

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.41 of 2011

From the judgment of conviction and order of sentence dated 24.01.2011 passed by the learned Additional Sessions Judge, Titilagarh, in Sessions Case No.2 of 2010.

Purna Chandra Behera

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Mr.J.Sahu
Advocate

For Respondent

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Mr.S. K. Nayak
Additional Government Advocate

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K. PANIGRAHI

Date of Hearing : 05.12.2022 : Date of Judgment:08.12.2022

D.Dash,J. The Appellant, by filing this Appeal, has called in question the judgment of conviction and order of sentence dated 24.01.2011 passed by the learned Additional Sessions Judge, Titilagarh, in Sessions Case No.2 of 2010.

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.10,000/- with default stipulation to undergo rigorous imprisonment for one year.

2. Prosecution case is that on 28.08.2009, around 4.00 p.m., the Appellant (acused), namely, Purna Chandra Behera, carrying an Axe (Tangia), had been to the house of Sadananda Rajpalia (P.W.7) and finding Natha Rajpalia, the father of P.W.7 to be absent, had threatened that he would killed him. Sadananda and his family members, out of fear, closed the door and remained inside. It was around 11.00 p.m. in the night, one Sukumari Rajpalia (P.W.1) informed that while he was a sleep in her house, she heard shouts and having opened the door, saw the Appellant (accused) inflicting blows on the head of the deceased Natha Rajpalia (deceased) by an Axe (Tangia). It was in front of the house of Chalandri Rajpalia. She out of fear then shouted. Hearing the shout, accused Purna fled away carrying the Axe (Tangia) with him towards his house.

Receiving the information, Sadananda Rajpalia (P.W.7) came to the spot and found his father lying dead with bleeding injuries. He then lodged report before the Sub-Inspector of Police (S.I.) attached to Tikrapada Police Out Post under Saintala Police Station. He then entered the said fact in the Station Diary book maintained at the out post and sent the same to Saintala Police Station for registration of the case. The S.I. of Police attached to Saintala Police Station, in the absence of the Inspector-in-Charge (IIC) of the Saintala Police Station (P.W.22), immediately registered P.S. Case No.130 (18) of 2009 and directed the S.I. of Police attached to Tikrapada out post (P.W.21) to take up the investigation.

In course of investigation, the S.I. of Police (P.W.21) examined the Informant, visited the spot and held inquest over the dead body of the deceased in presence of the witnesses and prepared the inquest report (Ext.2). He also sent the dead body of the deceased for post mortem examination by issuing necessary requisition. From the spot during his visit, he seized the teeth of the deceased lying there and some amount of cement stained with blood and accordingly prepared the seizure list (Ext.3). Other witnesses including the seizure witness and the eye witness (P.W.1) were then examined. He also prepared the spot map (Ext.14) and then arrested the accused. Said accused, while in police custody, stated to have kept the weapon Axe (Tangia) concealed and agreeing to give recovery of the same, gave his statement to that effect, which was recorded under Ext.5/1. The accused then led the police and witnesses to his house and gave recovery of the Axe (Tangia) as well as his wearing apparels such as blood stained blue full shirt and white check shirt, which were seized under seizure list Ext.4/1. The Axe (Tangia) being seized, had been sent to the Doctor conducting post mortem examination to opine as to if by that injuries, noticed on the person of the deceased, are possible. On 29.08.2009 around 11.00 p.m., the S.I. of Police seized the wearing apparels of the deceased. The incriminating articles were sent for chemical examination through Court.

On 16.11.2009, the I.I.C. of Saintala Police Station (P.W.22) took charge of the investigation from P.W.21. He examined other witnesses and on completion of the investigation, submitted the final form placing the accused to face the trial for commission of offence under section 302 IPC.

3. Learned Sub-Divisional Judicial Magistrate, Titilagarh, having taken cognizance of the offence and after observing all the formalities, committed the case to the Court of Sessions. 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 the deceased intentionally.

