

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.313 of 2014

From the judgment of conviction and order of sentence dated 7th, November, 2013 passed by the learned Sessions Judge, Phulbani, in Sessions Trial No.216 of 2010.

Rastrapati Pradhan

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Mr. S. P.Dash
Advocate

For Respondent

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Mr.S. K. Nayak
Additional Government Advocate

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE S.K. MISHRA

Date of Hearing : 28.11.2022 : Date of Judgment:06.12.2022

D.Dash,J. The Appellant, by filing this Appeal, has called in question the Judgment of conviction and order of sentence dated 07.11.2013 passed by the learned Sessions Judge, Phulbani, in Sessions Trial Case No.216 of 2010, arising out of G.R. No.54 of 2010, corresponding to Daringbadi P.S. Case No.30 of 2010 of the Court of learned J.M.F.C., Daringbadi.

The Appellant (accused) has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (for short,

‘IPC’) and accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.1000/- with default stipulation to undergo simple imprisonment for 2 months.

2. Prosecution case is that on 27.06.2010, around 10 a.m., when Pabitra Pradhan (informant-P.W.1) and her husband were standing in front of their house, her husband Pradeep (deceased) told the accused not to blame or defame her daughter. Then the accused came out of his house holding a crowbar and assaulted on the head of the deceased by that crowbar resulting bleeding injuries on his head which led to his death and thereafter, he went away from the spot. The wife of the deceased (P.W.1) then having raised cry, the villagers arrived at the spot and then the matter was reported in writing to the Inspector-in-Charge (I.I.C) of Daringbadi Police Station.

3. The I.I.C. (P.W.15) having received such written report (Ext.1) from the wife of the deceased (P.W.1), immediately registered P.S Case No.30 of 2010 and took up investigation. He examined the informant (P.W.1) and other witnesses. He also visited the spot and prepared the spot map, held inquest over the dead body of the deceased and prepared his report (Ext.2).

In course of investigation, he also seized the sample earth, blood stained earth, and the crowbar, which was lying on the spot, by preparing seizure list. The dead body of the deceased was sent for post mortem by issuing necessary requisition and his wearing apparels were also seized under seizure list. On 28.06.2010, the accused was arrested and forwarded in custody to the Court. On completion of investigation,

Final Form was submitted placing the accused to face the trial for commission of offence under section 302 of IPC.

4. Learned J.M.F.C, Daringbadi, on receipt of the Final Form, having taken cognizance of the offence, after observing the formalities committed the case to the Court of Sessions for trial. That is how the trial commenced by framing the charge against the accused for having committed the offence under section 302 IPC in causing the murder of Pradeep Pradhan intentionally.

5. In the trial, the prosecution in total has examined fifteen (15) witnesses; out of them, as already stated, P.W.1 is the informant who happens to be the wife of the deceased. P.W.2 is the daughter of P.W.1 and the deceased. P.W.3, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.10, P.W.11 and P.W.12 are the co-villagers. P.W.13 is the Doctor who had conducted the post mortem examination over the dead body of the deceased. P.W.15 is the I.I.C. who had registered the case and carried investigation to a point till 21.08.2010 whereafter P.W.14 took charge of the investigation till its completion. Besides examining the above witnesses, the prosecution has also proved several documents which have been admitted in evidence and marked as Ext.1 to Ext.12; important of those are Ext.1 F.I.R, Ext.5 Post Mortem Report and Ext.7 Chemical Examination Report.

6. The Trial Court on going through the evidence of the Doctor P.W.13, who had held autopsy over the dead body of the deceased and submitted his report (Ext.5), so also the other evidence such as the evidence of the Investigating Officer (P.W.15) who had held the inquest

over the dead body and prepared his report Ext.2 as well as the evidence of other witnesses, has held the death of Pradeep Pradhan to be homicidal in nature. In fact, this aspect of the case was not so challenged before the Trial Court nor it is being so questioned here. No evidence has been let in by the side of the defence.

7. The plea of defence is that of complete denial and false implication.

8. Learned counsel for the Appellant submitted that the evidence of P.W.1 and P.W.2 who happens to be the wife and daughter of the deceased, being highly interested witnesses, their evidence is not at all trustworthy and cannot form the foundation of guilt of the accused in holding him to be the author of the crime in causing death of Pradeep. He submitted that evidence of these two witnesses are not receiving any support from the evidence of all other witnesses who are the villagers and had arrived at the spot and, therefore, when admittedly the deceased and the accused were not pulling on well, the Trial Court ought to have eschewed the evidence of P.W.1 and 2 from consideration. He further submitted that when prosecution had examined several independent witnesses and none of them have supported the case, the evidence of these two namely P.W.1 and P.W.2 ought not to have been held sufficient to fasten the guilt upon the accused as their version are not only inconsistent and as such unsafe to be relied upon.

It was alternatively submitted that even accepting the prosecution version that the accused dealt a blow on the head of the deceased by a crowbar, as there was no prior planning for the said incident and it

happened after the deceased irritated the accused in implicating him to be falsely blaming her daughter, the accused, at best can be held guilty of commission of offence under section 304-I of I.P.C. but not 302 IPC.

