

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**JCRLA No.17 of 2011**

From the judgment and order of sentence dated 30.11.2010 passed by the learned Additional Sessions Judge, Nabarangpur camp at Umerkote in CT. No.22 of 2010.

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***Dayarama Bhatra***

....

***Appellant***

-versus-

***State of Odisha***

....

***Respondent***

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

***For Appellant*** - Ms.B. Nayak,  
S. Samal & B.R. Sahu (Advocates)

***For Respondent*** - Mr.Samaresh Jena,  
Additional Standing Counsel

**CORAM:**

**MR. JUSTICE D.DASH**

**DR. JUSTICE S.K.PANIGRAHI**

**DATE OF HEARING : 26.10.2022 : DATE OF JUDGMENT:28.10.2022**

***D.Dash,J.*** The Appellant, by filing this Appeal, from inside the jail, has called in question the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Nabarangpur camp at Umerkote in C.T. No.22 of 2010.

By the same, the Appellant has been convicted for commission of offence under sections 302/201 of Indian Penal Code, 1860 (for short, 'I.P.C.') and accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.20,000/-, in default to undergo rigorous imprisonment for two months for the offence under section

302, I.P.C. and rigorous imprisonment for one year with fine of Rs.2,000/- in default to undergo rigorous imprisonment for six months for the offence under section 201, I.P.C. with the stipulation that the substantive sentences would run concurrently.

2. The prosecution case is as follows:-

On 04.08.2009 one Phulsingh Pujari (P.W.3) arrived at the Police Station and reported that his son Raghu Pujari (deceased) having tied the cattles had left the house on 03.08.2009 around 6.30 P.M. and he did not return during the night. He further informed that during the morning hour, his brother namely, Gurubandhu Pujari having seen the dead body of said Raghu Pujari lying on the land of Bamdev Bhatra; in turn told him about that.

The report as above being received by the Assistant Sub-Inspector of Police attached to Dabugaon Police Station; U.D. case No.11 of 2009 was registered. In course of inquiry, the ASI of Police (P.W.13) detected a pair of chappal, two coins of one rupee denomination and one key in the premises of Mendra School. He then held inquest over the dead body of Raghu Pujari in presence of witnesses on that date, i.e., on 04.08.2009 around 2.35 P.M. and examined the witnesses. The dead body was sent for post mortem examination. In course of inquiry, it came to light that on 03.08.2009 around 5.30 P.M., deceased Raghu Pujari had come to that school where accused was present and the deceased then had gone to the house of the accused and was also found sitting on the verandah of the house of the accused. It also came to surface in course of inquiry in that P.S. U.D. Case that the accused was suspecting that the deceased was having illicit relationship with his wife. From all these, the A.S.I. of Police (P.W.13) entertained strong suspicion as to the involvement of the accused in killing the deceased. So, he lodged a written report with the O.I.C., Dabugaon Police Station which led to the registration of

regular case for commission of offence under section 302/201, I.P.C. as against this accused.

Investigation being completed with collection of the materials, the accused was placed for facing the trial for commission of offence under sections 302/201, I.P.C.

The Judicial Magistrate First Class, Umerkote having taken cognizance of the said offenses in G.R. Case No.370 of 2009 arising out of Dabugaon P.S. Case No.82 of 2009 committed the case to the Court of Sessions for trial of the accused for the said offences. That is how the accused finally faced the trial in the Court of learned Additional Sessions Judge, Nabarangpur at camp Umerkote being charged for offence under sections 302/201, I.P.C.

3. The accused in the trial denying the charges pleaded his ignorance about the said incident as also his complicity in the murder of Raghu Pujari. He also stated that the case has been foisted against him simply for the previous enmity.

4. The prosecution, in order to bring home the charges against the accused person in the trial, has examined in total fourteen witnesses, which includes the father and other relations of the deceased as also few co-villagers and the Medical Officer who conducted the Post Mortem over the dead body of the deceased as well as the Police Officer causing inquiry in that U.D. Case so registered when the dead body of Raghu Pujari was found which gave rise to the registration of the regular case leading to the trial. The prosecution besides leading the evidence through the lips of the above witnesses has also proved several documents prepared in course of enquiry and investigation which include the F.I.R., Post Mortem Report, seizure lists etc.

The defence has examined none and has also not proved any document on his behalf.

5. The Trial Court, upon examination of evidence at its level has held the accused guilty of committing the murder of deceased Raghu Pujari and accordingly the accused has been convicted for offence under section 302, I.P.C. as well as for the offence under section 201, I.P.C. for having made all possible attempts to de-surface the evidence as to his involvement in the said crime. The Trial Court having held the accused guilty as above has recorded the sentence as afore-stated which the accused is undergoing.