4. In the trial, the prosecution in total has examined twenty-two (22) witnesses; out of them, P.W.7, as already stated, is the Informant, who happen to be the son of the deceased. P.W.1 is the eye witness, who had informed about the incident to P.W.7. P.W.2 is another witness, who was informed by P.W.1 about the incident. P.W.20 is the Doctor, who had conducted the autopsy over the dead body of the deceased and has given his report (Ext.10). P.W.21 is the S.I of Police, who initially conducted the investigation for some period and P.W.22 is the I.I.C. of Saintala P.S., who concluded the investigation and submitted the final form.

Besides examining the above witnesses, the prosecution has proved several documents such as FIR (Ext.1), inquest report (Ext.2), post mortem (Ext.10), seizure list and chemical examiner report (Ext.19). The seized Axe (Tangia) has been produced during the trial and marked as Material Object (M.O.I). The full pant and check shirt of the accused as well as the Chadi and shirt of the deceased were produced before the Trial Court and marked as M.O.II to M.O.V respectively.

5. The plea of defence is that of complete denial and false implication. No evidence has also been let in from the side of defence.

6. The Trial Court on going through the evidence of the Doctor P.W.20, who had conducted post mortem examination over the dead body of the deceased and submitted his report (Ext.10) as also other witnesses including P.W.21, who had held inquest over the dead body of the deceased and submitted his report (Ext.2) has held the death of the deceased 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 before us.

Careful reading being given to the evidence of the Doctor (P.W.20), it is seen that he had noted one external cut injury of 3½ inch X 2 inch X 2 inch on the right side of the forehead penetrating scalp bone meninges and frontal lobe of brain and another cut injury of 4 inch X 3 inch X 3 inch on the right side of the face leading to avulsion of right eyebrow from the socket and one crushed injury to right side of the face leading to fracture of the maxilla upper jaw and lower jaw. There was dislocation of all the teeth from the right upper jaw. On dissection, P.W.20 had found depressed fracture and a cut on the right side of frontal bone leading deep into the brain matters. All these injuries have been noted in his report (Ext.10). P.W.21, who had held inquest over the dead body deceased, too had noticed the external injuries and indicated the same in his report (Ext.2). Taking into account all these above as well as the evidence of other witnesses, who had seen the deceased lying dead with bleeding injuries, We are wholly in agreement with the conclusion of the Trial Court that the deceased met a homicidal death.

7. Learned counsel for the Appellant submitted that the prosecution here relies upon the solitary testimony of the P.W.1, who has been

projected as the eye witness to the occurrence. Inviting our attention to the deposition of P.W.1, he submitted that such evidence of P.W.1 is not safe to be relied upon as she has given prevaricating statements and those too are not receiving corroboration on material particulars from other sources. He further submitted that the evidence of P.W.7 and P.W.2 to whom P.W.1 says to have informed about the incident are in variance with each other. He points out the discrepancy in the evidence of P.W.1 and P.W.7 as to how and in which manner P.W.7 was informed. He thus submitted that the Trial court has gone wrong in basing the conviction upon the evidence of P.W.1, when the evidence of that witness is not of unimpeachable character. It was also pointed out as the conduct of those two witnesses being not normal, the same shakes the credibility of those witnesses and as such, their evidence, according to him, are not at all trustworthy.

8. Learned Additional Government Advocate for the Respondent, while supporting the judgment of conviction of the accused by the Trial Court, submitted that P.W.1 is a natural witness and her presence, at the time of occurrence has been fully established when it has also not been questioned by the defence. He submitted that as no such material surfaces to raise any doubt on her testimony, the conviction recorded by the Trial Court is well in order.

9. 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.Ws.1 to P.W.22 and have perused the documents admitted in evidence and marked Ext.1 to Ext.19.

10. The prosecution here heavily relies upon the evidence of P.W.1, who is said to be the eye witness to the occurrence and the role of the accused therein.

It is the settled principles of law that a conviction can be based on the solitary testimony of a witness and it is always not necessary that the said evidence must receive corroboration so as to be accepted as reliable and trustworthy. The evidence of the witness must stand to scrutiny and pass through the test of reliability so as to say that the same is wholly reliable. When only the single eye witnesses is not found to be wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then, the Courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.

