

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.9 of 2017

From the judgment of conviction and order of sentence dated 30.11.2016 passed by the learned 1ST Additional Sessions Judge, Baripada, District-Mayurbhanj in S.T. Case No.77 of 2014.

Bhanja Mohakud

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Mr.J.K. Nayak
(Advocate)

For Respondent

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Mr.S.K.Nayak,
Addl. Government Advocate

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE G. SATAPATHY

Date of Hearing : 14.12.2022 : Date of Judgment: 20.12.2022

D.Dash,J. The Appellant, by filing this Appeal, has assailed the judgment of conviction and order of sentence dated 30.11.2016 passed by the learned 1ST Additional Sessions Judge, Baripada, District-Mayurbhanj in S.T. Case No.77 of 2014 arising out G.R. Case No.45 of 2014 (C.T. No.465 of 2014) corresponding to Sarat P.S. Case No.03 of 2014 of the Court of the learned S.D.J.M., Udala.

The Appellant (accused) thereunder has been convicted for committing the offence under section 302/201 of the Indian Penal Code,

1860 (for short, 'the IPC') and accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- (Rupees ten thousand) in default to undergo rigorous imprisonment for one year for the offence under section 302 IPC and rigorous imprisonment for five years and pay fine of Rs.5,000/- (Rupees Five Thousand) with the default stipulation to undergo rigorous imprisonment for six months for the offence under section 201 IPC with further stipulation that the substantive sentences would run concurrent.

2. Prosecution Case:-

On 04.02.2014 at about 11.00 p.m., one Sanga Singh Deogam (Informant-P.W.1) presented a written report before the Officer-in-Charge of Sarat Police Station (P.W.14) stating therein that his father Ladura Singh Deogam (deceased) was practicing sorcery in the village and nearby area. On the previous day, i.e., on 03.02.2014, in the afternoon around 3.00 p.m., he had been to the 'Handia Bhati' at Badasahi on his cycle to consume Handia (locally prepared drink for intoxication) and had not returned. During the forenoon of 04.02.2014, Sanga Singh Deogam (P.W.1) came to know from the villagers that in the previous evening around 6.30 a.m., accused Bhanja Mohakud had assaulted his father and when one Rutia Soren (P.W.2) had opposed said action of the accused, he was threatened to leave the place. He alleged therein that accused Bhanja Mohakud had killed his father and concealed the dead body somewhere. It is also stated that despite search, he could not find and trace the same.

3. Receiving the said written report (Ext.1), the O.I.C. of Sarat P.S. (P.W.14), having treated the same as the FIR, registered Sarat P.S. Case No.3 of 2014 and took up the investigation.

In course of investigation, he examined the Informant (P.W.1), the scribe of the FIR and other witnesses. He also conducted raid in the house of the accused and apprehended him. It is stated that the accused then gave his statement in presence of the witnesses and pursuant to the same, the dead body of the deceased and the weapon were recovered from the place to which the accused had led the O.I.C. (P.W.14) and the witnesses. The blood stained earth and sample earth were seized under the seizure list, in presence of the witnesses. The O.I.C. (P.W.14) then sent the requisition to the Additional District Magistrate, Mayurbhanj for deputation of a Executive Magistrate for exhuming the dead body. On arrival of the Magistrate, the dead body was exhumed from the place where it had been buried. Inquest over the dead body was held in presence of the witnesses and then other accused persons were apprehended. The dead body was also sent to Sub-Divisional Hospital, Udala for post mortem examination. The O.I.C (P.W.14) then seized the bicycle of the deceased, examined other witnesses and sent the incriminating articles seized in course of investigation for chemical examination through Court. Finally, on completion of the investigation, the O.I.C. (P.W.14) submitted the Final Form under section 302/201/34 IPC placing this accused as also three others, namely, Laga @ Ladura Singh Deogam, Sidam Singh Deogam and Sahu Singh Deogam to face the trial for commission of offence under section 302/201/34 IPC.

4. Learned Sub-Divisional Judicial Magistrate, Udala, on receipt of the above report, having taken the cognizance of the offences, after observing all the formalities, committed the case to the Court of Sessions for trial. That is how the trial commenced against this accused and three others by framing the charge for the above offences.

