

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.93 of 2007

Baga Kabasi

....

Appellant

Mrs. Usharani Padhi, Advocate

-versus-

State of Odisha

....

Respondent

Mr. Janmejaya Katikia, Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

24.09.2022

Order No.

06.

1. The present appeal is directed against the judgment dated 12th June, 2007 passed by the Adhoc Additional Sessions Judge (Fast Tract Court), Malkangiri in Criminal Trial No.1 of 2006 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.5,000/-, in default to undergo further R.I. for six months.

2. The Appellant has been found guilty of murdering Deba Kabasi, a resident of the same village Kutiguda Panchayat. Dulla Madkami (P.W.4) the Ward Member of Mariwada Panchayat, within the jurisdiction of Kutiguda. He stated that while he was in his house, Bhima Kabasi (P.W.5), the son of the deceased Deba Kabasi, came to him and informed that the deceased had been killed by the Appellant by means of a Tangia in front of his house.

P.W.4 then went immediately to the spot and found the deceased lying dead with bleeding injuries.

3. On the following day i.e. 19th April 2005, a meeting was convened to which the Appellant had also called. The two sons of the deceased i.e. Bhima Kabasi (P.W.5) and Rama Kabasi (P.W.6) were also present. The Appellant is stated to have made an extra judicial confession at the said meeting of having killed the deceased on the previous night with a Tangia and is also stated to have produced the said Tangia at the meeting. P.W.5 was then instructed to keep the blood-stained Tangia with him. P.W.4 proceeded to the Malkangiri Police Station (P.S.) and lodged the report. This was reduced to an FIR (Exhibit 2/1) under Section 302 IPC.

4. The Investigating Officer i.e. Prakash Kumar Rath (P.W.8) took up the investigation, proceeded to the spot and collected the blood-stained earth and sample earth from the spot. The said Tangia was seized on being produced by P.W.5. The wearing apparels of the Appellant were also seized. After conducting inquest over the dead body of the deceased, it was sent for post-mortem (PM) Examination.

5. On completion of the investigation, a charge-sheet was laid against the Appellant. He pleaded not guilty and claimed trial.

6. The PM of the deceased was conducted by one Dr. K. C. K. D. N. Hembram, at the District Headquarters Hospital, Malkangiri. However, the evidence in that regard was given by Dr. Jyotirmay

Nayak (P.W.7), who was acquainted with the handwriting and signature of Dr. Hembram. The PM report revealed an incised wound over left temporal region and another incised wound over the left side of the neck of the deceased. There was a fracture of left temporo zygomatotic bone. The cause of death was due to the injury to the brain.

7. The two eye-witnesses - the sons of the deceased, P.Ws.5 and 6 - have consistently spoken about the Appellant assaulting their father, the deceased, with a Tangia and killing him on the spot.

8. In the cross-examination of P.Ws.4, 5 and 6, while nothing has been brought out to raise any doubt as to the veracity of their versions, which is by and large consistent on the material aspect, one factor that has emerged concerns the mental condition of the Appellant. In his cross-examination, P.W.4 states "the accused is suffering from mental disturbances and psychological problem at times he becomes violent." Apparently, at the meeting also "the accused was trying to create disturbance."

9. Likewise, P.W.5 in his cross-examination states "the accused is in the habit of moving around in the village. His mental state is disturbed and he had gone mad about two years back." In fact, the accused happened to be the 'Badabapa' of P.W.5. Likewise, P.W.6 in his cross-examination states "the accused had gone mad for about 4 years."

10. However, Mr. Janmejaya Katikia, learned Additional Government Advocate (AGA) drew attention to the cross-

examination of P.W.7, Dr. Jyotirmay Nayak, who purportedly examined the Appellant soon after the occurrence. In his cross-examination, he stated that he had not found any abnormality with the Appellant. Likewise, P.W.8 denied in the cross-examination that the Appellant was not in a fit mental state. He explained that he did not send the Appellant for any mental checkup.

11. Learned counsel for the Appellant pointed out that this was a motiveless crime and the trial Court had not paid attention to the fact that the Appellant was mentally unsound.

12. A perusal of the impugned Judgment of the trial Court reveals that the plea as to the mental condition of the Appellant was perhaps raised only at the stage of arguments. The trial Court noted that such a plea should have been taken at the very first instance.

13. Nevertheless, the Court is of the view that this was an important factor, which could not have been overlooked by the trial Court.

14. The fact of the matter is that today the Appellant has undergone nearly seventeen years of incarceration. The Court would therefore urge, while confirming the guilt of the Appellant and, therefore, the judgment of the trial court, the State Government to consider the premature release of the Appellant, but importantly only after ascertaining his current mental status. If the Appellant requires further treatment for his mental condition then the State Government will take adequate steps to ensure that

he receives such treatment as is appropriate to his present mental condition. This is irrespective of whether he is prematurely released or not.

15. With the above observation, the appeal is dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda

