false accusations against his uncle. The accused then however is stated to have remained silent. Khara Laki then returned from that place and when he was standing on the junction of Badamarla, the wife of the accused namely, Majhee

Radhamma (P.W.2) came running and told him that her husband, the accused had committed murder of Khara Sania & Khara Paiti. Khara Laki immediately rushed to the spot and it was around 6 pm, when he entered into the house. The accused having seen him and at this sight immediately took to his heels and went towards the nearby jungle. That Sania and Paiti, deceased uncle and aunt of Khara Laki were found lying in a pool of blood. The villagers arrived at the spot and found a Kati lying near the dead bodies. The deceased couple were found to have received stab injuries on their persons. It has been stated that accused Majhi Bingu entertaining the belief that the deceased couple had practiced witchcraft upon him in causing definite harm has committed their murder.

3. The Inspector-In-Charge, Pottangi P.S. having received the said information in writing, registered P.S. Case No.17 of 2009 and directed the Sub-Inspector of Police, Mr. D. Naik (P.W.8) to take up investigation. In course of investigation, inquest was held over the dead bodies of the deceased couple, witnesses including the Informant and wife of the accused were examined. The Postmortem Examination was held over the dead bodies on police requisitions and the incriminating articles being seized, were sent for chemical examination. Finally on completion of investigation, the accused was

placed to face the trial for commission of offence under section-302 of the IPC.

4. Learned Sub-Divisional Judicial Magistrate on receipt of the charge-sheet, took cognizance of the said offences and upon observing legal formalities, committed the case to the Court of Sessions for trial. That is how the trial commenced by framing charge against the accused.

The plea of the accused is that of complete denial in further stating that he at the relevant point of time was absent in the village.

5. The prosecution examined in total eight(8) witnesses. Over and above the same, it has proved several documents such as F.I.R., Ext.1, inquest reports, Exts.2 & 3, postmortem reports, Exts.8 & 9 and seizure lists which includes the important one i.e. Ext.6.

The Appellant has neither examined any witness nor proved any document in support of the defence.

6. The Trial Court having gone through the evidence of the Medical Officer, P.W.6, who had conducted the autopsy over the dead bodies and submitted his reports, (Exts.8 & 9) and in view of other evidence on record, has arrived at a conclusion that Khara Sania and his wife Khara Paiti met homicidal death. Then proceeding to examine the evidence with regard to the authorship of the crime, in

the absence of any direct evidence being available when the wife of the accused P.W.2 has chosen to remain silent and did not support the prosecution case, culling out certain circumstances has held that those proven circumstances being cumulatively viewed complete the chain in every respect is unerringly pointing at the guilt of the accused in ruling out all other hypothesis except that of the guilty of accused. With that view, the Trial Court has held the accused guilty of offence under section-302 of the IPC and he has been sentenced as aforestated.

7. Mr. B. Nayak, learned Counsel for the Appellant submitted that the circumstances such as the suspicion being entertained by the accused against the deceased persons; that the deceased couple and accused were last seen together; that the accused resorted to abscondance after the incident and had made the disclosure after arrest have not been established beyond reasonable doubt by leading clear, cogent and acceptable evidence. He, therefore, submitted that the Trial Court has committed the error in holding that the prosecution has proved the guilt of the accused through circumstantial evidence. He also submitted that the Chemical Examiner's report, Ext.2 which is pressed into service against the accused is of no value in the absence of other required evidence.

8. Mr. S.K. Nayak, learned Additional Government Advocate while supporting the finding of guilt returned by the Trial Court in holding the accused to be the author of the crime in causing the murder of Khara Sania & Khara Paiti, submitted that all the circumstances, one by one which have surfaced from the evidence let in by the prosecution have been fully established. According to him, all those circumstances being cumulatively viewed, there remains no missing link in completing the chain. According to him, the chain constituting the circumstances as links is so complete that those being taken together rule out all the hypothesis other than the guilt of the accused. So, he contended that the Trial Court did commit no mistake in convicting the accused.

9. Keeping in view the submissions made; We have carefully read the judgment passed by the Trial Court. We have also perused the evidence adduced from the side of the prosecution which include the documents admitted in evidence and marked Exts. 1 to 20.

10. In the given case on the face of the evidence of the Doctor who had conducted autopsy over the dead bodies of Khara Sania & Khara Paiti and in view of his positive reports stating that the death is the result of such external injuries that he noticed on the persons of the deceased which further stand supported through the evidence of other

witnesses including the P.W.8, the Investigating Officer holding the inquest over the dead bodies, this Court is of the view that the death of Sania & Paiti are homicidal and the Trial Court is absolutely right in holding so.