5. In the trial, the prosecution has examined in total fifteen (15) witnesses. Out of whom, as already stated, P.W.1 is the son of the deceased, who had lodged the FIR (Ext.1). P.Ws.2 & 3 are the co-villagers of P.W.1. P.W.15 is the brother of P.W.1. Out of them, one has been cited as a witness to the recovery of the dead body pursuant to the statement of the accused, who is said to have led them to the place where it had been buried and P.W.3 is said to have seen the accused and deceased together near the Handia Bhati at Badasahi where the accused is said to have first assaulted the deceased and is also a witness to the recovery of the dead body. P.Ws.4 to 7, 9, 10 and 13 have not supported the prosecution case in any manner. P.W.8 is a witness to the inquest. The Doctor, who had conducted the post mortem examination over the dead body of the deceased has been examined as P.W.10. The constable, who had assisted the I.O. in course of investigation, has come to the witness box as P.W.12. The Investigating officer is P.W.14.

Besides leading the evidence by examining the above witnesses, the prosecution has proved several documents, which have been admitted in evidence and marked Exts.1 to 19. Out of those, the important are the FIR (Ext.1), inquest report (Ext.2), statement of the accused (Ext.3), post mortem report (Ext.6), opinion of the Doctor in response to the query made by P.W.14 (Ext.7) and the chemical

examination report and serological report Exts.18 & 19 respectively. The stone stained with blood, wearing apparels of the deceased and this accused as well as that of the other accused Laga @ Ladura Singh Deogam have been produced during the trial, which have been marked as Material Objects (M.O.I to M.O.VII).

6. The plea of the defence is that of complete denial and their non-involvement in the said death of the deceased. The accused persons however have not led any evidence nor proved any document in support of their defence.

7. The Trial Court, on going through the evidence of the Doctor (P.W.10), who had conducted the post mortem examination over the dead body of the deceased and his report (Ext.6) as well as the evidence of the I.O. (P.W.14) and other witnesses, have recorded the finding that the death of the deceased was homicidal resulting from the injuries inflicted upon him. In fact, this aspect of the matter was not challenged before the Trial Court and this is also the situation before us.

Having gone through the evidence of the Doctor (P.W.10) and his report (Ext.6) as well as the other evidence coming from the lips of the I.O. (P.W.14) and other witnesses, we are wholly in agreement with the finding of the trial Court that the deceased (Ladura Singh Deogam), the father of P.W.1 had met the homicidal death.

8. The Trial Court, then upon examination of the evidence both oral and documentary, let in by the prosecution, has held that this accused to have murdered the deceased and it has been held that the prosecution has proved the charges under section 302/201 IPC as against said accused Bhanja Mohakud beyond reasonable doubt. Further, finding the

evidence as to the implication of other three co-accused persons to be insufficient to fasten the criminal liability upon them for this incident of death of the deceased; the trial Court has acquitted them of the charges and we are informed that the State has also not impugned that order of acquittal of those three co-accused persons.

9. Mr.J.K. Nayak, learned counsel for the Appellant (accused) submitted that the finding of the Trial Court that it is the accused Bhanja Mohakud, who is the perpetrator of the crime, is unsustainable. He submitted that here, the prosecution case is based on circumstantial evidence of which the important one is the factum of recovery of the dead body pursuant to the so called statement given by this accused while in custody and leading the police and witnesses to the place has not been proved beyond reasonable doubt. According to him, the evidence on that score is not only insufficient but also highly doubtful. He next submitted that once it is accepted that the prosecution has not been able to prove beyond reasonable doubt, the fact that the accused, on being arrested, while in police custody, had led the police and witnesses to the place where the dead body had been buried and from that place, the dead body had been recovered; the other circumstances that the accused was seen assaulting the deceased near that Handia Bhati when it is not said that the accused, then having seriously assaulted the deceased, had caused his death, would not be of any such help to the prosecution to establish the charges against this accused. He further submitted that even accepting the evidence of the prosecution placed through P.W.3 that he had seen the accused assaulting the deceased near the Handia Bhati, that would not be enough to fasten the criminal liability upon the accused that he is the perpetrator of the crime even

being taken with other circumstances as projected and cumulatively viewed. He further submitted that the finding of guilt returned by the trial Court is not at all based on proper appreciation of evidence on record and the conviction has been recorded by the trial Court simply being swayed away by the fact that the dead body of the deceased was recovered from the place of burial being noticed with the marks of violence. He, therefore, submitted that the prosecution has failed to prove the chain of events beyond reasonable doubt so as to say that the said chain is so complete in every respect that it leaves no hypothesis other than the guilt of the accused by excluding all such hypothesis of innocence of the accused.

10. Mr.S.K.Nayak, learned Additional Government Advocate, in supporting the finding of the trial Court, submitted that the circumstances here as to recovery of the dead body of the deceased, having been proved at the instance of the accused, who had led the police and witnesses to the place of burial of the dead body, the presumption would be justified that the concealment was made by this accused as he has chosen to refrain from telling as to how else he came to know of it. He further submitted that the evidence of P.W.3 when is clear and acceptable that he had seen the accused assaulting the deceased and then had left the place being so threatened by the accused when the dead body has been recovered thereafter and none had seen the deceased during that period, that circumstance unerringly point at the guilt of the accused and that being taken together with recovery of the dead body at the instance of the accused the order of conviction of the accused has to stand. He, therefore, submitted that the conviction of the accused, as has been returned by the trial Court, is based on sound

appreciation of evidence in the backdrop of the settled principles of law and therefore, the Appeal does not merit acceptance.

11. Keeping in view the submissions made, we have carefully gone through the impugned judgment passed by the trial Court. We have also extensively travelled through the depositions of the witnesses (P.W.1 to P.W.15) and have perused the documents such as Ext.1 to Ext.19.

12. The instant case rests on circumstantial evidence and the prosecution main relies on the following circumstances:-

- a) the death of Ladura Singh Deogam (deceased) was homicidal;
- b) the dead body of the deceased was recovered at the instance of the accused pursuant to his disclosure statement from the place where it has been buried and also the stone stained with blood from the place kept; and
- c) on 03.02.2014 afternoon, the accused had assaulted the deceased as has been seen by P.W.3, who had to leave the place when was so threatened by the accused.

13. There cannot be any dispute as to the well settled proposition that the circumstances from which the conclusion of guilt is to be drawn “must or should” be and not merely “may be” fully established. The facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explicable through any other hypothesis except that the accused was guilty. Moreover, the circumstances should be conclusive in nature. There must be a chain of evidence so complete so as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must show that in all human probability, the offence was committed by the accused.

14. The Investigating Officer (P.W.14) has stated that on 4/5.02.2014 at about 3.00 a.m., he conducted raid in the house of the accused Bhanja Mohakud and apprehended him. He then recorded his confession statement in presence of the witnesses. Said confessional statement has been admitted in evidence and marked Ext.3. When he states that such confession statement had been recorded in presence of the witnesses, this P.W.14 is however not naming any of those witnesses. Be that as it may, from the statement of the accused (Ext.3), the admissible parts are to the effect that he had told that if they would go with him, he could show the place where the dead body had been buried and the stone which he had been used had been kept. This P.W.14 says that the accused then had led him and others to the spot. But surprisingly, which is the spot, is not stated. When the spot map prepared by this P.W.14 has been admitted in evidence and marked Ext.13 is seen a mark has been given therein as to the spot which is different from the place which is shown as the place of recovery of the dead body. When P.W.14 says that at 6.40 a.m., he visited the spot with accused Bhanja Mohakud and prepared the spot map, the place of burial of the dead body is clearly indicated in the said spot map. It is then stated that thereafter he sent a requisition for the presence of an Executive Magistrate so as to exhume the dead body and at 8.15 a.m. to 8.30 a.m., the accused showed the place where he had buried the dead body of the deceased. Thus, when the spot map indicates the place of burial of the dead body of the deceased and that had been prepared at 6.40 a.m., the evidence that the accused Bhanja Mohakud had showed the place where the dead body of the deceased had been buried, in between 8.15 a.m. to 8.30 a.m. becomes highly doubtful to accept that it was the accused, who had

shown P.W.14 and others the exact place where the dead body had been buried and then it had been so recovered in presence of the Executive Magistrate. The evidence of P.W.14 rather goes to show that he had beforehand the knowledge as to the place where the dead body had been buried as otherwise; he could not have prepared the spot map showing the place marked Ext.E when prior to that the accused had shown the exact place. The inquest report, which has been prepared after the recovery of the dead body is Ext.2. In that report, nothing is indicated as to when the dead body was recovered rather P.W.1 has written there in his own handwriting that there was no doubt in that matter. This P.W.14 has very interestingly inserted there that the cause of the death of the deceased was due to assault by means of a stone by the accused as reported, but then who reported that, is also not indicated nor is stated ruing evidence. In addition to this, when P.W.14 has stated that the statement of the accused being recorded, he had signed thereon, the accused had first led them to the place to give recovery of a stone stained with blood, but again when it is said that from the spot, it was recovered, the spot is not stated. This P.W.14, in cross-examination, says to have not mentioned the time of recording of the statement of the accused as well as the time of his apprehension and he simply says that he arrested the accused on 05.02.2014 at about 6.00 a.m. and forwarded him to the Court on 05.02.2014 at 1.40 p.m. It having been mentioned by this P.W.14 that he had taken the signatures and LTIs of the accused and witnesses on that confessional statement, interestingly neither the signature nor the LTI of accused is finds place on that Ext.3. That casts doubt on this document, Ext.3 that it is not be real one but subsequently prepared. Even accepting the evidence of P.W.14, when that Ext.3 had

been prepared on 05.02.2014, it is seen to have been sent to the Court two months thereafter as can be seen from the signature of the S.D.J.M. upon receipt of the same when no such explanation is forthcoming.

P.W.1, the son of the deceased does not say as to when the accused was apprehended and also wherefrom. He simply states that the accused led the police and himself to the place. He does not say as to if any one-else had accompanied them. He says that the dead body was recovered at the instance of the accused from the place where he had taken them and then police held the inquest whereas the evidence of P.W.14 runs totally different that the Executive Magistrate had been requisitioned and on his arrival, the dead body was recovered. This witness is not stating to have signed on that statement of the accused nor he is even stating that P.W.14 had at any point of time recorded the statement of the accused. He simply states that police interrogated and then the accused led to the place. P.W.2 says that accused, while in police custody, has admitted his guilt before the police and others to have killed the deceased which is inadmissible and then to have buried the dead body near the river side, which too is inadmissible in so far he having buried is concerned. He states that accused then led the police and witnesses to the police where the dead body was buried and showed the place wherefrom the dead body was recovered as also showed the stone and that was also recovered. This witness is silent as to whether the accused gave his statement and it was on which date, at what time and where in which place. During cross-examination, this witness however has said that the police had called him to the Police Station and obtained his signatures.

P.W.3, the other witness simply states that accused confessed his guilt to have killed the deceased and buried the dead body near the Nala and then led the police and others to the place where the dead body was buried and therefrom, the dead body was recovered. The first part is inadmissible in evidence and the second part of the evidence as to the accused stating and then leading to the place is without any further supporting the evidence. This witness is also not stating that the statement of the accused had been recorded by the police.

In view of such state of affairs in evidence, We are of the considered view that the prosecution has failed to establish the most important circumstance that the accused, while in custody, had led the police and other witnesses to the place of burial of the dead body wherefrom, the dead body had been recovered, beyond reasonable doubt.

With the failure of the prosecution to prove the above noted circumstance, even if we accept the evidence of P.W.3 that he had seen the accused assaulting the deceased in Handia Bhati at Badsahi and thereafter, had left the place when no other evidence has not been tendered in attributing any such further act to the accused in that light and it is also not forthcoming in evidence as to the distance between Handia Bhati and the place where the dead body was recovered nor so indicated in the spot map (Ext.13), more so when that owner of the Handia Bhati has not been examined and it is not said that no one else was present when P.W.3 left the place, that does not place the prosecution in a position to conclude that the guilt of the accused has been established beyond reasonable doubt. We are therefore, of the view

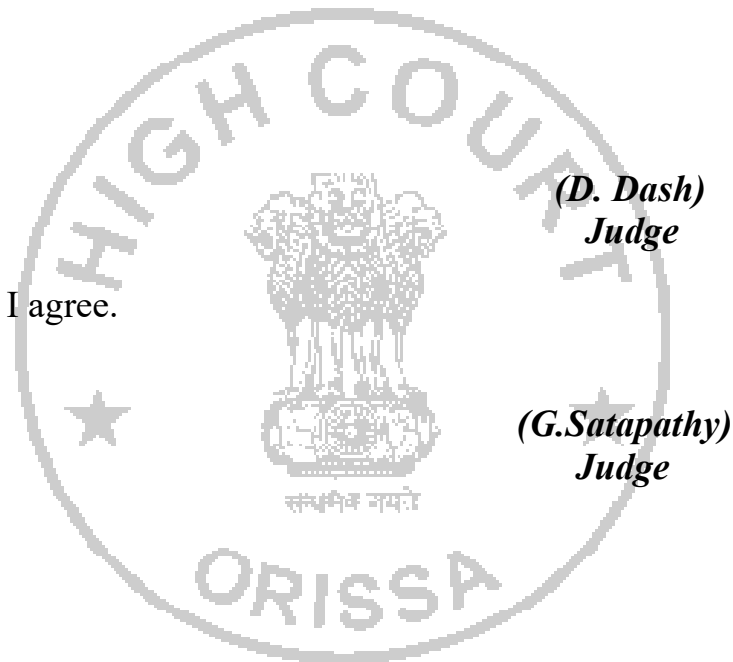
that the order of conviction of the accused for commission of the offence under section-302/201 IPC cannot be sustained.

15. In the result the Appeal is allowed. The judgment of conviction and order of sentence dated 30.11.2016 passed by the learned 1ST Additional Sessions Judge, Baripada, District-Mayurbhanj in S.T. Case No.77 of 2014 are hereby set aside.

The Appellant (Accused), namely, Bhanja Mohakud be set at liberty forthwith, if his detention is not required in connection with any other case.

G.Satapathy

I agree.



Basu