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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 118 of 2022

Prasant Kumar Mohanty @ Saheb **Appellant**

-versus-

State of Odisha **Respondent**

Advocates, appeared in this case:

For Appellant : Mr. T. Panigrahi, Advocate

For Respondent : Mr. Ishwar Mohanty
Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT
05.09.2022

Dr. S. Muralidhar, C.J.

1. The present appeal is directed against the judgment dated 20th December, 2021 passed by the learned Addl. Sessions Judge, Nimapara in S.T. Case No.79/256 of 2016-15 sentencing the Appellant for the offence under Section 302 IPC and sentencing him to undergo life imprisonment and pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for six months.

2. At the outset, it is required to be mentioned that although the accused was charged also for the offence under Section 498A IPC, he was acquitted of that offence by the trial Court.

3. The case of the prosecution is that the Appellant accused got married to the deceased at Kakatpur in January, 2006. A son was born to them. According to Bijay Kumar Das (PW 10), who is the informant and father of the deceased, the accused did not allow the deceased to visit her parents' place.

4. According to PW 10, on 8th March, 2015 the deceased visited her parents' house with her son and the accused also came to his house. After dinner, they returned to their house. The accused first went with the son and after about 5 to 10 minutes, the deceased went to the house.

5. The star witness of the case, is Dibyanshu Mohanty (PW 8), the son of the Appellant and the deceased who was eight years old at the time of his examination. He very clearly stated that "after taking dinner, father and myself returned home first and then mother came. Mother was washing utensils, father dragged mother and dealt a blow with a big knife to her hand. Grand-mother took him and kept alone."

6. It has emerged from the evidence of Pravash Chandra Sahoo (PW 25) the Investigating Officer (IO) that at 8 am on 9th March, 2015 he received the report of PW 10 which disclosed the commission of a cognizable offence. He received a formal FIR and took up investigation and registered the case under Sections 498A, 302, 304 B IPC read with Section 34 and Section 4 of the Dowry Prohibition Act. On 10th March, 2015 he arrested the

Appellant who offered to produce his wearing apparels which had been concealed in the hood of the Honda Activa vehicle. This was then produced before the IO and seized by him.

7. It is important to note that from the spot itself PW 25 seized a blood-stained knife, chappal, broken bangles from the verandah. On 20th March 2015, PW 25 received the post mortem examination report. The post mortem was conducted by Dr. Ramesh Chandra Mallick (PW 26). He found 17 incised cut wounds on the body of the deceased and gave his opinion that the death was caused due to the injuries to the "great vessels of neck like jugular and carotid vessels of both sides." It must be mentioned here that Dr. Santosh Kumar Tripathy (PW 24) examined the Appellant and found "superficial cut marks anteriorly on both palms."

8. On completion of the investigation, a charge sheet was led against the Appellant. He pleaded not guilty and claimed trial. On behalf of the prosecution, 25 witnesses were examined and none on behalf of the defence. The chemical examination report dated 17th December, 2015 of the State Forensic Science Laboratory (SFSL), Rasulgarh, Bhubaneswar was exhibited as Ext.24. The blood stains on the track pant and full shirt of the Accused as well as on the broken bangles, saree and blouse of the deceased were all of human blood group 'A'. Even the blood group on the iron handle knife was of Group 'A'.

9. On an analysis of the evidence, the trial Court came to the conclusion that the prosecution had proved the case against the accused beyond all reasonable doubts. The case was based on the direct evidence of the child witness, whose testimony was believed by the trial Court as being consistent and reliable. The trial Court found no evidence to bring home the charge against the Appellant accused for the offence under Section 498A IPC. He was accordingly acquitted of the offence under Section 498A IPC.

10. The conclusions of the trial Court were as under:

(i) PW 4, the son of the accused, had seen the knife blow given by the accused on the deceased on the night of the occurrence. His evidence remained unshaken. There was no reason for PW 4 who was the son of the Appellant to falsely implicate his own father. It is therefore, clear that he had seen the crime of murder of the deceased by the accused.

(ii) The chemical examination report was clear about the blood group of the stains found on the wearing apparels of the accused, on the knife and other wearing apparels of the deceased tallying with each other.

(iii) The plea of the defence that there was no endorsement of the scribe of the FIR that the contents of the FIR were read over and explained to the Informant, was not acceptable. It was clear from the evidence of PW 2, the sister of the deceased and daughter of

PW 10, that the latter was proficient in Odia. Therefore, the absence of such endorsement would not affect the case of the prosecution.

(iv) The description of the weapon of offence as ‘chopad’ (chopper) or ‘knife’ need not make much of a difference. Although according to PW 2 a sharp-edged chopper was lying near the dead body, the FIR mentioned that the accused had assaulted the deceased by means of a knife. This was also the version of PW 4. PWs 15 and 16 also noticed a knife next to the body. According to PW 21 the Scientific Officer, he collected the blood-stained knife from the verandah near to the deceased. Therefore, the mere mention by PW 1 that the weapon was a ‘chopper’ cannot falsify the consistent evidence of the other PWs that the weapon was a knife.

(v) The injuries on the accused were superficial. While the accused may have used the knife to inflict multiple blows, some superficial injuries might have resulted on his palms. Therefore, the non-explanation by the prosecution of those injuries was not fatal to its case.

(vi) As regards the motive for the offence, it was furnished by the defence itself through the suggestion that the accused suspected the deceased of having an affair with one Saideep Sahoo. However, in a case of direct evidence as the present one, the absence of motive would not affect the case of the prosecution.

11. This Court has heard the submissions of Mr. T. Panigrahi, learned counsel for the Appellant and Mr. Ishwar Mohanty, learned Additional Standing Counsel for the Respondent (State).

