

IN THE HIGH COURT OF ORISSA AT CUTTACK**JCRLA No.60 of 2006**

Sundar Mohan Naik ***Appellant***
-versus-
State of Odisha ***Respondent***

For Appellant : Ms. Kiran Rout, Advocate

For Respondent : Mr. J. Katikia,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

JUDGMENT
19.04.2022

Dr. S. Muralidhar, C.J.

1. This appeal is directed against the judgment dated 28th January, 2006 passed by the Sessions Judge, Mayurbhanj in S.T. Case No.110 of 2005 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to rigorous imprisonment for life.

2. This appeal was admitted on 19th November, 2007. As per the report dated 19th March, 2021 of the OIC Badasahi Police Station (PS), the Appellant continues as a life convict at Baripada Circle Jail.

3. The case of the prosecution is that on 28th January, 2005 at around 10.15 AM, the deceased Makari Naik returned to her house in village Bada-Raikali from the house of her parents situated in village Tulasibani and sat on the verandah of her house near the informant (P.W.1), who is the sister of the mother-in-law of the deceased, and who was preparing Sabai rope in the verandah. The husband of the deceased (P.W.4) was taking food inside the house. The husband's brother-Chandra Mohan Naik (P.W.5) was also present in the verandah.

4. Around 10 to 15 minutes thereafter, the accused came there on a cycle and abused the deceased Makari Naik saying "saliku mari debi". When P.W.5 protested and asked the accused to go away, the accused brought a spade (MO 1), which was lying near the cowshed of P.W.4, and hit on the backside of the deceased with the blunt side of the spade. As a result, Makari Naik sustained injury on her head, fell down and became unconscious. As a result of commotion that resulted some of the villagers and others rushed to the spot. The accused threw the spade near the spot and ran away.

5. P.W.4 then sent information of the occurrence to the house of his father-in-law and then started arranging money for the treatment of the deceased. The following day, Sanatan Naik (P.W.6) came to the house of P.W.4 and he and P.W.4 took the deceased to the District Headquarters Hospital (DHH), Baripada for treatment. While undergoing treatment, the deceased succumbed to her injuries on 30th January, 2005 at 1.15 PM.

P.W.1 along with others of the village Bada-Raikali went to Khunta PS, where she lodged a report about the occurrence. The OIC, Khunta PS (P.W.8) registered the case on the same day at around 6-7 PM and took up the investigation.

6. The dead body of Makari Naik was sent for post-mortem (PM) by the OIC and the spade (MO 1) was seized. P.W.7, who conducted the PM, noticed the following injuries on the deceased:

“i. Lacerated wound of size 1 Cm x 1 Cm on right occipito temporal region.

ii. One haematoma of size 3 Cm x 3 Cm. below scalp on right occipital temporal region.

iii. Fracture of skull 1 Cm x ½ Cm on right occipital region.”

7. On dissection, P.W.7 found one big clot 3 cm x 3 cm x 2cm below the right occipital inside the scalp. He opined that the injuries were ante-mortem in nature and sufficient in the ordinary course of nature to cause death. He further opined that the injuries were probably caused by a hard and blunt object.

8. On 1st April 2005, P.W.7 examined, at the request of the police, the spade-MO 1 and opined that the injuries mentioned in the PM report were possible with the blunt side of that spade. In his cross-examination, P.W.7 was categorical that “such injuries cannot be caused on fall on hard and blunt or stony surface.” On a re-examination, P.W.7 specifically indicated that the death was due to intracranial haemorrhage causing cardio-respiratory failure. He

was again asked whether such haemorrhage could be caused due to fall over hard and rough surface. He answered in the negative.

9. Reverting to the investigation, P.W.8 arrested the accused, seized his wearing apparels, nail clipping and sample blood. He sent the seized properties to the SFSL, Rasulgarh, Bhubaneswar. The Chemical Examiner on examining the seized properties found small faint smear of blood of a human origin on the spade. He did not find blood stains on the other seized properties.

10. On completion of the investigation, P.W.8 submitted a charge-sheet against the accused, who denied the allegations and claimed trial.

11. Of the 8 prosecution witnesses examined, P.W.1 and P.W.5 were eye-witnesses to the occurrence. P.W.1, the informant, was able to clearly state in her examination in chief that while she was preparing Sabai rope on the verandah of the house of P.W.4, the deceased was sitting near her after returning from her father's house. She clearly stated that the accused came there on a cycle, assaulted on the backside of the head of the deceased with a spade (MO 1) saying "saliku mari debi". As a result, the deceased received bleeding injury on her head and fell down. After the occurrence, the accused threw the spade near the spot and went away. P.W.1 identified the spade with which the accused had assaulted the deceased.

12. The cross-examination of P.W.1 did not bring out any inconsistencies. She had described the occurrence orally to the police and this was reduced to writing by the scribe at the PS. She then put her left thumb impression thereon. All that was able to be elicited from P.W.1 was that the deceased Makari Naik had first married Baikuntha Naik and had one son through him. Subsequently, she married Harihara (P.W.4) and had a daughter through P.W.4. While P.W.4 was a resident of village Bada-Raikali, the accused was a resident of village Belpal.