9. Learned counsel for the State submitted that there appears no such suspicious feature in the evidence of P.W.1 and P.W.2 so as to doubt their testimony. He further submitted that they are being the natural witnesses and their presence at the spot having been fully proved, their direct evidence in implicating the accused to be the author of the injury on the head of the deceased by means of a crowbar cannot be thrown aside. He, therefore, submitted that even though some villagers have not supported the prosecution case that would be of no significance in doubting the positive version of P.W.1 and P.W.2, who are wholly trustworthy and reliable. He, therefore, contended that the Trial Court has rightly held the accused to be the author of the crime. Refuting the alternative submission of the learned counsel for the Appellant, it was submitted that the accused having dealt the blow on the head of the deceased by means of a crowbar simply because it was solitary blow, that would not be enough to conclude that the offence committed would fall under 304-I IPC and not 302 IPC.

10. Keeping in view the submission made, We have carefully read the judgment passed by the Court below. We have also extensively travelled through the depositions of the witnesses of P.W.1 to P.W.14 and have perused the documents admitted in evidence and marked Ext.1 to Ext.12.

11. Firstly, coming to the nature of the death of the deceased i.e. Pradeep, when we look at the evidence of Doctor conducting post mortem examination i.e. P.W.13, and his report Ext.5 as well as the evidence of P.W.15, who had held inquest over the dead body of the deceased and prepared his report and other witnesses, We find ourselves to be completely in agreement of the view taken by the Trial Court that Pradeep met a homicidal death on account of the injuries sustained on his head.

12. Now, coming to the crucial point for determination as to whether the prosecution has proved its case against the accused beyond reasonable doubt to be the author of said injuries, as have been found by P.W.13 on the head of the deceased; it be noted that now the prosecution relies upon the evidence of P.W.1 and 2 for the purpose since other witnesses have resided from their previous version and not supporting the prosecution case in any manner in implicating the accused in the said incident. Be that as it may, merely because those villagers are not stating anything against the accused connecting him with the incident either directly or indirectly, that cannot be the sole reason to discard the evidence of P.W.1 and 2, if their evidence being scanned are found to be having the ring of the truth. Similarly, as because the P.W.1 and 2 are directly related to the deceased, being his wife and daughter, that itself cannot be ground to doubt their testimony by disbelieving and discarding the same.

13. Nonetheless, the evidence of P.W.1 and 2 must stand to strict legal scrutiny so as to conclude that those can be placed reliance within establishment of the charge against the accused.

14. P.W.1 is the informant and has lodged the F.I.R. (Ext.1). She states that she with her husband on the relevant day and time, were in front of their house and standing on the village Danda. The accused, who happens to be her brother-in-law, was then asked by the deceased that he should not blame or defame their daughter. It is stated that the accused then brought a crowbar from his house and assaulted on the head of the deceased causing bleeding injury. The blow, as stated to, have been given is one. The witness although has been examined at length, We find that no such feature has been brought out from her so as to doubt her positive testimony. The witness appears to have been successfully withstood the cross-examination. She in her F.I.R has also narrated the incident in the same manner as can be seen therefrom which has been admitted in evidence and marked as Ext.1. P.W.2 is the daughter of the deceased. It is her evidence that when her father told the accused that their daughter is also his daughter, the accused attempted to assault her father by a crowbar and she then tried to prevent the accused but he pushed her and then assaulted on the head of his father resulting bleeding injury. The witness is aged about 15 years and was then reading in class-VIII. It is stated that the incident took place around 8 or 9 P.M. and then they were reading inside the house and their mother was sitting inside the house. Although We find the evidence of P.W.1 and 2 to be in variance with regard to the happenings prior to the actual assault upon the deceased yet in so far as the role of the accused in assaulting the deceased on his head by means of a crow bar is concerned, that remains wholly consistent. The statement of P.W.2 that they were in the house in view of the positive evidence of P.W.1 is also hardly on any significance and the version of this witness that her mother was inside

the house, as can be seen from the tenor of evidence, is referable to the time anterior to the actual incident. The evidence of these two witnesses also receive corroboration from the evidence of Doctor P.W.13 who has stated that the injury on the head of the deceased is possible by means of crowbar which he had the occasion to examine on being sent her examination and opinion.

15. On a concept of analysis evidence herein made evidence, We find all the reason to say that it is safe to rely upon the evidence of P.W.1 and 2 to record a finding that it is the accused who had assaulted the deceased on his head by the crowbar.

16. Having said above here, let us address the alternative submission of learned counsel for the Appellant (accused). We find from the evidence of P.W.1 and 2 that there was some altercation between the deceased and the accused when the deceased blamed the accused to be defaming his daughter unnecessarily, which was not up to the taste of the accused. P.W.1 and P.W.2 have stated that the accused has dealt a solitary blow on the head of the deceased by that crowbar. It is not stated by the witnesses that accused in expectation that the deceased would be telling her to have defamed their daughter had carried the crowbar to the spot from the very beginning. The evidence of P.W.13 is that the fatal injury is the result of one blow. The accused and the deceased are two brothers and they hail from the rural pocket of a schedule district of the State. Cumulatively viewing all these above, We are, of the view that the act committed by the accused would fall under section 304-I IPC.

17. Accordingly, We hold the accused guilty of committing the offence under section 304-I IPC. In view of the aforesaid, the judgment of conviction is liable to be altered to the extent that the accused was stand vacated for commission of offence under section 304-I IPC and not under section 302 IPC, as has been recorded by the Trial Court, and the order of sentence thus liable to be modified. Accordingly, in the result, the Appeal stands allowed in the part. The accused is convicted for offence under section 304-I IPC and sentence to undergo rigorous imprisonment for a period of 10 years.

Mr.S.K.Mishra, J.

I Agree.

*(D. Dash),
Judge.*

*(S.K.Mishra),
Judge.*

Gitanjali