12. The present case has turned primarily on the testimony of the child witness (PW 4) who has spoken clearly and cogently. The law in regard to appreciation of the evidence of the child witness has been explained in several decisions including *Yogesh Singh v. Mahabeer Singh AIR 2016 SC 5160*, where the Supreme Court held as under:

“22. It is well-settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the Rule of corroboration is of practical wisdom than of law. (See *Prakash v. State of M.P.* (1992) 4 SCC 225; *Baby Kandayanathi v. State of Kerala* 1993 Supp (3) SCC 667; *Raja Ram Yadav v. State of Bihar* (1996) 9 SCC 287; *Dattu Ramrao Sakhare v. State of Maharashtra* (1997) 5 SCC 341; *State of U.P. v. Ashok Dixit and Anr.* (2000) 3 SCC 70; *Suryanarayana v. State of Karnataka* (2001) 9 SCC 129).

23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. [Vide *Panchhi v. State of U.P.* (1998) 7 SCC 177].”

13. This is a case based on direct evidence of the child witness (PW 4) which has been fully corroborated by the medical

evidence. Moreover, this was corroborated further by the chemical examination report which showed that the bloodstains on the knife and clothes of the accused matched the blood group of the deceased.

14. Mr. Panigrahi, learned counsel appearing for the Appellant did not assail the evidence of the child witness as such. He, however, first submitted that PW 10 who happens to be the father of the deceased lodged the FIR but the contents of the FIR were not read over and explained to him. He referred to the cross-examination of PW-25 in this regard.

15. It has emerged in the evidence of PW 2, another daughter of PW 10 and the sister of the deceased, that PW 10 was well-versed in Odia and could read and understand Odia. As rightly pointed out by the trial Court the FIR was lodged in Odia and therefore it was unlikely that the PW 10 would not understand its contents. This therefore, does not weaken the case of the prosecution in any manner.

16. It is then contended that the injuries on the palms of the accused have not been properly explained by the prosecution and this was fatal to its case.

17. The evidence of Dr. Santosh Kumar Tripathy (PW-24) is instructive in this regard. He examined the Appellant accused and found the cut marks on his palm to be of superficial in nature.

Importantly, a suggestion was given to him that this was not based on medical science and he denied this. Although he did state that “the injury on the person of the injured (Accused) may be possible by fall on a rough surface”, the evidence of PW 8, the child witness is absolutely clear that there was no occasion for the Appellant to have any fall on a rough surface while committing the crime. The Court, therefore, does not agree with the counsel for the accused that the failure by the prosecution to explain the injuries on the palms of the accused is fatal to its case.

18. It is then contended that the prosecution has not been able to establish the precise motive for the crime. This is a case based on direct evidence, in the form of the child witness, which has been found to be unimpeachable. Therefore, as observed in ***Goura Mohan Singh v. State of Orissa (2018) 70 OCR 933***:

“It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the court which has placed reliance on them, the question whether there is any motive or not becomes wholly irrelevant.”

19. It is then submitted that the evidence of PW 25 proves the fact that one Saideep Sahoo, whom the Appellant suspected of having an affair with the deceased, did have an extended telephonic talk with the deceased just before her death. It is submitted that the

CDRs, which would have borne out this fact, were not enclosed with the charge sheet.

20. There is no merit in the above submission. It is the defence which has suggested to the PWs about the so-called affair of the deceased with Saideep Sahoo, which they have all denied. The fact that the CDRs of the mobile phone of the said Saideep Sahoo or of the deceased was not enclosed with the charge sheet is therefore, to no avail as far as the present case is concerned.

21. It was then contended that according to PWs-2, 3 and 10 the injuries were caused by a 'chopad' (chopper) but the weapon seized was in fact a knife. As pointed out by the trial Court, barring PWs 2, 3 and 10, all the other witnesses have consistently spoken of finding a knife next to the body and this includes PWs 15 and 16 and of course PW-25. Even PW-4, the eye-witness (a child) spoke of his mother being attacked by his father with a knife. Consequently, not much turns on the fact that three of the PWs may have described the weapon of offence to be 'a chopper'. The fact remains that a sharp-edged weapon was used.

22. It was then contended that this was not a cold-blooded murder inasmuch as the accused must have acted in a fit of anger as a result of grave and sudden provocation and in fact left behind the weapon of offence next to the body. It was surmised by Mr. Panigrahi, learned counsel for the Appellant, that since the deceased continued her extra marital relationship with Saideep

Sahoo, therefore, the accused must have been enraged and must have acted in a fit of anger under grave and sudden provocation.

23. In the present case, the postmortem report reveals that there were seventeen incised wounds and that too on the vital parts of the body. It shows that the accused was not a person who was acting on grave and sudden provocation. He had acted with extreme depravity and unusual cruelty. Consequently, the question of converting the offence to one under Part-II of Section 304 of IPC simply does not arise. There is no evidence to support the plea of the accused that there was a sudden quarrel and in the heat of the moment, the accused attacked the deceased. The only person, who could have thrown light on this was PW-4. The precise answer given by the child was as under:

“After returning from maternal grand-father’s house, there was no quarrel between father and mother. I had seen quarrels between father and mother before the incident. The quarrel between father and mother was for money.”

24. Therefore, the Appellant failed to prove the plea of acting on a grave and sudden provocation.

25. Having carefully perused the entire evidence on record in light of the judgment of the trial Court and having considered the submissions of learned counsel for the parties, the Court is not satisfied that any ground has been made out by the Appellant to interfere with the well-reasoned judgment and order of sentence of the trial Court.

26. Consequently, the appeal is dismissed, but in the circumstances, with no orders as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.