Bearing the above in mind, let us first of all scrutinize the evidence of P.W.1 to find out as to whether her testimony stand to the test of reliability.

P.W.1 is a married lady of twenty-five years old and is a co-villager of the deceased as well as the accused. She has stated that in the night, she saw accused assaulting the deceased by an axe (tangia) on his face on the road running in front of their house. She states that accused was inflicting axe (tangia) blows by its sharp side on the face of the deceased and seeing this when she raised hullah, accused fled away and then she immediately called her paternal uncle Biswajaya Rajpalia (P.W.2) and told him about the incident, who, in turn, informed the son

of the deceased (P.W.7) and then the family members of the deceased rushed to the spot and from there, they went to the Police Station. The witness has been cross-examined. She at one point of time has of course said that when she opened the door of her house, the accused fled away but that appears to be of no such significance when she has gone asserting that she had seen the accused assaulting the deceased by axe (tangia) on his face in front of the road running in front of their house. She pin pointedly states that accused was inflicting the blows by the sharp side of the axe (tangia) and when she raised hullah, accused fled away. Thus, this witness certainly at that point of time was not expected to be sitting outside her house and when she says that she opened the door and the accused fled away; that is clearly referable to the fact that after she saw the accused dealing the blows, when she raised hullah, the accused fled away as otherwise there was no occasion for the accused to immediately leave the place. Thus, said statement of P.W.1 when taken into account with the totality of her evidence, in our opinion is not sufficient to hold P.W.1 as not a reliable witness. Moreover, the evidence of P.W.1 finds corroboration from the evidence of P.W.2, who is the paternal uncle of P.W.1 and whose house is nearby and under the circumstance, it is normally expected that P.W.1 would inform him as to what she saw P.W.2.

P.W.2 states that while asleep, P.W.1 woke him up and when he woke up, he was told by P.W.1 that accused assaulted the deceased. He is none other than the person, who scribed the FIR under the instruction of P.W.7. He has clearly stated to have derived the knowledge about the incident from P.W.1. The witness having been cross-examined, his evidence has remained unshaken.

P.W.7, who is the son of the deceased, has told that when he was asleep, he received a telephone call from P.W.2 that his father had been murdered by the accused and thereafter they all went to the spot. He has also stated to have lodged the FIR. This witness also arrived at the scene of occurrence some time later and found, his father lying dead sustaining some injuries. The evidence of all these witnesses find full corroboration from the evidence of the Doctor (P.W.20), who had noticed the injuries on the body of the deceased run in consonance with the evidence of P.W.1 as regards the seat of injuries and he too has opined that the injuries so noticed are possible by the axe (tangia-M.O.I) which has been seized by P.W.21 from the house of the accused which he has deposited. The evidence of P.W.1 to the effect that she having opened the door, saw the incident clearly finds stated in the FIR (Ext.1). This witness (P.W.1) noted about is a distant relation of the deceased as has been brought in cross-examination. But, that itself is no ground to say that she is stating falsehood when no such material as to disbelieve her presence at the time of occurrence is forthcoming. We also do not find that there was any such reason on the part of all these witnesses to falsely implicate the accused. It is true that in this case, the witnesses, who have been cited from the side of the prosecution to prove the recovery and seizure of the Axe (Tangia) at the instance of the accused while in police custody pursuant to his statement have resiled from their previous version, yet that in our view, does not adversely affects the prosecution case as laid through the evidence of eye witness (P.W.1), which is reliable and find corroboration from the evidence of P.Ws.2 & 7.

11. On the conspectus of analysis of the evidence hereinabove, this Court finds that the prosecution has proved its case against the Appellant (Accused) beyond reasonable doubt for having committed the murder of Natha Rajpalia (deceased) and as such the judgment of conviction and order of sentence, as returned by the Trial Court, are not liable to be interfered with.

12. In the result, the Appeal is dismissed. The judgment of conviction and order of sentence dated 24.01.2011 passed by the learned Additional Sessions Judge, Titilagarh, in Sessions Case No.2 of 2010 are hereby confirmed.

Dr.S.K.Panigrahi, J.

I Agree.

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

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

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