13. The evidence of P.W.1 appears to be natural, trustworthy and truthful. Although she is a related witness, there is no inconsistency in her statement. Her ocular evidence is fully corroborated by the medical evidence.

14. The second eye-witness is P.W. 5, who is brother-in-law of the deceased. He also clearly stated about the incident in a manner completely consistent with the version given by P.W.1. In his cross-examination, he stated that he was at a distance of 10 to 15 feet from the deceased. He did not see P.W.4 talking with the accused. One fact, which emerged in his cross-examination is that the accused was the Sadhu of the first husband of the deceased i.e. Baikuntha Naik. A suggestion was given to this witness that due to enmity between P.W.4 i.e. the husband of the deceased and the accused, a false case had been created against the accused. This was denied by P.W.5.

15. P.W.5 is again a natural witness and has spoken clearly and cogently. Not only there is no inconsistency in the versions given by P.W.1 and P.W.5, but also nothing has emerged during their cross-examination of these two categorical eye-witnesses to give rise to any doubt on the veracity of their versions.

16. Ms. Kiran Rout, learned counsel for the Appellant, first sought to suggest that it was unnatural that the deceased was not immediately taken to the hospital when she was still alive and that immediately arrangement was started to be made for her treatment without getting her to the hospital.

17. It is seen that when the accused had attacked the deceased on the backside of her head, it had caused a lacerated wound, but the real serious and fatal injuries happened to be internal injuries. The PM showed one haematoma below the scalp on the right occipital temporal region and a fracture on the skull of 1 cm x ½ cm on right occipital region. It is entirely possible that the close family members did not realize the seriousness of the injuries.

18. The further submission of Ms. Rout that this was not an intentional murder as the deceased succumbed to her injuries only the following day and, therefore, he should be brought within the realm of Section 304 Part I or Part II, also does not impress this Court. The injuries were on the vital portion of the head and were so serious that it resulted in the fracture of the skull. Clearly, it cannot be said that there was no intention of the accused to cause the murder of the deceased.

19. The other important factor to be noted is that from the versions of both P.Ws.1 and 5, it is clear that the attack was unprovoked. The deceased was sitting quietly in the verandah when all of a sudden the accused arrived there on the bicycle. It is he who abused the deceased, then went to the cowshed and brought the spade and attacked her. She was completely unarmed. It was a cruel and dastardly act and, therefore, could not be said to be as a result of grave or sudden provocation. No element of Section 304 either Part I or Part II can be said to be attracted in the facts and circumstances of the case.

20. The decision of the Supreme Court in *Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596* is instructive on what could constitute an offence described under Section 299 IPC i.e. culpable homicide not amounting to murder and Section 300 IPC which defines murder. Para 32 of the said judgment reads as under:

“32. The guiding principles were summed up in *State of M.P. v. Ram Prasad, AIR 1968 SC 881* to the effect that even if there be no intention to cause death, (at AIR p. 883, para 8) “[if] there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death” cause Fourthly of Section 300 IPC will get attracted and that the offender must be taken to have known that he was running the risk of causing the death or such bodily injury as was likely to cause the death of the victim. Same principle is discernible from the decision of this Court in *Dattatraya v. State of Maharashtra, (2020) 14 SCC 290*.”

21. Having carefully perused the evidence in the present case, in light of the legal position explained in the above extract, it is obvious that this is an instance where the accused knowingly attacked the deceased on the vital part of the body with a clear intention to cause her death. Clause 4 of Section 300 IPC is clearly attracted since the act is “so imminently dangerous that it must, in all probability, cause death”. The decision in *Shatrughna Baban Meshram (supra)* reiterates the settled legal position as explained in *State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382*. Viewed from any angle therefore the inescapable conclusion in the present case that is the accused, who attacked the deceased on the vital part of the body with a lethal weapon intending to cause her death. He succeeded in doing so and in fact did cause the death of the deceased.

22. Ms. Rout finally argued that there is no motive for the crime and in the absence of motive, which was an important factor, the guilt of the accused cannot be said to be proved.

23. This is a case based on the direct evidence. It is possible that the prosecution may not have been able to discern the motive for crime. However, as observed by the Supreme Court recently in *Nandu Singh v. State of Madhya Pradesh (Now Chhattisgarh) 2022 LiveLaw (SC) 229* in a case of direct evidence there being the instances where the motive for the crime is unable to be proved. That by itself will not, particularly in a case of direct evidence, act in favour of the accused when all other factors

unmistakably point proved his guilt in the murder. In this connection it may be noted that on *Shivaji Chintappa Patil v. State of Maharashtra (2021) 5 SCC 626*, the Supreme Court of India referred to the decision in *Anwar Ali v. State of H.P. (2020) 10 SCC 166* where it was observed:

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive... ..”

24. For all of the aforesaid reasons, the Court finds no ground made out for interference with the well-reasoned judgment of the trial Court. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(*S. Muralidhar*)
Chief Justice

(*R. K. Pattanaik*)
Judge

M. Panda