

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.77 of 2008

Ganesh Naik @ Konda

.....

Appellant

Mr. Udit Ranjan Jena, Advocate

-Versus-

State

.....

Respondent

Ms. Saswata Patnaik,
Addl. Government Advocate

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

**ORDER
23.11.2022**

Order No.

05.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Udit Ranjan Jena, learned Legal Aid counsel appearing for the appellant and Ms. Saswata Patnaik, learned Addl. Government Advocate appearing for the State.
3. This is a petition-appeal under Section 374 (2) of the Cr. P.C. from the judgment and order of conviction and sentence dated 20.02.2008, delivered in Criminal Trial No.34 of 2007, by the Ad hoc Addl. Sessions Judge (FTC), Malkanagiri.
4. The genesis of the prosecution case can be located in the F.I.R. lodged by one Ghasiram Thakur by revealing that on

09.07.2006, his son Sanjay Thakur had gone to the cultivable land along with one Jayadev Majhi for the purpose of ploughing. While going, he had taken the bullocks with him. At about 11 0' clock on the same day (morning), they finished their work and at that point of time Ganesh Naik (the appellant) arrived at the spot and invited the deceased and Jayadev Majhi to partake Kusumkoli (berry).

5. Jayadev Majhi went to herd the cattle. Suddenly, without any provocation, the appellant struck a blow on the back of the neck of the deceased by a Tangia. Jayadev Majhi rushed to the village and intimated the incident to the wife of the informant, his son-in-law and son and they all arrived at the spot and found the informant's son dead.

6. Based on the said information, a case was registered being Mathili P.S. Case No.52 of 2006 under Section-302 of the IPC and taken up for investigation.

7. On completion of the investigation, the Police filed the Charge Sheet against the appellant based on the evidentiary materials collected in the course of the investigation.

8. The Sessions Judge framed the charge against the appellant under Section-302 of the IPC for committing the murder of Sanjay Thakur, the son of the informant.

9. The appellant denied the charge and claimed to face the trial in accordance with law.

10. The prosecution examined as many as 12 witnesses including Jaydev Majhi (P.W.8) who has claimed to have witnessed the occurrence. The other witnesses did not see any part of the occurrence. Their source of knowledge was P.W.8. As such, P.W.8 is the sterling witness for the prosecution.

11. It has been stated by the counsel for the appellant that the weapon of offence (Tangia) was seized and sent for serological examination, but no report was placed in the trial.

12. Mr. Jena, learned counsel for the appellant has submitted that no evidence has been led by the prosecution to prove the cause of death.

13. It has been stated by Ms. Saswata Patnaik, learned Addl. Government Advocate that the Medical Officer, who conducted the Post-Mortem examination, had passed away before the trial commenced.

14. We have perused the deposition of P.W.8 as recorded in the trial. He has testified that he was along with the deceased and for a short period for grazing the cattle, he had gone to a distance from the place, where the deceased and the appellant were partaking berries.

After sometime, he saw that the appellant was giving blow by a Tangia on the back of the neck of the deceased.

15. He had rushed to the deceased and found that he received a grave injury on the back of his neck. He rushed to the village to inform the informant, the father of the deceased, his mother and other co-villagers. When they arrived at the spot, they found the deceased dead.

16. Having scrutinized the entire records, we find that the prosecution has failed to prove the cause of death or the nature of injury, if any, on the person of the deceased. Even whether the Tangia, as seized, was used for committing that injury on the back of the neck of the deceased has not been proved by the forensic report.

17. It has been noted by the trial Judge that no forensic report has been produced in the trial. Thus, the prosecution has failed to prove the cause of death whether it was natural or it was homicidal.

18. The evidence of P.W.8 could have been relied on, if there had been corroborative evidence.

19. While scrutinizing the statement of P.W.8, we find it difficult to rely on his testimony entirely. He stated that all on a sudden, the appellant had struck the blow on the back of the neck of the deceased.

20. We are really at bay to analyze the conduct of P.W.8. Even we do not know whether that was a single injury or there were other injuries on the body of the deceased.

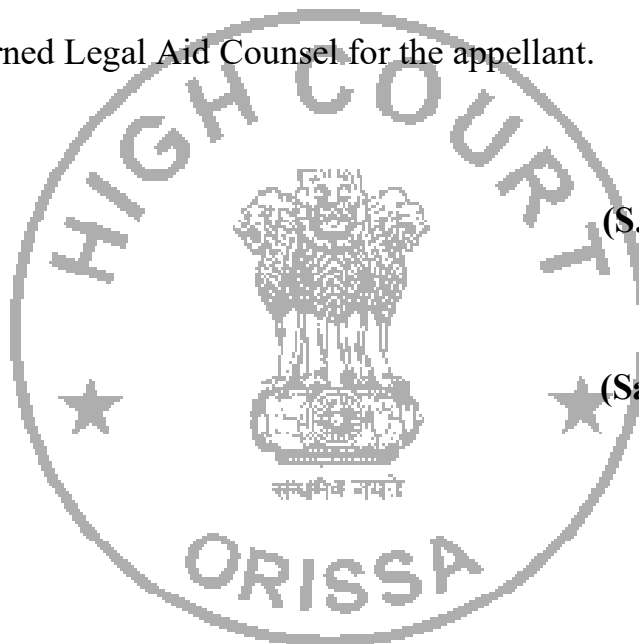
21. Even the original inquest report has not been admitted in the evidence, but a carbon copy has been admitted. Under Section 63 of the Evidence Act, a carbon copy can be treated as the secondary evidence. For admitting a secondary evidence, the procedure that is required to be followed has not been followed. Hence, admission of carbon copy of the inquest report is unsustainable.

22. Having situated thus, we are of the considered view that the cause of death and the nature of injury have not been ascertained in the trial. Without ascertaining these two aspects, the charge under Section-302 of the IPC cannot be held to have been proved.

23. Though there is some material to seriously suspect the appellant's involvement in the murder, but the statement of P.W.8 has been left uncorroborated except for the part that he went to the village to call the father and other relatives of the deceased and he came back at the place of occurrence. Therefore, it will be unsafe to rely on the evidence of P.W.8 to sustain the conviction.

24. Having observed thus, we are persuaded to reverse the finding of the trial Judge convicting the appellant.

25. The judgment and order of conviction and sentence are, therefore, set-aside.
26. In the result, the appeal stands allowed.
27. The appellant shall be set at liberty forthwith, if he is not wanted in any other case.
28. The trial court record be returned forthwith.
29. A free copy of this order be supplied to Mr. Udit Ranjan Jena, learned Legal Aid Counsel for the appellant.



(S. Talapatra)
Judge

(Savitri Ratho)
Judge