

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA NO.16 OF 2021

From the judgment of conviction and order of sentence dated 11.04.2017 passed by the learned Sessions Judge, Mayurbhanj-Baripada in S.T. Case No.192 of 2013 arising out of G.R. Case No.111 of 2013 (C.T. No.913 of 2012) of the Court of learned S.D.J.M., Udala.

Sankar @ Jhangala Murmu ***Appellant***

-versus-

State of Odisha ***Respondent***

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

=====

For Appellant - Mr. R.C. Maharana,
Advocate.

For Respondent - Ms. Samapika Mishra,
Addl. Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING :21.11.2022 : DATE OF JUDGMENT: 25.11.2022

D.Dash,J. The Appellant by filing this Appeal, from inside the jail, has called in question the judgment of conviction and order of sentence dated 11.04.2017 passed by the learned Sessions Judge, Mayurbhanj-Baripada in S.T. Case No.192 of 2013 arising out of G.R. Case No.111 of 2013 (C.T. No.913 of 2012) of the Court of learned S.D.J.M., Udala.

The Appellant(accused) has been convicted for commission of offence under section-302/201 of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for six(6) months for offence under section-302 of the IPC. He too has been sentenced to undergo rigorous imprisonment for one year and pay fine of Rs.2,000/- with the default stipulation to further undergo rigorous imprisonment for (1)one month for committing the offence of causing disappearance of evidence in order to screen himself from legal punishment for such murder punishable under section-201 of the IPC.

2. The prosecution case is that on 03.09.2012, Ajit Kumar Behera (P.W.13) of village Kanheibandh under Khunta Police Station in the district of Mayurbhanj receiving an information about floating of a dead body near the bridge of a rivulet locally named and called 'Nalhua Nala' went there and found the information to be correct, when he saw the dead body of a female, aged around 35 years was floating over the water in that rivulet. He then reported the matter in writing to the Officer-in-Charge (OIC) of Khunta Police Station (P.W.11). Basing upon the said report(Ext.5), OIC registered as Khunta P.S. U.D. Case No.20 dated 03.09.2012 and took up inquiry.

It is stated that in course of inquiry, he identified the dead body to be of one Basi Murmu, daughter of Chhuta Majhi @ Hembram (P.W.3). He came to ascertain that the said deceased had married one Thala Murmu of village Patsanipur under Udala Police Station, 12 years before. She was blessed with a son aged about 7 years and in the year 2007 on the death of her husband; she went to her maternal uncle's house at village Biprachandrapur under Khunta Police Station. While staying there, love affairs developed with the accused namely, Sankar@Jhangala Murmu, who happens to be her maternal uncle. When such relationship was objected to by the villagers including the family members, the deceased was driven out of the house. She went to her cousin sister's house at village Gududi and stayed there. Despite her living, accused continued to keep the relationship with her. The deceased then insisted the accused to marry her, which proposal was not accepted by the accused citing the reason that he had his legally married wife. It is stated that in view the pressure from the side of the deceased, accused-Sankar@Jhangala Murmu had in mind to somehow eliminate her to get rid of the situation.

On 02.09.2012, accused-Sankar@Jhangala Murmu insisted the deceased to go to Bhubaneswar so that there they would freely stay together as husband and wife. The deceased then agreed to the proposal.

On the very night, they both left the village to proceed to Bhubaneswar. On their way after arrival at Nalhua bridge, when it was around 11 pm, the accused cut the throat of the deceased by a sharp cutting weapon. The accused having thus beheaded the deceased then threw both body as well as the head into the rivulet (Nalhua Nala) and returned to his village.

The above report in the U.D. Case then came to be registered as Khunta P.S. Case No.26 of 2013 by that OIC and he took up investigation. The U.D. Case having been registered on 03.09.2012, the regular police station case showing the accused to be the person to have murdered the deceased has come to be registered on 15.03.2013 for commission of offence under section-302/201 of the IPC.

3. In course of investigation, which was then taken up by the Sub-Inspector of Police, Khunta P.S. (P.W.14), he seized the entire record of the U.D. case, visited the spot and examined the witnesses. On 17.03.2013, he arrested the accused. It is stated that the accused while in police custody led the Police and witnesses to give recovery of the weapon i.e. one Bhujali by leading them to the place where he had kept it concealed, after having given his statement to that effect. The statement of the accused was recorded by P.W.14 vide Ext.1 and the seizure list was prepared pursuant to the seizure of the Bhujali (M.O.-

VIII). The accused was also medically examined and his wearing apparels were seized. The incriminating articles were sent for chemical examination through the Court and the report of the same (Ext.18) was received. On completion of investigation, he submitted the final form placing the accused for the trial for commission of offence under section-302/201 of the IPC.