11. Before proceeding to judge the sustainability of the finding of the Trial Court as to the role of this accused in causing the murder of those two namely, Sania and Paiti, it be first stated that the prosecution although from the beginning in the F.I.R. had come up with the case that the wife of the accused having seen the incident had stated so before P.W.1 that it is her husband who had killed those Sania and Paiti, she having been examined as P.W.1 in the Trial, has not so deposed and maintained silence in further stating that she did not know as to who had killed the deceased couple. She has simply stated to have told that P.W.1 (informant) about the death of the deceased, when he had came to verify the incident. The prosecution although has cross-examined said witnesses with the permission of the Court, barring confronting the said witness with her previous statement before the Police recorded under section-161 of the Cr.P.C., has not been able to elicit anything more from her lips to provide support to the prosecution case in any manner. This witness stated to have no knowledge about the occurrence. Thus this witness even

though is stated to be a witness not stating the truth; that is of no avail to the prosecution case as against the accused as the author of the crime.

12. The prosecution thus having lost the advantage of proving the case against the accused through direct evidence, has relied upon following circumstances as culled out from the evidence:-

- a) prior enmity of the accused with the deceased couple for the reason that the accused was under the impression that they were playing witchcraft in causing definite harm to him;
- b) the accused was quarrelling with the deceased couple shortly before the incident;
- c) the accused after the incident at the sight of P.W.1 ran away;
- d) the accused resorted to abscondance from the village subsequent to the incident;
- e) the accused being in custody of the police having made a disclosure statement had led the police and witnesses to give recovery of the axe (M.O.II);
- f) the chemical examiner's report, Ext.20 indicates that the human blood of the same group was found in the wearing apparels of the accused as well as other seized incriminating materials including the weapons (M.O.I and M.O.II).

13. Before going to ascertain as to if the proven circumstances complete the chain in every respect leaving no missing link in ruling

out all the hypothesis other than the guilt of the accused excluding the innocence, it is first of all to be seen as to how far each such circumstance has been proved by the prosecution through clear, cogent and acceptable evidence.

14. P.W. 1 is one of the important witnesses for the prosecution. He has stated to have gone to the spot and saw that the accused had assaulted his uncle and aunt with sharp cutting weapon. Although, he is stating the same, the very next sentence of his deposition reads that the injured couples were lying on the ground and they were dead when he verified. In fact his evidence in the Court that he saw that the accused had assaulted them appears to be his own inference drawn from the circumstance that he had seen accused present there and the accused seeing him took to his heels. as a plain reading being given to his deposition, does not lead to show that he had seen the accused assaulting them. When it is stated thus, his version in the F.I.R., Ext.1 is to the effect that when he arrived in the house of his uncle, the accused left running and thereafter, he having made the entry to the house found his uncle and aunt lying dead. During cross-examination, he has stated to be the first person to reach at the spot and find the deceased couple lying on the ground in pool of blood. He is not stating that the accused then was carrying any weapon or that while

running away, he threw away the weapon that he was holding; when he is stating to have come to the spot, hearing the incident from P.W.2, from near Kamuti Chowk where he was standing, P.W. 2 is however stating to have simply informed about the death of the deceased couple to the P.W.1 only when he come to verify the incident. Even as We accept the evidence of the witnesses that on hearing from P.W.2, he came to the house, it is stands difficult to believe for a moment that a person committing the murder of two would still be waiting at the very spot, since that is not only against the natural human conduct that too for an offender that he would be in that way inviting the attention of others to be so implicated in the incident but also highly improbable. Then P.W.1 is also not stating as to what was the time gap between his leaving the house after subsiding the quarrel and receipt of the information as also his arrival in the house hearing the shocking news. The witnesses who have met this P.W.1 are not stating that P.W.1 had so told before them that when he came to the house, the accused was standing and at his sight, he left the place. P.W.4 simply says that when he had gone to the spot, P.W. 1 reported the matter to the police. No other witness has been examined from the side of the prosecution to provide any corroboration to the evidence of P.W. 1 who happens to be the

nephew of the deceased couple and in ordinary course is interested in the prosecution. This witness P.W. 1 during cross-examination has also stated that he being the first person to arrive at the spot found the deceased couple lying there on the ground. He is not stating as to exactly at which place the accused then was standing. The conduct of this P.W.1 in not making any attempt to chase the accused or even not raising hullah for the villagers to immediately rush in for doing the needful in apprehending the accused are certainly to be taken adverse note of that, he being the nephew of the deceased persons would simply stand as mute spectator even seeing the accused near his uncle and aunt lying in the pool of blood. He too is not stating that at that moment, the accused was holding any weapon so as to give rise to an apprehension as to any danger to his life which compelled him to maintain silence. Thus, We find the evidence of P.W.1 to be unsafe to be relied upon to say that the circumstance projected by the prosecution that the accused was in the very house where the dead bodies were lying in a pool of blood has been proved beyond reasonable doubt.

