

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.11 of 2011

From the judgment of conviction and order of sentence dated 25th January, 2011 passed by the learned Additional Sessions Judge, FTC, Rourkela.Camp-Bonai in Sessions Trial Case No.127/42 of 2010.

Shankar Mundari

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Ms. B.L.Tripathy,
Advocate

For Respondent

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Mr.S.S. Kanungo
Additional Government Advocate

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 14.11.2022 : Date of Judgment:18.11.2022

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 dated 25th January, 2011 passed by the learned Additional Sessions Judge, FTC, Rourkela, Camp-Bonai in Sessions Trial Case No.127/42 of 2010 arising out of G.R Case No. 74 of 2010 corresponding to Lahundipada P.S Case No.22 of 2010 of the Court of the learned S.D.J.M., Bonai.

By the same, the Appellant (Accused) has been convicted for commission of offence under section 302 of the Indian Penal Code (in short, 'IPC') and sentenced to undergo imprisonment for life and to pay fine of Rs.3000/- (Rupees three thousand) with the default stipulation to undergo rigorous imprisonment for two years.

2. The prosecution case is that on 10.02.2010, Rama Chandra Mundari (Deceased) and his brother Shankar Mundari (Accused) were carrying on discussion concerning their landed properties. The informant namely Rasai Mundari (P.W.3), who happens to be the son of Ram Chandra Mundari and nephew of accused Shankar Mundari watched the same for some time. In course of their discussion, the accused demanded the share from the property of the deceased which the latter refused to part with. The informant then proceeded towards Jungle and on his return, after sometime, he saw the accused assaulting his father on his head by a stone. He then went to rescue his father and at that time, seeing them, the accused gave an axe blow on the head of his father and then chased the informant by holding that axe to assault for which the informant again went inside the forest. After sometime, the informant came and saw his father lying dead. He then told the incident to the local ward member who advised him to report the matter at the police station. Accordingly, he orally reported the matter before the Inspector-in-Charge of Lahunipada who reduced the same into writing (F.I.R-Ext.7). The Inspector-in-Charge (P.W.8), on such report, immediately registered the case and took up the investigation himself.

3. In course of investigation, the Investigating Officer held the inquest over the dead body of the deceased, prepared the Inquest Report (Ext.8) and the spot map (Ext.12). He sent the dead body for post

mortem examination by issuing necessary requisition to that effect. He also examined the witness including the informant and seized the incriminating articles by preparing seizure list on that score. The accused was arrested around 5.00 p.m. On 10.02.2010, he offered his statement and led the police and the witnesses to the place of recovery of the axe which too was seized. The statement of the accused was reduced in writing by the Investigating Officer (Ext.9). The incriminating articles had been sent for chemical examination through the Court. On completion of investigation, Final Form was submitted by the Investigating Officer (P.W.8) placing the accused to face the trial for commission of offence under section 302 of IPC.

4. In the trial the prosecution has examined in total 8 witnesses which include the Doctor (P.W.2) and as already stated the Investigating Officer (P.W.8). The informant has been examined as P.W.3. P.W.1 is the witness to the seizure of the wearing apparels of the accused and the deceased. The wife of P.W.3, who happens to be daughter-in-law of the deceased has been examined as P.W.4 and the mother of P.W-3 has come to the witness box as P.W.5. P.W.6 is witness to the recovery of the axe at the instance of the accused by leading police and others to be place where the same was kept concealed. Besides the above, the prosecution has proved several documents which have been marked as Ext.1 to 12 and those include the F.I.R. (Ext.7), inquest report (Ext.8), post mortem report (Ext.4), statement of the accused (Ext.9), opinion of the Medical Officer P.W.6, seized lists etc.

The plea of the defence being that of complete denial, no witness has been examined in support of the same.

5. Having gone through the evidence of the Doctor, P.W.2 and that of P.W.8 as well as the reports (Ext.4) and (Ext.8) as also the evidence of other witness including P.W.3, 4 and 5, we are wholly in agreement with the above finding of the Trial Court as regards the nature of death of Rama Chandra.

6. The Trial Court accepting the evidence of Doctor who had conducted post mortem examination over the dead body of the deceased on 11.02.2010 at 11 a.m. and his report Ext.4 as well as the evidence of the Investigating Officer (P.W.8) who had held inquest report over the dead body has held the death of Rama Chandra Mundari to be homicidal. In fact, this aspect was not under challenge from the side of defence.

7. Ms. B.L. Tripathy, learned counsel for the Appellant submitted that the finding of the Trial Court basing on the evidence of P.w.3, 4 & 5 in attributing the authorship of the injuries upon the deceased which have been proved to be fatal is unsustainable. According to him, the Trial Court has not at all appreciated the evidence of these witnesses in a proper manner and simply relying upon their version as rendered during their examination-in-chief and without putting the evidence of those witnesses to the test on the score of reliability in a general manner the conclusion has been arrived that it is the accused who had assaulted the deceased to death. He further submitted that when such evidence of the witnesses are not at all acceptable to fasten the guilt of the accused, the evidence as to the recovery of the weapon at the instance of the accused pursuant to his statement which is not free from doubt and discrepant would render no help to the case of the prosecution.

8. Mr.S.S.Kanungo, learned counsel for the State on the other hand, while supporting the finding of the Trial court as regard to the guilt of the accused contended that the evidence of P.W.3, 4 and 5 are quite natural and they all have deposed about the role of the accused in causing fatal injuries upon the deceased. According to him, the Trial Court did commit no mistake in holding the same as reliable to fasten the guilt of the accused for committing murder of Rama Chandra Mundari by intentionally causing his death; where the same also receive corroboration from the evidence as to the recovery of the weapon i.e. axe at the instance of the accused who having led the police and witnesses after giving the statement, had gone to the place of concealment in giving said recovery.

9. Keeping in view the rival submissions, We have carefully read the Judgment passed by the Trial Court. We have also extensively travelled through the evidence of the prosecution witness P.W.1 to 8 and have perused the documents admitted in evidence and marked Ext.1 to 12.

10. In order to judge the sustainability of the answer of the Trial Court that it is the accused who has caused the death of the deceased in addressing the rival submission and arrive at a conclusion on that score, We are now called upon to discuss the evidence on record.

First important witness for the prosecution is P.W.3. He has stated that while his father (deceased) and his uncle (accused) were having the discussion with regard to the property matter, he went to the forest for collection of fire wood. He said to have returned from the forest around 4 p.m. This witness is not stating as to the time when he left for the forest from that place nor has stated as to what was the time gap between his leaving and return. Be that as it may, he is stating that on

his arrival, he saw the accused assaulting his father by an axe on his head. The F.I.R version of this P.W.3 is that first he saw his father being assaulted by the accused on his head by means of a stone. This part is not stated in his evidence in Court. He then stated that when he wanted to separate the accused, there was attempt by the accused to assault him on his head by that very axe and he then fled away. He was however next gone to state that at the first sight, the accused was found to have assaulted his father by stone and when he was running away from the place out of fear, he was so assaulted by an axe. The sequence of happenings as narrated in the F.I.R as well as in the evidence greatly differs. Having said all these during his examination-in-chief, his version during cross-examination is completely different which demonstrates that he had not seen the accused assaulting his father as he has then categorically stated to have heard from his wife (P.W.5) about the assault upon his deceased father by the accused. He has next admitted that he had not seen the accused assaulting his father. With the above state of affair in the evidence of P.W.4, We are not in a position to accept even for a moment that he had seen the accused assaulting his father and his version of that score as noted in the F.I.R.(Ext.7) and in his examination-in-chief are wholly unsafe to be relied upon.

11. The next important witness for the prosecution is P.W.4. She is the wife of P.W.3 and her evidence is that at the relevant time, she was at home. She has stated that accused came and called her father-in-law and then they had the discussion. This part that accused called the deceased is not stated by P.W.3 when he has particularly stated that he left the place when the discussion between the two was going on. P.W.5's further evidence is that in course of discussion, quarrel ensued when her father-in-law (deceased) proposed to settle the dispute with the

intervention of village Panch. It is stated that the accused first pelted a stone aiming at the head of the deceased and then went to his house brought out an axe and assaulted the deceased on his head by means of that very axe which she has seen and narrated to P.W.3. P.W.3's evidence is however not coming in that light that he was told by this P.W.4 about all said happenings. This witness again in her cross-examination has gone to say that hearing hot exchange of words between the accused and deceased, she came out of the house and saw the deceased lying with bleeding injuries. This leads to say that by the time, this witness came out of the house, the deceased had already received the injuries on his head and with said injuries, he was lying on the ground with blood oozing from the seats of the injuries. The Trial Court though has noted the witness to be a rustic one, it is the version of the witness herself on being asked by the Presiding Officer that what she stated was after understanding the question correctly. Thus the evidence of this witness P.W.4 is also of no help to the prosecution in proving the role of the accused in the said incident that it is he who had assaulted the deceased on his head by that axe after having assaulted the deceased by stone. The immediate disclosure of this witness P.W.4 on the happenings before P.W.3 as stated by P.W.3 also differs on material particulars. The wife of the deceased when examined as P.W.5 has stated that she had gone to the market and on her return, she came to know that her husband had been assaulted by the accused and it was so informed to him by P.W.4. She again is not stating as to whether by the time she arrived at home, her son was there or that he came later. Thus from the evidence of these witnesses, even if for a moment, We accept that the accused was near the place, that circumstance itself is not enough when the prosecution having projected P.W.3 and 4 as the

witnesses during trial to have seen the accused playing the role in assaulting the deceased, has failed in that attempt to prove the incident with the role played by the accused through them.

12. With the aforesaid discussion of evidence of P.W.3, 4 and 5, let us now turn our attention to the evidence of P.W.3 with regard to the recovery of the weapon at the instance of the accused. This witness is not stating as to where the accused gave his statement. When he states that accused confessed to have assaulted his father, the same is not admissible in law. He is also not stating as to whether accused led the police and others to the place of concealment of the stone and axe. Although through him, the prosecution has proved the statement of the accused as Ext.9, he has not written the same. P.W.8 the Investigating Officer states to have arrested the accused at 5 p.m. and while in custody, he has said that the accused had confessed his crime and so saying, that the accused had killed the deceased by a stone and axe, the recovery of the same was given. This P.W.8 is also not stating that at which place the statement was given by the accused and from where he led to which place and where from the recovery was made. All these above important factual datas are not forthcoming from his evidence. Thus, We are of the view that the prosecution has failed to prove by leading clear, cogent and believable evidence that the accused while in police custody having given his statement as to the keeping of the stone and axe by him in a place so selected had led the police and witnesses and had given the recovery of the same beyond reasonable doubt.

13. For all the aforesaid reasons, We are, of the view that the prosecution has failed to establish its case against the accused as laid to secure a conviction for the offence for which the accused stood charged

beyond reasonable doubt. In that view of the matter, the finding of the Trial Court convicting the accused for commission of offence under section 302 IPC and the order of sentence cannot be sustained.

14. In the result, the appeal stands allowed. The judgment of conviction and order of sentence are hereby set aside.

The accused being on bail; the bail bond shall stand discharged.

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

Dr.S.K.Panigrahi, J.

I Agree.

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

True Copy

Jr.Steno

Gitanjali