

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 23 of 2011

From judgment and order dated 30.02.2005, passed by learned Adhoc Sessions Judge (F.T.), Padmapur in S.T. Case No. 293/2004 (Criminal Trial No.138/20 of 02).

Basanta Sahu

.....

Appellant

-Versus-

State of Odisha

.....

Respondent

Advocate(s) appeared in this case :-

For Appellant : M/s. Bhojaraj Seth &
Ashwini Kumar Das,
Advocates

For Respondent : Ms. Samapika Mishra,
Addl. Standing Counsel

CORAM:

MR. JUSTICE D. DASH

MR. JUSTICE SASHIKANTA MISHRA

DATE OF HEARING:- 13.12.2022

DATE OF JUDGMENT 23.12.2022

SASHIKANTA MISHRA, J.

The appellant calls in question the correctness of judgment passed by learned Adhoc, Additional Sessions Judge (F.T.), Padampur on 30.07.2005 in S.T. Case No. 293/3 of 2002/2004 (Criminal Trial No. 138/20 of 02)

whereby he was convicted for the offence under Section 302 of IPC and was sentenced to undergo imprisonment for life.

2. Prosecution case, briefly stated, runs as follows:-

One Tosamani Sahu presented a written report on 08.06.2002 at about 6.00 A.M. before the IIC of Padampur police station in the district of Bargarh alleging that the accused-appellant had killed his wife by means of an axe. It was stated that on the previous night at about 10.00 P.M. while the informant his wife and minor son were sleeping in front of their house on the village lane along with his elder brother-Fakira Sahu, seeing the possibility of rain, the deceased took her cot and child to the outer room of their house and slept. After some time the informant himself went inside with his cot and slept adjacent to his wife because of rain. After about half an hour upon hearing a groaning sound the informant woke up and saw the accused, who is his brother, standing with a blood stained axe in his hand. The informant asked as to what he had done and tried to catch hold of him but he ran away with the axe. The informant saw bleeding injury

on the right shoulder and neck of the deceased and that she had already died. He then called his other brother and raised hulla hearing which the neighbours came to the spot.

3. On such allegations, the FIR was lodged leading to registration of Padampur P.S. Case No.33 of 2022 followed by investigation. Upon completion of investigation charge sheet was submitted against the accused under Section 302 of IPC and the accused was put to trial. It is the further case of prosecution that the accused had himself surrendered at the police station with a blood stained axe and his wearing apparels were stained with blood. He confessed to have committed the murder of the deceased. His statement was recorded under Section 161 of Cr.P.C and the blood stained axe and wearing apparels were seized from his possession.

4. The accused took the plea of denial and false implication by his brother. The defence also took the plea that such false implication was due to dispute between the informant and the accused as the deceased had illicit relations with one Guna Sahu for which the informant had killed her and falsely put the blame on the accused.

5. To prove its case, prosecution examined 13 witnesses of whom P.W.12 is the informant, P.Ws. 1, 2, 3, 4, 5, 6, 7, 8 and 9 are post occurrence witnesses P.W. 10 is the autopsy surgery and P.W. 13 is the I.O. The prosecution also proved 19 documents and 10 material objects. Defence did not adduce any oral evidence but exhibited 1 document.

6. Basing on the prosecution and defence case learned trial court framed the following points for determination:-

“(i) Whether the death of the deceased Banita Sahu was homicidal to nature ?

(ii) Whether on 7/8.6.2002 night at about 4.00 a.m. at village Barikel the accused intentionally committed murder of the deceased ?

(iii) Whether the act of the accused was with intention of causing the death of the deceased or it was done with the intention of causing such bodily injury, which is sufficient to cause death in ordinary course of nature or the accused had the knowledge that this act was so eminently dangerous that it must in all probability caused the death or such bodily injury as is likely to cause death.”

