

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.74 of 2011 and CRLA No.30 of 2012

Against the judgment dated 29th July, 2011 passed by the learned Additional Sessions Judge, (F.T.C.) Athagarh in Sessions Trial No.278 of 2010.

JCRLA No.74 of 2011

Kulamani Behera

.....

Appellant

Versus

State of Odisha

.....

Respondent

CRLA No.30 of 2012

Sukanti Behera

.....

Appellant

Versus

State of Odisha

.....

Respondent

Advocate(s) appeared in both the cases :-

For Appellants : Mr. B.K. Ragada, Advocate

For Respondent : Mr. M.S. Sahoo, AGA

**CORAM : THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY**

JUDGMENT

30th March, 2022

B.P. Routray, J.

1. The Appellants, namely Kulamani Behera and Sukanti Behera are husband and wife. Kulamani has been convicted for the offence under Section 302 of the Indian Penal Code (in short 'the I.P.C.') and Sukanti under Section 302/109 of the I.P.C. Both have been sentenced to imprisonment for life.

2. Prosecution's case is a sorrowing story of patricide. Kulamani is the elder son of the deceased Ghana. Other two sons of Ghana are Chintamani (P.W.1) and Mahendra. Kulamani married to Sukanti around 10 years prior to the occurrence. She insisted kulamani to stay separately from the family. To avoid disturbance and to maintain peace in family, the thatched house was left for Kulamani and Sukanti who lived there on separate mess. The deceased along with his wife stayed in the pucca house within same premises. His two other sons namely, Chintamani and Mahendra were staying outside the village at their workplace. The absconded co-accused Bapi @ Saroj Parida used to come to the house of Kulamani and spent time with Sukanti. Such free mixing of Sukanti and Bapi was objected by the deceased and his wife Padma (P.W.10) for which the relationship between the deceased and Kulamani became more strained. Sukanti was allegedly instigating Kulamani against the deceased. Padma was with her husband over the issue relating to Sukanti and Bapi. Deceased and his wife were suspecting illicit relationship of Sukanti with Bapi and opposing their relationship, a village meeting was convened at the behest of deceased. In the said village meeting, the villagers directed Bapi not to visit the house of Kulamani. But Bapi used to come frequently to Sukanti in their house disobeying the direction of the villagers and as such, the relationship of accused persons with the deceased became further strained.

3. On the occurrence day, i.e. 10th August, 2009 at about 5 pm when the deceased returned to house after grazing cattle, in the outer premises of their house, both appellants along with Bapi encircled the deceased. At that time Padma was sitting in the outer verandah of the pucca house, Indumani – the neighbour (P.W.3) was present in her

outer courtyard, Allada Behera (P.W.2) – the nephew of the deceased was standing at a distance of 15 feet and some other witnesses including Nabakishore Patra (P.W.5) and Bidyadhar Behera (P.W.7) were present at the nearby place. Some altercations were exchanged between the deceased and the Appellants and all of sudden Kulamani dealt a blow on the head of the deceased by means of a glass beer bottle which he was holding in his right hand. As the bottle broke with the stroke on the head, Kulamani again pierced the broken glass bottle into the lower chest of the deceased. Bapi and Sukanti being present there were instigating Kulamani to kill the BUDHA (deceased). The deceased fell down on the ground and all the accused persons fled away from the spot. The witnesses immediately rushed and shifted the deceased to the Pandal of Mangala Temple situating near the spot. P.W.2 informed to P.W.1 over phone about the incident. P.W.1 reached at village without delay and lodged the written report in Badamba Police Station which was registered as P.S. Case No.125 dated 10th August, 2009.

4. The investigation was taken up by P.W.15 the Sub-Inspector of Police. He held inquest over the dead body on the next morning and sent it for post mortem examination. The spot was preserved overnight with guards sent by P.W.15. In the morning different witnesses were examined and the spot was visited by the scientific officer. The broken glass bottle (M.O.I) and the broken glass pieces (M.O.II) lying at the spot were seized. Kulamani was arrested on 12th August, 2009 and Sukanti was arrested on 1st December, 2009. The charge-sheet was filed on 7th December, 2009 alleging offences stated above.

5. Defense denied the allegations. Kulamani took the stand that the deceased died due to fall on pointed stone while returning with the cattle. Sukanti took the plea of alibi.