15. Having said as above, the other circumstances as to the accused suspecting the deceased persons to be practicing witchcraft in causing

definite harm to him, his abscondance even if believed lose their importance to a great extent.

At this juncture, coming to the disclosure statement of the accused said to have been made before Police, the independent witness, P.W.5 is silent as to what the accused told to the Police. When he says that the accused confessed his guilt, the same is clearly inadmissible in the eye of law. His statement that the accused said to have concealed the weapon of offence is also not admissible as to say “weapon of offence”, it certainly relates to the user of the weapon. Thus, his statement recorded by the Police being as proved through this witness vide Ext.6 cannot be accepted, moreover as he too has not stated as to where and when, such statement was recorded and his simple version is that he had put his signature on the relevant papers as required by the Police. He has next stated to have no remembrance as to contents of the said statement as recorded by the Investigating Officer.

The evidence of the Investigating Officer, P.W.8 is that the accused confessed to have committed the crime after being arrested on 07.02.2009 from another village is too not admissible being directly hit under the provision section-25 of the Evidence Act. He also says that the accused told to have concealed the weapon of offence, that

also distinctly relate to the user of said weapon which too can't be taken as it is. The recovery of the weapon from under the doors fitted with frames lying at the eastern corner of the house of the accused as stated by him, does not receive corroboration from the evidence of the witness P.W.5. He simply states that the accused led the Police team to the house and gave recovery of the weapon i.e. axe (tangia), when common experience goes that such type of weapons are usually available in almost all houses of the village, which here is in a remote part of a scheduled District of the State and judicial notice of it can also so taken. The human blood of the same group as that of the deceased persons having been detected on that weapon that very weapon cannot be said to have been connected to have been so used in causing the injuries upon the deceased couple since the prosecution has not taken the pain of ascertaining the blood group of the accused.

In view of aforesaid, in our considered view the approach of the Trial Court is not right in holding the same to be a strong circumstance as the accused is offering no such explanation on that score.

For the aforesaid discussion of evidence and reasons as assigned, We are led to hold that the prosecution has not been able to

establish its case through circumstantial evidence that the accused is guilty of commission of the crime under section-302 of the IPC.

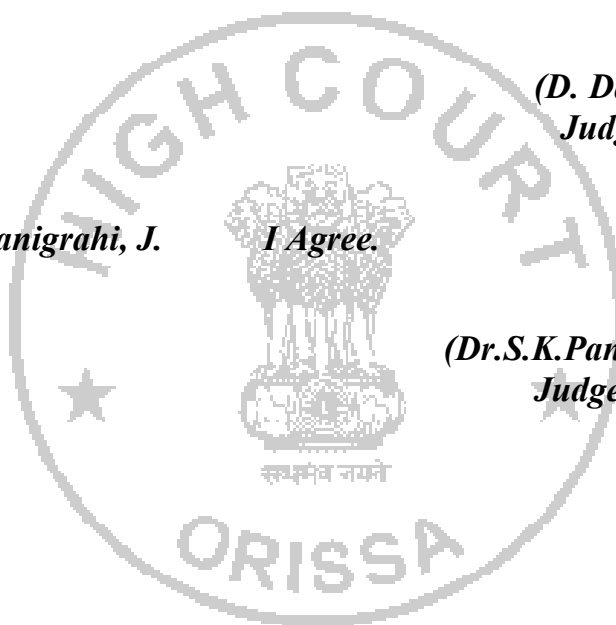
16. In the result, the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge(Fast Track Court), Jeypore in Criminal Trial No.87 of 2009 (C.T. No.108 of 2009 of Sessions Judge) are hereby set aside. The accused being on bail, his bail bonds shall stand discharged.

Dr.S.K.Panigrahi, J.

I Agree.

***(D. Dash),
Judge.***

***(Dr.S.K.Panigrahi),
Judge.***



Narayan