7. In order to determine the first point learned trial court relied upon the evidence of the autopsy surgery (P.W.10) and the post mortem report submitted by him

marked Exhibit-5 as also his opinion marked Exhibit-6. The autopsy surgery deposed that he had found the following ante-mortem injuries on the deceased:-

- “(i) Cut wound of size 3” X 2 C.Ms. apart and depth upto 7 cervical vertebra body on the right side of neck 4” below right ear it is present horizontally slightly oblique from before backward;*
- (ii) One cut wound of size 2” X 1 and half inches X 1” lying parallel 1” below and lateral to the wound No.1.*
- (iii) Triangular safe out wound of size 1” X 1” X half inch in the right shoulder.”*

8. He opined that the cause of death was due to anti-mortem injuries which can cause death cumulatively but the wound no.1 is fatal. As regards his answer to the query of the police regarding the weapon of offence, P.W. 10 deposed that the wounds found on the person of the deceased were possible to be caused by the weapon (axe). Nothing substantial was elicited from him in cross-examination by defence. Learned court below therefore, accepted the testimony of the autopsy surgery to hold that the death of the deceased was homicidal in nature.

9. As regards the other points, that is, authorship of the crime, learned trial court scanned the entire oral evidence of the prosecution witnesses and found that the

evidence of the informant P.W. 12 clearly showed that the accused had committed the crime. The learned trial court further found that the evidence of the informant (P.W.12) is corroborated by P.W. 3. Much emphasis was placed on the conduct of the accused in surrendering before the police station with the blood stained axe shortly after the occurrence and before lodging of the F.I.R. and that too, without offering any cogent explanation for the same. The defence plea as referred above was rejected on the ground that there was no evidence to support the same. The trial court thus found the prosecution to have established its case against the accused successfully and therefore, convicted the accused and sentenced him as aforesaid.

10. Heard Mr. B. Seth, learned counsel appearing for the appellant and Miss Samapika Mishra, learned Additional Standing Counsel for the State.

11. Assailing the impugned judgment Mr.Seth has contended that the order of conviction cannot stand because the same is based on the solitary evidence of the informant (P.W.12) which suffers from non-corroboration by other witnesses. According to Mr.Seth, the trial court erred in relying upon the evidence of P.W.12, even though

he is a highly interested witness. Mr. Seth further argues that the defence plea being plausible could not have been brushed aside rather, should have been tested on the principles of pre-ponderance of probability.

12. Per contra, Miss Samapika Mishra, supporting the impugned judgment has contended that there is no bar in law to rely upon the solitary evidence of an eye witness if the same is found to be truthful, cogent and reliable. She further argues that the defence plea as laid is entirely unbelievable and was rightly rejected by the trial court. Miss Mishra further submits that the subsequent conduct of the accused in surrendering before the police station and of confessing to have killed the deceased cannot at all be ignored. According to Miss Mishra, the impugned judgment therefore, does not warrant any interference whatsoever.

13. There is no doubt as regards the nature of death of the deceased, that is, homicidal in nature. Defence has not seriously objected to the finding of the trial court in such respect. We have traveled through the evidence on record carefully and particularly that of the informant P.W.12 because, he seems to be the only person

who witnessed the occurrence. In his evidence he states as follows:-

“3) After five to ten minutes there was rain, therefore, I also went inside the room. My brother P.W.3 also went inside the room and slept by closing the door. (I along with my wife and child slept in the outer room of the house by opening the door because there was heat due to summer.

4) At about 4 A.M. the accused Basanta Sahu dealt an axe blow on the neck of my wife and two blows on her shoulder .Then my wife shouted with pain.

5) My sister Janaki Sahu at that time slept in the upstairs of the house. Hearing my shout, my sister Janaki Sahu P.W. 1 came to the spot. I chased the accused Basanta Sahu, but, I could not able to catch hold of him. The accused Basanta ran away holding that axe. Thereafter, I went to the house of brother Fakira Sahu P.W.3 and called him Fakira Sahu P.W.3 . He came to my house and saw the bleeding injury on the neck of my wife (deceased). I discloses the fact before the P.W. 3 that when I came that the accused dealt axe blow to the deceased and ran away and I tried to chase and catch hold of him, but, failed.

6) Hearing our hulla nearby villagers gathered at the spot I along with my brother Fakira Sahu went to the police station for reporting the matter. I lodged the written report in the P.S. scribed by my brother P.W.3 as per my instruction. Ext.8 is the FIR and Ext.8/ 1 is my signature.

7) When I reached at the P.S. I found the accused Basanta had already surrendered before the Police and was standing there.