6. Prosecution examined 15 witnesses and several documents from Ext.1 to Ext.23 were marked along with seven material objects viz. M.O.I to M.O.VII.

7. Defense examined one witness i.e. D.W.1, in support of the plea of alibi taken by Sukanti.

8. P.W.14 is the doctor who conducted post mortem examination over the dead body of the deceased. The report has been marked as Ext.7. As per the opinion of P.W.14, he noticed one incised wound present over the vertex of left side scalp of size 1" X ½" X ½" and another curved incised wound of size 3.5" X 2" X abdominal depth, extending from xiphysternum running downward in a curved way towards right. There was an internal injury, i.e. rupture of superior surface of the right lobe of liver of size 1" X ½" X 2". All such injuries in the opinion of P.W.14 were ante-mortem in nature and might have been caused by sharp weapon and the cause of death is due to hemorrhage and shock as a result of injury to the liver. The time since death was within 6 to 36 hours from the time of post mortem examination which was conducted on 11th August, 2009 at 11.45 am.

Thus, the aforesaid injuries coupled with the circumstances establish the homicidal in nature of death of the deceased which is not disputed by the Appellants in course of hearing.

9. Next to see the involvement of Appellants in the alleged offence, prosecution projects P.Ws.2, 3, 5, 7 and 10 as the eye-witnesses.

10. P.W.2 is a co-villager and an independent witness. P.W.3 is the neighbour of the deceased. P.W.5 is a friend of the informant and resident of the nearby village – Baselinota. P.W.7 is the Sarpanch and P.W.10 is the widow of the deceased. The map under Ext.12 reveals the spot on the village road in front of the thatched house where Appellants were residing. The pucca house is next to it. Just in front of that on the other side of the road, the Mangala Temple and Mangala Mandap are situating adjacent to each other. The house of Indumati (P.W.3) situates towards backside of the pucca house.

11. It reveals from the evidence of the eye witnesses that, at the time of occurrence the deceased as usual was returning to his house at around 5 pm from the field with the cows. When he reached near Mangala Temple, Kulamani intercepted him and there was hot exchange of words between them. Kulamani in quick succession assaulted the deceased by the beer bottle which he was holding and dealt a blow on the head of the deceased. The bottle crashed with the blow and the broken part remained in the hand of Kulamani was pierced in the upper abdomen just below the chest. P.W.10 – the widow of deceased who was sitting in the front verandah of their pucca house immediately rushed to the spot and P.W.2 who was on the road nearby also rushed to the spot. Similarly, P.W.5, 3 and 7 who were present near the spot also rushed to the spot. It is the consistent evidence of all those eye witnesses that Kulamani first dealt a blow on the head of the deceased by the beer bottle and again pierced the broken bottle part in

the chest of the deceased. The specific evidence of P.W.5 is to the effect that when he arrived near Mangala Temple found Kulamani and deceased were arguing. He was at a distance of 20 to 25 feet from the spot. Suddenly Kulamani assaulted on the head of the deceased by means of the bottle followed by the blow in his chest. Similarly, it has been specifically stated by P.W.10, the widow that, *“at the time of incident, I was sitting in the verandah of my house xxxx xxxx while my husband arrived near Mangala Temple, there ensued a quarrel of my husband with Kulamani. Kulamani was holding a glass bottle. Hearing altercation I rushed there. All of sudden Kulamani dealt a blow on the head of my husband by means of that glass bottle and when it broke he again pierced the broken glass bottle on his belly near the chest. Bapi and Sukanti were with Kulamani and instigating Kulamani to murder ‘BUDHA’ (deceased).”*

P.Ws.2, 3 and 7 all have stated in the same line. All these witnesses have been cross-examined comprehensively. Nothing could be elicited from their cross-examination to disbelieve their version. Rather they have confirmed their version by giving a detail account of the occurrence in their cross-examination. Thus upon thorough scrutiny of the evidences of these eye witnesses coupled with medical evidence, an irresistible conclusion is established against Kulamani of his complicity in the assault on the deceased by means of the glass bottle twice causing his death. The evidences of the eye witnesses are so cogent and corroborative that does not leave any room for any ambiguity. The circumstances as narrated by different witnesses also depict the ill-feeling between Kulamani and Sukanti with the deceased, his wife and other family members. The evidence of P.Ws.3, 10 and P.W.4 (the Sarapanch) depict the background circumstances how the

deceased was objecting the suspected illicit relationship of Sukanti with Bapi and the resultant ill-feeling between the accused persons with deceased and other family members. Even Sukanti had lodged an F.I.R. alleging rape against the deceased which was later pacified in the village meeting.