4. Learned Sub-Divisional Judicial Magistrate, Udala having received the above report from P.W.14, took cognizance of the above noted offences and after observing the formalities, committed the case to the Court of Sessions for trial. That is how the Trial commenced after framing of charge against the accused person for offence under section-302/201 of the IPC.

5. In the trial, the prosecution has examined in total fourteen (14) witnesses; out of whom, P.W.3 is the father of the deceased, P.W.4 is the witness to the seizure of that Bhujali (M.O.-VIII) said to have been recovered pursuant to the statement of the accused-Sankar@Jhangala Murmu while in police custody. The P.W.7 and P.W.12 have been examined from the side of the prosecution as the eye witnesses to the occurrence. The Doctor who had conducted the autopsy over the dead body of the deceased in course of inquiry in the U.D. case and had submitted his report (Ext.3) has been examined as P.W.9. As already

stated, P.Ws.11 and 14 are the two Police Officers who had conducted the enquiry in the U.D. case and investigation in the regular case respectively. The person who had given the written report after seeing the dead body floating in the rivulet has come to the witness box as P.W.13. Besides the above, the prosecution has also proved several documents such as the U.D. F.I.R., Ext.5, the regular F.I.R., Ext.11, the postmortem examination report, Ext.3, the statement of the accused leading the police and witnesses to give recovery of the Bhujali-Ext.1, chemical examination report, Ext.18 etc. The incriminating articles including the Bhujali having been produced during the trial those have been marked as material objects M.O.-I to M.O.-VIII).

6. The defence having taken the plea of complete denial and false implication, has however tendered no evidence in support of the same.

7. The Trial Court keeping in view the evidence of the Doctor (P.W.9) and the postmortem report Ext.3 submitted by him as well as the evidence of P.W.10 holding the inquest over the dead body in course of inquiry in the U.D. case and his report to that effect Ext.7 as also the evidence of other witnesses has held the death of the deceased to be homicidal. The defence has not questioned this finding and that too is not challenged before us.

Having gone through the evidence of Doctor, P.W.9 and his postmortem examination report Ext.3 as well as the evidence of P.W.11 together with his inquest report Ext.7 and the evidence of other witnesses, We find ourselves in full agreement with the finding of the Trial Court as regards the nature of death of the deceased.

8. Mr. R.C. Maharana, learned Counsel for the Appellant submitted that the Trial Court has failed to appreciate the evidence of prosecution witnesses by taking into account all such surrounding circumstances which have emanated from their evidence. He submitted that keeping in view the conduct of P.Ws. 7 & 12 in remaining silent for such a long period, the Trial Court ought not to have placed reliance upon their evidence by mechanically accepting their version that they having been threatened by the accused had not divulged the incident which they had seen in their own eyes before any one which is too casual and under the circumstances does not stand to the acceptance of the human mind. He submitted that the evidence of P.Ws. 7 & 12 are not at all believable for their unusual conduct and response as well as reaction which are quite unnatural and the same being wholly unsafe to be relied upon, the Trial Court committed grave error in accepting them as reliable witnesses and their version as trustworthy. He further submitted that the evidence let in by the prosecution with regard to the recovery and seizure of the

weapon i.e. Bhujali (M.O.-VIII) at the instance of the accused pursuant to his statement while in police custody has not been proved beyond reasonable doubt and the available evidence on that score is not at all acceptable. According to him, there being no further evidence to connect the Bhujali (M.O.-VIII) with the crime, the same even if accepted for a moment is of no avail to the case of the prosecution to establish the complicity of the accused. He also submitted that even accepting that evidence of recovery of the Bhujali (M.O.-VIII) at the instance of the accused, that is not enough to fasten the guilt of the accused as the author of crime in committing the murder of the deceased when no other evidence stand on that score.

9. Ms. Samapika Mishra, learned Additional Standing Counsel while supporting the finding of the Trial Court, had taken us through the depositions of the P.Ws. 7 & 12. According to her they are the star witnesses for the prosecution and their evidence are natural and also they having remained silent for a long period, when have given explanation for the same which is quite believable and acceptable in the facts and circumstances; more particularly when they all hail from rural background and belong to the Tribal Community, the Trial Court did commit no error in accepting their version as reliable and trustworthy as they had no axe to grind against the accused. He further submitted that

the evidence of P.Ws. 7 & 12 receive due corroboration from the recovery of the Bhujali (M.O.-VIII) which in the opinion of the Doctor might have been used for the commission of offence and that being proved to have been recovered at the instance of the accused pursuant to the statement (Ext.1) while he was in police custody and seized; the conviction recorded by the Trial Court does not warrant interference.