8) There was dispute between myself and the accused for house and he killed my wife for that dispute. On the date of occurrence the accused was reading at ‘Bijadihi’.”

In cross examination he admits as follows:-

22) I had not seen the first axe blow dealt by the accused to the deceased but, I had seen the second blow dealt by the accused to the deceased. The second blow was also seen by my sister (P.W.1). When I awoke hearing sound of the deceased I saw blood was coming out from the neck. The second blow caused injury on the shoulder of the deceased. I saw two blows dealt by the accused to the deceased.

23) When the accused dealt second and third blow I was standing at a distance. Hearing my hulla, my sister P.W.1 got down from the upstairs. When the accused dealt second blow, at that time I raised hulla. P.W.1 got down from the upstairs without holding a light.”

14. The testimony of P.W. 12 and his statement in cross-examination as above clearly reveal that he was an eyewitness and had seen the accused dealing at least two blows with the axe on the deceased. It is to be kept the mind that there was no source of light in the room which was plunged in darkness but then, the accused is none other than the brother of P.W.12 and therefore, it would not be too much to expect him P.W.12 to recognize/identify the accused even in the absence of light.

15. P.W.1 is the sister of the informant as well as the accused. She claims to have been sleeping in a room upstairs and of seeing the accused going away when she came out from the house to attend call of nature. She was

told by P.W. 12 about the act committed by the accused. However, such fact appears to be an improvement from her earlier version inasmuch as the I.O. (P.W.13) admitted in cross-examination that P.W.1 had not stated so before him during investigation. The version of P.W.1 is therefore, not of much help to prosecution.

16. Coming to other witnesses, it is seen that P.W.2 turned hostile but P.W.3 is an important witness being another brother of the informant and the accused. He was also sleeping outside his house and went inside because of possibility of rain. He stated that at about 4.00 A.M. Toshamani (P.W.12) called him by knocking his door and told him that accused had killed his wife and thereafter he and the family members went to the house of P.W.12 and saw the deceased lying dead on the cot. His version as a whole appears to be truthful, save and except that his statement that Toshamani (P.W.12) had not knocked his door was proved to be an improvement. But his other statements stand firm.

17. P.W.4 says that he heard shout of Toshamani (P.W.12) that the accused had killed his wife and fled away. His statement is also believable. P.W.5 is the

brother of the Sarapanch of the village. He says that P.W. 3 told his brother that the accused had killed the deceased and that he along with his brother came to the spot and saw the deceased lying dead with heavy bleeding. He was witness to the inquest and proved his signature on the inquest report marked Exhibit-1. Similar is the version of P.W.6 who is also a witness to the inquest. Though he turned hostile yet his positive statement was that he had gone to the police station along with P.W.3 and P.W.12 and they found the accused had already surrendered before the police. Significantly, despite turning hostile he stuck to the above version, even in cross-examination by the defence. P.W. 7 is the Gramarakhi and seizure witness who admitted the seizure but did not say anything about the occurrence. P.W. 8 is another seizure witness. P.W.9 is the wife of the P.W.3 who says that at about 4.00 A.M. P.W.12 came to their house and knocked at the door and told them that the accused had killed his wife and ran away and that he tried to catch hold of him but failed. He further stated that P.W. 12 told them that the accused had assaulted her by means of an axe and thereafter they went to the spot and

saw cut injury on the neck and shoulder of the deceased with severe bleeding.

18. It is thus seen that all the above witnesses are post occurrence witnesses and their version regarding authorship of the crime being based on hearsay, is not admissible. However, they all stated in clear terms that after hearing about the incident they went to the spot and saw the deceased lying dead with cut injury on her neck with heavy bleeding. This part of their evidence corroborates the version of eyewitness P.W.12 regarding the death of the deceased and of sustaining cut injury with bleeding on her neck.