6. Mr. B. Nayak, learned Counsel for the Appellant submitted that the finding of the Trial Court against the accused holding him guilty for commission of offence under section 302/201, IPC is vulnerable. According to him, the evidence on record as placed from the side of the prosecution are wholly insufficient to fasten the guilt upon the accused for commission of offence under sections 302/201, I.P.C. He further submitted that there being no direct evidence to connect the accused with the crime and the case being based on circumstantial evidence, even accepting the evidence as laid by the prosecution, the circumstances so projected when joined as links do not complete the chain so as to arrive at an irresistible conclusion as to the guilt of the accused excluding all the hypothesis other than the guilt of the accused. He further submitted that the Trial Court has committed grave illegality in accepting the evidence as to so called extra judicial confession of the accused, which is inadmissible in law in holding the accused as the author of the crime in any manner. According to him, the evidence that the accused confessed his guilt before the witnesses so examined is inadmissible as the evidence on record would show that it was in presence of police. He submitted that the last seen theory sought to be established from the side of the prosecution is not at all believable and that to, the same even if accepted is not enough in the facts and

circumstances to conclude that it is none other than the accused, who had done the deceased to death. He further submitted that the recovery of the napkin said to have been made at the instance of the accused has not been shown to be having any connection with the crime and thus it is of no aid to the case of the prosecution.

7. Mr. S. Jena, learned Additional Standing Counsel for the State submitted all in favour of the findings returned by the Trial Court in holding the accused to be the author of the crime. According to him, the Trial Court on detail analysis of evidence on record did commit no error in returning the finding that the prosecution has established its case against the accused in causing the murder of Raghu Pujari beyond reasonable doubt and therefore, the judgment of conviction and order of sentence are not liable to be interfered with.

8. Keeping in view the submissions made; We have carefully read the judgment passed by the Trial Court. We have also bestowed our due attention to the evidence on record, both oral and documentary.

9. At the outset, it is stated that here in the case, there is no dispute over the fact that deceased Raghu Pujari met a homicidal death, which has been well established through the Doctor conducting the autopsy over the dead body of Raghu Pujari and in view of his opinion remaining unchallenged as to the cause of death.

10. In the given case as it appears, the prosecution is not relying on any direct evidence to connect the accused with the charges. The Trial Court has rightly noted the said fact. The evidence let in by the prosecution are on the score that the deceased was last seen in the company of the accused prior to the recovery of the dead body of the deceased and that he had confessed to have committed the crime. The other evidence from which the prosecution seeks corroboration is the

factum of recovery of a napkin said to have been used for the purpose of causing the death of the deceased by throttling.

**11.** Principle of law is well settled that a conviction can be based on the circumstantial evidence. The rider, however, remains that in order to draw the inference as to the guilt of the accused from the circumstances; each of such circumstance must be clearly and cogently established and those circumstances should be of definite nature having the tendency of unerringly pointing towards the guilt of the accused. More importantly those circumstances being taken cumulatively must form the chain, which is so complete in every respect that there would remain no scope to escape from the conclusion that within all human probability the crime had been committed by the accused. In other words, the circumstantial evidence must be complete in every respect and as such incapable of an explanation of any other hypothesis other than the guilt of the accused. Such evidence must be certain standing to point the finger at the involvement of the accused in committing the crime and those must be consistent with the guilt of the accused and inconsistent with his innocence.

In the backdrop of above settled principles of law, the evidence on record now needs examination so as to judge the sustainability of the finding of the Trial Court on the complicity of the present accused in committing murder of the deceased Raghu Pujari and then proceeding to cause disappearance of the evidence in seeing that nothing in that light come to surface.

**12.** The prosecution case is that the accused was suspecting that his wife and deceased were having illicit relationship and that is projected as the motive behind the crime which is said to be a circumstance. In this regard except bald statement of some prosecution witnesses, nothing is specifically stated nor even with reference to any incident and citing

the same. The witnesses are also not stating that the accused deposing confidence had secretly disclosed his mind. So motive even though stand as a circumstance, in this case it has not been proved as so required by leading clear, cogent and acceptance evidence.

The other circumstances are that the deceased prior to the recovery of the dead body was last seen with the company of the accused; the accused confessed to have done the deceased to death and then had led the police to give recovery of the napkin used for throttling.