10. Keeping in view the submissions made; We have gone through the judgment passed by the Trial Court and we have also carefully read the depositions of all the witnesses, P.Ws.1 to 14 and have perused the documents admitted in evidence and marked Exts.1 to 18.

11. The report about the death of the deceased having been received by P.W.11 on 03.09.2012 that has led to the registration of the U.D. case. The report had been given by P.W.13. The inquiry in the U.D. Case was conducted by the Officer-in-Charge of the Police Station, P.W.11. He upon enquiry in the U.D. Case has submitted the report Ext.12 and lodged the F.I.R. Ext. 11 which being registered by him, P.W.14 has been directed to take up the investigation.

In the said report, he mentions that it is accused who had committed the murder of the deceased, by cutting the throat of the deceased by means of a sharp chopper. The details as to the relationship between the deceased and the accused as also all such dealings between

them and the happenings in that night have been described in the said report i.e. Ext.11. At this stage, it is however important to take note that the report is totally silent as to wherefrom P.W.11 collected all those informations and how could he derive all said information to be so written in the F.I.R. (Ext.11). Basing upon the same, the case having been registered showing the present accused to be the author of the crime, P.W.14 states to have commenced his investigation on the very day when he received the report from P.W.11 on 15.03.2013 vide Ext.11. He then said to have examined the witnesses on 16.03.2013 and arrested the accused on 17.03.2013.

12. The prosecution has projected two witnesses to have seen the incident and they are P.Ws. 7 and 12. The Investigating Officer P.W.14 is not stating that as to if he examined those P.Ws.7 and 12 in course of his investigation. When P.W.11 is also not stating to have examined these two witnesses in course of enquiry in the U.D. case. He too has not indicated anything about these two; P.W.7 and 12 in the report Ext.11 which is certainly of great significance. When P.W.11 is stating to have known about the incident during his enquiry into the U.D. case; had be met from P.W.7 and P.W.12; their names as the source could have been so stated to provide affirmation. These two witnesses, P.Ws. 7 & 12 are also not stating as to when they first gave their statements

before the police whether before P.W.11 or P.W.14. They simply state that they had narrated the incident to the police but then it is when is not being said by them or before whom i.e. OIC of the P.S. or S.I. of Police attached to that P.S. P.W.7 when states to have seen the incident wherein the accused finally murdered the deceased by means of Bhujali, his conduct renders his version on that aspect wholly suspicious; that when he saw the incident on 01.09.2012 night, he remained silent for such a long period stretching over six months. His explanation is to the effect that on the next day of the occurrence, around 8 am, he was called by the accused and threatened to be killed in case he disclosed about the same. The incident having taken place in the dead of night even till 8 am in the morning, this P.W.7 has not disclosed the same before any of his relations, neighbours or other villagers and that is not explained and he does not state to have been threatened by the accused at the crime location. It is really interesting to note that when this witness had seen the incident and says to have fled from the spot out of fear as to then how he would again be accepting the invitation of the accused would go to his house on the next morning to receive threat of life followed by the narration as to the consequences if he divulged the incident before others which is against the normal human conduct. When judicial notice of the fact can be taken that it is rarely seen with the members of that

Tribe hailing from rural areas remaining silent for such a long time after having seen the ghastly incident in not raising voice in order to suppress the matter is rather unusual for them. He is not stating to have not met the Police Officer who was inquiring in the U.D. case. If that was the case that the witness was so scared to divulge the incident receiving the threat from the accused, he is not breathing a word as to how he could gather courage and under what circumstances he later on mastered the courage in disclosing before the police after long lapse of six months, when also the accused had not been arrested.

P.W.12 about his arrival at the place what has stated is not believable. Be that as it may, when he is stating to have seen the accused assaulting the deceased and then states that he with P.W.7 fled from the spot, the same belies the evidence of P.W.7 that they too had seen the accused slitting the throat of the deceased. Interestingly, he does not state to have been threatened by the accused in case he divulged the incident before others. It is his evidence that his brother-in-law, P.W.7 has been threatened that to after two days of the occurrence. In the same way, he is not giving any explanation whatsoever as to why he maintained silence for such a long time and even without disclosing the incident to anybody in the village. Furthermore, the evidence of these two witnesses differ on material particulars as to the happenings in

the crime scenario. Thus, We are of the view that the evidence of these two witnesses are wholly unsafe to be relied upon to hold that they had seen the accused committing the murder of the deceased.