12. Therefore, as seen from the evidence of the witnesses the entire scene goes against Kulamani to suggest him as the assailant of murder of the deceased. Viewing from any angle, the innocence of Kulamani is not forthcoming from the materials brought on record. The statements of the eye witnesses are so cogent and supportive to each other that does not leave any lacuna or suspicion to the benefit of Kulamani. The unimpeachable nature of evidence given by the eye witnesses establishes the guilt of the deceased beyond all reasonable doubts.

13. Coming to see the involvement of Sukanti, who has been found guilty for offence under Section 302/109 I.P.C., the prosecution case against her is to the effect that she was instigating Kulamani to finish the deceased as the deceased was against her relationship with Bapi. As per the evidence of all those eye witnesses Sukanti was all along present at the spot with Kulamani. As per the evidence of those eyewitnesses viz. P.Ws.2, 3, 5, 7 & 10, a summery statement of their evidences is to the effect that Sukanti was standing close to the deceased and Kulamani at the time of assault and instigating Kulamani. P.W.10, the widow of the deceased has added that Sukanti was instigating Kulamani to murder the BUDHA (the deceased). The background circumstances as narrated by different witnesses speak that Sukanti had illicit relationship with Bapi and as the deceased and other

family members were opposing the same, Sukanti and Bapi instigated Kulamani to commit the murder. In the words of the learned trial judge, the absence of Sukanti at the time of inquest, her silence with regard to the death of the deceased, the objectionable relationship between Sukanti and Bapi which was repeatedly protested by the deceased are the factors giving rise the inference against her that she instigated Kulamani to kill the deceased as no other issue was there between Kulamani and deceased. As such, she was convicted for abetment of the offence of murder by Kulamani.

14. In terms of the language incorporated in Section 107 of the I.P.C., a person is said to abet doing of a thing under three circumstances. First, when he instigates to any other person to do that thing, secondly, engages with others in any conspiracy for doing that thing, thirdly, intentionally aids by any act or illegal omission of doing that thing. The Supreme Court in the case of **Kulwant Singh @ Kulbansh Singh vrs. State of Bihar, (2007) 15 SCC 670** have held that *“where a person aids or abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 107 strictly, the instigation must have reference to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation, Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other person in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place*

or has been intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable.”

15. It is true that the act abetted within the meaning of Section 107 and punishable under Section 109 means the specific offence abetted. This means the abetment must be to commit the specific offence i.e. murder in the present case. By relooking to the evidence of all those eyewitnesses, none of them have stated the specific word of instigation used by Sukanti to commit the murder by Kulamani. Admittedly, it is not the case of the prosecution that Sukanti had in any manner aided the commission of offence except her presence at the spot. The learned trial judge as stated above by presuming the fact that Kulamani might have promised to his wife (Sukanti) to take revenge on his father for his alleged protest to the relationship of Sukanti and Bapi, has inferred against Sukanti to sustain the conviction. The statements of the eyewitnesses are not specific with regard to instigation by Sukanti. There might be opposition or protest by the deceased against any relationship between Sukanti and Bapi, but that does not mean, in absence of specific evidence, that Sukanti had instigated Kulamani to murder the deceased. There might be ill-feeling between the parties or there might be accusations and counter accusations between the parties. Nevertheless, the evidence needs to be specific with regard to instigation for murder and for murder only, not for any other purpose. This is absent in prosecution evidence. Sukanti might have complained to Kulamani against her father-in-law but that does not mean she instigated her husband to commit murder of her father-in-law. There is absolutely no material to satisfy such instigation committed by Sukanti and the inference drawn by the trial court against Sukanti is not

supported with material evidence. As such, we are of the considered opinion that the offence of abetment of murder by Sukanti is not proved beyond all reasonable doubts and she is entitled for acquittal.

16. In the result, the conviction of Kulamani and sentence imposed on him is confirmed. The appeal preferred by him i.e., JCRLA No.74 of 2011 is dismissed. In respect of Sukanti Behera, she is acquitted from the charges. The appeal preferred by her i.e., CRLA No.30 of 2012 is allowed and the bail bonds are discharged.

17. The LCRs be returned forthwith.



(B.P. Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice