AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 25 of 2011

Sanyasi Jani .... ***Appellant***

-versus-

State of Odisha .... ***Respondent***

Advocates appeared in the cases:

For Appellant : Mr. Sujit Ku. Gupta, Advocate

For Respondent : Mr. Janmejaya Katikia, Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
28.06.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 16th September 2010, passed by the Additional Sessions Judge, Nabarangpur Camp at Umerkote in C.T. No.70 of 2007, convicting the Appellant for the offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life with a fine of Rs.10,000/- and in default to undergo Rigorous Imprisonment (RI) for two years and also convicting him for the offence punishable under Section 324 of the IPC and sentencing him to undergo RI for two years. Both the sentences were directed to run concurrently.

2. The case of the prosecution was that on 16th March, 2007 at night, one Bastar Santa (PW-1) was returning to his village after disposing of the dead body of Chaitu Santa of village Poinri Chachara. At that time he saw the accused/ Appellant, Sanyasi Jani running from the village side and Shyam Santa (PW-6) and Raisingh chasing him. They were shouting that the accused had committed the murder of Pati Santa and was running away. Having heard this, PW-1 caught-hold of the accused who was holding a scissor (Kainchi) at that time. He snatched away the scissor from the accused and handed it over to Raisingh. Both PW-6 and Raisingh informed the PW-1 that the accused had committed the murder of the father of the PW-6 and was running away.

3. PW-1 went to the house and found the dead body of Pati Santa lying in front of it. The deceased had sustained a stab injury on his chest and was bleeding severely. PW-1 stated that he had also heard that the accused had stabbed Bhima Santa (PW-3) with the scissor and had run away.

4. To the same effect is the evidence of Raibaru Santa (PW-2) who noticed PW-6 and other persons catching hold of the accused who was running away.

5. Bhima Santa (PW-3) was an injured eye-witness and the nephew of the deceased Pati Santa. He was at the house of Pati Santa at the time of the incident. He stated how the accused/ Appellant came to their house and first dealt PW-3 a blow by

means of a scissor. When the deceased objected, the accused/ Appellant dealt a blow on his chest with a spear. He denied in his cross-examination that the accused/ Appellant was suffering from any mental disorder at the time of the incident.

6. Trinath Santa (PW-5) the son of Pati Santa was present in the house at the time of the attack on his father, the deceased. His precise deposition was that: "the accused suddenly came to our house and dealt a blow by means of spear on my father and went away from the house. Then we chased the accused and caught red handed the accused". He confirmed that PW-6, PW-1 and PW-2 were also present while chasing the accused/ Appellant and apprehending him. The person who gave information of the crime to the police was Ghasia, who was dead by the time of the trial. Nothing was elicited from the cross-examination of the PW-5, one of the key eye-witnesses to the incident. There was only a denial that he was not deposing falsely because of previous enmity.

7. The other son of the deceased, Shyam Santa (PW-6) was also an eye witness to the attack on the deceased by the accused/ Appellant. The accused was running away when PW-6 chased him and caught him with the help of others. PW-6 too denied that the accused was suffering from any mental disorder.

8. Yet another eye-witness was the wife of the deceased, Sabita Santa (PW-7) who too was present in their house when the accused suddenly came and dealt a blow by means of a spear, as a result of which the deceased died. A further eye-witness is PW-8

Tula Santa, the wife of PW-6 who too spoke of the assault. There was hardly re-cross-examination of this witness.

9. This is a case of direct evidence with several eye-witnesses speaking about the incident in clear and cogent terms without any contradictions elicited in their cross-examination. No doubt they are the related witnesses but they have spoken clearly and consistently and their evidence has been corroborated fully by the medical evidence of Dr. Manoj Kumar Panda (PW-9) who found a penetrating injury situated right over the chest in the front of size 4cm X 4cm. The injury was situated over the right 7th rib space. The other injured eye-witness Bhima Santa (PW-3) was examined by Dr. Bhaskar Kumar Kar (PW-10) who too corroborated the scissor injury on the left arm near the elbow joint.

10. As far as the accused/ Appellant is concerned, PW-10 found four abrasions on his body which were consistent with his having been chased and caught by the other witnesses.

11. The trial Court had no difficulty in concluding that the guilt of the accused was proved beyond all reasonable doubt and proceeded to convict him.

12. Having heard learned counsel for the Appellant as well as learned Additional Government Advocate, the Court is unable to come to a different view in the matter.

13. A weak attempt was made by learned counsel for the Appellant by first contending that the accused was not in a sound state of mind at the time of the occurrence. The fact remains that the burden of establishing this was on the accused, but he miserably failed to do so. None of the PWs agreed with the suggestion made to them by the defence in this regard.

14. It was next submitted that the motive for the crime was not established. All the witnesses have spoken uniformly of the accused suddenly coming and attacking the deceased with a spear and also attacking Bhima Santa (PW-3) with scissors. As already noticed that none of these witnesses could be shaken in cross-examination, there was absolutely no need for them to falsely implicate the Appellant. As regards absence of motive, it will be useful to recall the settled legal position as explained in ***Bikau Pandey v. State of Bihar (2003) 12 SCC 616*** that absence of motive "is of no consequence and pales into insignificance when direct evidence establishes the crime." With there being clear and cogent evidence of the eye-witnesses, the burden of the prosecution to prove the motive is not significant. Again, in ***State of U.P. v. Kishanpal (2008) 16 SCC 73*** it was held as under:

> "39. … The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the

> evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

15. The above legal position was reiterated in ***Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91*** where it was held:

> "24… It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance."

16. The Court is, therefore, satisfied that no legal errors have been committed by the trial Court in convicting and sentencing the present Appellant in the manner indicated hereinbefore. There are no grounds made out for interfering with the well-reasoned order of the trial Court.

17. The appeal is accordingly dismissed with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S. Behera/ Jr. Stenographer