13. Now so far as recovery of the Bhujali(M.O.-VIII) at the instance of the accused-Sankar@Jhangala Murmu is concerned, it has been stated by P.W.-14 that he arrested the accused on 17.03.2013 around 11.45 am and he then told about the keeping of the weapon of offence concealed in a place and so saying he led the police and gave recovery of the same, from the place where he had concealed. He does not state as to where and at which exact location, accused-Sankar@Jhangala Murmu gave his statement. P.W.14 also does not state about the place of concealment and he too has not deposed as to how and under what circumstances, the accused stated and gave recovery of that Bhujali(M.O.-VIII). He has not even referred to any place wherefrom the recovery of the said weapon i.e. Bhujali(M.O.-VIII) which had been concealed was recovered and seized. First of all the suffixed part as “of offence” as it finds place in his evidence is in admissible in evidence. The statement of this witness does not at all satisfy both the factual and legal requirement of the provision of section-27 of the Evidence Act when the same too is quite cryptic and vague. The evidence of the other witness (P.W.4) who has deposed about this fact is in the same vein.

This witness (P.W.4) has also not stated as to where that accused gave the statement and he simply states that the police recorded the statement. He is also not stating that whether the police recorded the statement of the accused before leading them to the place or after the recovery and seizure of Bhujali (M.O.-VIII).

P.W.14 is also silent as to whether it was before recovery or after the recovery of the Bhujali (M.O.-VIII) and its seizure. Interestingly, when it is not even stated by any of the witnesses regarding that love affairs of the of the accused with the deceased and the other facts which have been highlighted in the report, Ext.11, the Trial Court has taken note of the same from the F.I.R.(Ext.11) in saying that such was the probable motive behind the crime. Thus, We find ourselves not in a position to hold that the prosecution has proved the factum of recovery of Bhujali (M.O.-VIII) beyond reasonable doubt by leading clear, cogent and acceptable evidence.

14. On a conspectus of the analysis of evidence made hereinbefore, We thus find that the judgment of conviction and order of sentence passed by the Trial Court in convicting the accused for commission of offence under section-302/201 of the IPC by holding the prosecution to have proved the charges against the accused beyond reasonable doubt are liable to be set aside.

15. In the result, the Appeal is allowed. The judgment of conviction and order of sentence dated 11.04.2017 passed by the learned Sessions Judge, Mayurbhanj-Baripada in Sessions Trial Case No.192 of 2013 arising out of G.R. Case No.111 of 2013 (C.T. No.913 of 2012), of the Court of learned S.D.J.M., Udala are hereby set aside.

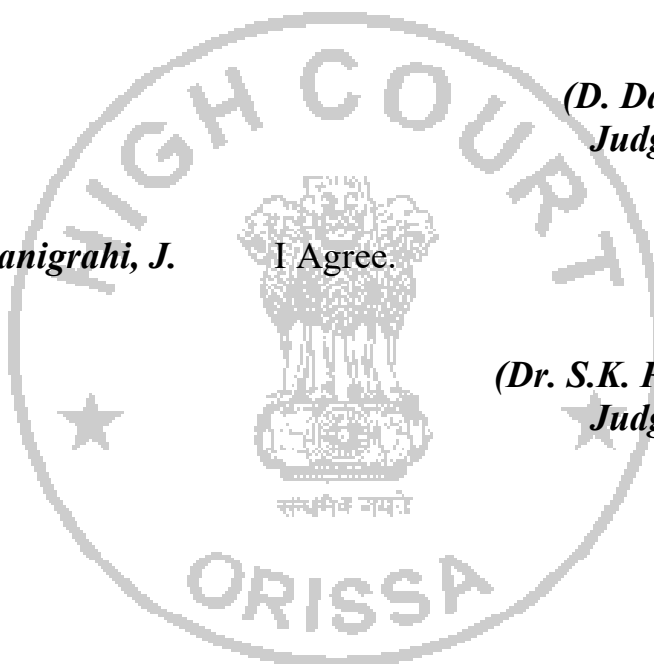
The Appellant (accused) be set at liberty forthwith in case his detention is not so required in connection with any other case.

Dr.S.K. Panigrahi, J.

I Agree.

***(D. Dash),
Judge.***

***(Dr. S.K. Panigrahi),
Judge.***



Narayan