13. The Doctor conducting the autopsy over the dead body of the deceased has opined that the death was due to asphyxia caused by obstruction of mouth and respiration and that too manually. The evidence as above has remained unimpeached. P.W.2 has stated that accused confessed before the village people that he had killed the deceased by throttling his neck by means of napkin. While saying so, he has however stated that accused while in police custody confessed his guilt that he had committed the murder of the deceased by strangulation of neck by means of napkin. It is his further evidence that the accused had led the police while in custody in giving recovery of that napkin from the place where it had kept concealed which was seized by the police. It is not his version that the first disclosure was only before him where neither other villagers were present nor the police. That apart he is not stating as to why and for what reason, the accused reposed such confidence on him when he is in no way even related to him. P.W.4 who is the younger brother of the deceased has stated that after the police arrested the accused, he confessed his guilt in saying to have killed the deceased as he was having the illicit relationship with his wife in further stating that he did so by throttling the neck of the deceased by a napkin and then leading the police gave recovery of the said napkin from the place. The evidence of P.W.5, who is the Uncle of the deceased, is also

in the same vein that the accused confessed his guilt before the police to have killed Raghu Pujari stating the reason for the same and then leading the police to give recovery of that napkin. The other witness P.W.6 has also stated that the accused being arrested so confessed to have killed the deceased as he was having illicit relationship with his wife and then he led the police in giving recovery of that napkin used in throttling the neck of the deceased in causing his death. It is clear that all refer to that one time confession as made by the accused.

14. So far as this confession of the accused is concerned, all these witnesses having clearly stated that the accused after being arrested by the police while in his custody stated to have killed the deceased by throttling his neck by means of napkin, such statement before the witnesses in presence of police is inadmissible in the eye of law in view of the provision contained in section 25 of the Evidence Act. Therefore, such evidence as to so-called confession of the accused is of absolutely no avail for the prosecution in the direction of establishment of the guilt of the accused and that cannot be taken as the evidence on the said role of the accused nor it can thus stand as the circumstance. The Trial Court with regard to the recovery of the napkin, even if it is taken for a moment that the accused while in police custody led the police to give recovery of that napkin from the place; there being no further evidence to connect the same independently with the commission of the crime by leading any evidence either direct or indirect; that in no way comes to the aid of the prosecution stating about its use in the commission of the crime. The prosecution has taken no pain to get the said napkin examined by any expert in proving the opinion as to have been used in the throttling.

15. Having held as above when we come to the evidence as to the last seen theory solely falling from the lips of P.W.7, it is seen that the same

too is not so acceptable and even than of no such significance. This witness has stated that around 7 P.M. in the evening the deceased had gone to him when he was in the school hostel and he sat with him for five minutes. He has not stated that then the deceased disclosed about his plan of going out with the accused. The witness states that thereafter he found the accused going with the deceased. But it is also not that they went towards the house of the accused or towards which other place. The conduct of this P.W.7 too is not that natural as he does not say to have asked them as to their purpose of going or the place where they were going which one out of normal instinct would have liked to ask. Then he says that the accused returned to the hostel around 10 P.M. He is not stating anything more about any such suspicious conduct of the accused either before leaving the hostel or on his return or even thereafter when the dead body was recovered lying under a banyan tree near the school. He is also not indicating that he from the conduct of the accused after return had noticed any such abnormal behavior and unusual features as different from other days and normally during his living. When he states that chappal of the accused were lying on the school premises, the same is of no such marking a feature as admittedly the accused was discharging the duty as a cook in the hostel. That apart, it being the case of the prosecution that the deceased used to come to the hostel and meet the accused quite often, they too having left the hostel together for a while without any other evidence in the direction of pointing any suspicious finger at the accused is of no such significance and rather can be seen as quite natural and normal. That apart, more importantly, this witness has also not stated anything about the mental condition of the accused on his return and any such special features if so marked with him, which was likely as of normal human conduct since the accused is not a professional criminal and even is not said to be

having the criminal background but he hails from rural area of a schedule district.

**16.** In view of the aforesaid analysis of evidence on record, We are of the view that the finding of the Trial Court that it is the accused who has committed the murder is not sustainable and here according to us the evidence on record are not enough to hold that the prosecution has established its case against the accused in committing the murder of deceased beyond reasonable doubt.

**17.** In the result, the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Nabarangpur camp at Umerkote in C.T. No.22 of 2010 are hereby set aside. The accused be set at liberty forthwith in case his detention in custody is not so required in any other case.

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

**Dr.S.K.Panigrahi, J.**

**I Agree.**

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