19. Having examined the evidence of the sole eyewitness P.W.12 as discussed hereinbefore, we find no reason to doubt his credibility or veracity. On the contrary, his version comes out as truthful, consistent and reliable. The defence has not been able to elicit anything from him in cross-examination that could even remotely persuade us to view his testimony with suspicion. That apart, there are other materials and evidence to corroborate the version of P.W.12 such as, seizure of blood stained cloths of the deceased, weapon of

offence, inquest report, spot map etc. Law is well settled that conviction can be recorded on the basis of the testimony of sole witness. It is the long settled legal principle that evidence has to be weighed and not counted as held by the Apex Court way back in the case of **Binaya vs. State, reported in AIR 1957 SC 614**. It is also well settled that if the evidence of a solitary witness is cogent, clear, convincing and unimpeachable, it is enough to base conviction as held by the Apex Court in the case of **Sushila vs State Of Tamil Nadu**, reported in **1982 CriLJ. 500**. We therefore, find no reason to not accept the version of P.W.12.

20. The prosecution as well as learned trial court have laid great emphasis on the conduct of the accused in surrendering before the police station with the weapon of offence shortly after the occurrence and in confessing his guilt thereat. In this regard, the evidence of P.W.6 is relevant, which has already been discussed hereinbefore. The I.O. (P.W.13) deposed that on 08.06.2002 at about 5.45. A.M., the accused appeared at the police station with the blood stained axe (M.O.6) and blood stained wearing apparels. The accused also confessed before him

that he had committed murder of his younger brother's wife and accordingly his statement was recorded under Section 161 of Cr.P.C.. The blood stained axe was seized and blood stained wearing apparel of the accused was also seized vide seizure list marked Exhibit-9. In cross-examination P.W.13 stated that at the time of such seizure two Gramarakhis, namely, Mahendra Muguri and Prajapati Suna were presented. None of them have been examined as witnesses. However, P.W.6 who accompanied the informant and P.W.3 to the police station clearly stated that they found the accused had already surrendered before the police. Of course, the so called confessional statement of the accused while in police custody is not admissible evidence. But the evidence showing his presence at the police station with the weapon of offence and blood stained wearing apparel cannot be brushed aside lightly. This would be relevant as a subsequent conduct under Section 8 of the Evidence Act. It must also be noted that the occurrence took place between 4.00 A.M. to 5.00 A.M. and the accused appeared in the police station at about 5.45 A.M. which is after a small interval of time. Therefore, it can be reasonably held

that such conduct has close nexus with the fact in issue to be relevant for the case. Similar view was taken by the Apex Court in the case of **State (N.C.T. of Delhi) vs. Navjot Sandhu@Afsan Guru**, reported in (2005) 11 SCC 600. Defence has not really disputed such fact. The above circumstance was also specifically put to the accused in his examination under Section 313 of Cr.P.C. vide Question No.40 to which, he simply denied but then when the evidence is unimpeachable, his mere denial is of no consequence. We therefore, hold that the subsequent conduct of the accused in appearing before the police station with the blood stained axe and wearing apparel only fortifies the prosecution evidence regarding his culpability.

21. Coming to the defence evidence, while according to the accused himself, he was falsely implicated by his brother, in cross-examination of the prosecution witnesses suggestion was given to the effect that the informant had himself killed his wife because she had illicit relations with one Guna Sahu and to cover up his misdeed, he falsely implicated the accused. But when the accused himself does not say so it becomes rather

difficult to accept the defence plea. That apart, there is no such definite evidence in this regard to show that there was an ill feeling between the informant and the deceased because of the suggested reason.

Thus, from a conspectus of analysis of the evidence as made hereinbefore, we find the following:-

- (i) The version of the sole eyewitness P.W.12 is clear, consistent and credible.
- (ii) The post occurrence witnesses have corroborated the evidence regarding death of the deceased, nature of the injuries sustained, spot of occurrence etc.
- (iii) The subsequent conduct of the accused in appearing before the police station shortly after the occurrence with the blood stained weapon of offence and wearing apparel is highly significant.
- (iv) The defence plea as laid is patently unbelievable.

Reading of the impugned judgment shows that learned trial court has appreciated the evidence on record in the right perspective. Therefore, we find no reason to interfere with the judgment of conviction and order of sentence impugned in this appeal.

22. For the foregoing discussion and reasons therefore, the appeal is found to be devoid of merit and is therefore, dismissed.

(Sashikanta Mishra)
Judge

D. Dash, J. I agree.

(D. Dash)
Judge

Orissa High Court, Cuttack,
Dated the 23rd Dec. 2022, B.C. Tudu

