

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.53 of 2012

From the judgment of conviction and order of sentence dated 08.02.2012 passed by the learned Adhoc Additional Sessions Judge, FTC, Khurda in S.T. No.53/129 of 2011-2009.

Mamata Sahu

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Mr.Manoranjan Das
(Advocate as Amicus Curie)

For Respondent

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Mr.S.S. Kanungo,
Additional Government Advocate

**CORAM:
MR. JUSTICE D.DASH
DR. JUSTICE S.K.PANIGRAHI**

Date of Hearing : 17.11.2022 : Date of Judgment: 18.11.2022

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 08.02.2012 passed by the learned Adhoc Additional Sessions Judge, FTC, Khurda in S.T. No.53/129 of 2011-2009 arising out of G.R. Case No.153 of 2009 corresponding to Jankia P.S. Case No.25 of 2009 on the file of the learned Sub-Divisional Judicial Magistrate, Khurda.

The Appellant (accused person) thereunder has been convicted for commission of offence under section 302/201 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly, she has been sentenced to

undergo imprisonment for life and pay fine of Rs.500/- (Rupees Five Hundred) in default to undergo rigorous imprisonment for three months for the offence under section 302 IPC and rigorous imprisonment for a period of one year for the offence under section 201 IPC with the stipulation that the substantive sentences to run concurrently.

2. PROSECUTION CASE:-

Brajakishore Sahu, the father of Bhikari used to reside outside the village. He had married Kanchan (P.W.9). They were blessed with two sons and two daughters. Two sons are Bhikari and Rabi. Jhunubala (P.W.10) and Renubala are his two daughters. Deceased (Bhikari) had married accused four years prior to the date of incident, which took place in the night of 15/16.02.2009. They were having frequent quarrel between them. In the night of occurrence, Renubala with her mother, Kanchan (P.W.9) were in the maternal house of Jhunubala (P.W.10) at Village-Chhanagiri. Around 2.00 a.m., they received a telephonic call from one Sanjay Swain (P.W.5) that Bhikari had been killed. Hearing the same, Kanchan, Jhunubala (P.w.10) & Renubala returned to their village Tankola and in their house, they found the deceased lying dead in the front room. During that night of occurrence, accused, Bhikari and their two year old son were staying. By the time Kanchan (P.W.9) and Jhunubala (P.W.10) arrived in their house, police personnels from Jankia Police Station, being informed about the incident, had already arrived at the spot. It was around 4.00 a.m. Kanchan (P.W.9) then presented a report (FIR-Ext.10) about the incident. On the basis of the same, the then Officer-in-Charge of Jankia Police Station (P.W.11) registered Jankia P.S. Case No.25 of 2009 and the investigation was taken up. The accused was arrested and she, while in police custody, led

the police and witnesses in giving recovery of one “Langala Luha”. The inquest over the dead body was held and the dead body was sent for post mortem examination by issuing requisition. The incriminating articles were also seized in course of investigation and sent for chemical examination through Court. On completion of the investigation, the accused was placed to face the trial for commission of the offence under section 302/201 IPC.

3. Learned Sub-Divisional Judicial Magistrate, Khurda, on receipt of the final form, took cognizance of the offences and after observing all the formalities, committed the case to the Court of Sessions for trial. That is how the accused faced the trial after framing of the charge for the said offences.

4. Prosecution, in order to establish its case, has examined eleven witnesses in total. As already stated, Kanchan, the mother of the deceased has been examined as P.W.9 and his daughter has been examined as P.W.10. P.Ws.2 & 7 are the two witnesses to the seizure of that Langala Luha at the instance of the accused while in police custody. Two other witnesses, i.e., P.Ws.4 & 5 have been examined in support of the fact that in the night of occurrence, the accused had informed them that some thieves, having entered into their house, had killed her husband (the deceased). P.Ws.1 & 6 are two post occurrence witnesses. P.W.8 is the witness to the inquest whereas P.W.7 is a witness to the seizure of the wearing apparels of the deceased as also the sample earth. The Doctor conducting the post mortem examination over the dead body of the deceased has come to depose as P.W.3. At the end, the Investigating Officer has come to the witness box and examined himself as P.W.11.

The defence, having taken the plea of complete that she, being innocent, has been falsely implicated in the case has further stated that she was then in her parental house at Mangarajpur. In support of the same, one witness has been examined.

The prosecution, besides examining the above witnesses, has also proved several documents, more importantly, the FIR (Ext.10), the inquest report (Ext.9/2), the post mortem report and the seizure lists.

5. The Trial Court, upon examination of the evidence of the Doctor (P.W.3) over the dead body of the deceased, who has proved his report (Ext.1) as also the other evidence of the witnesses including the Investigating Officer holding the inquest over the dead body of the deceased; further taking into consideration the positive opinion of said Doctor (P.W.3), has held the death of Bhikari to be homicidal. This aspect was not challenged before the Trial Court nor it is now challenged before us in this Appeal.

The Doctor (P.W.3), conducting the post mortem examination, has found six lacerated injuries over different parts of the body of the deceased, more importantly, on the fore head, occipital and parietal region and cheek and has stated the nature of injuries to be ante mortem. His positive evidence in Court is that said injuries had been caused by hard and blunt object. With the above available evidence, We find ourselves wholly in agreement with the finding of the Trial Court as to the nature of death of the deceased.

The Trial Court thereafter, in the absence of any direct evidence to establish the charges against the accused, has gone to examine the circumstances projected by the prosecution through evidence.

The circumstances are:-

“(i) the accused was last seen with the deceased in the house in the night of occurrence.;

(ii) the recovery of “Langala Luha” pursuant to the statement given by accused while she was in police custody and leading the police and witnesses for said recovery which has been used for causing the injuries.”

On evaluation of evidence, the above circumstances, having found by the Trial Court to have been proved beyond reasonable doubt and having said that those, unerringly point finger of the guilt at the accused to be the author of the crime, has cumulatively viewed those in saying that the chain complete in establishing the guilt of the accused ruling out all such hypothesis other than the guilt of the accused.

6. Mr.M.R.Das, learned Amicus Curie for the Appellant-accused submitted that the evidence on record do not establish the circumstances projected by the prosecution beyond reasonable doubt. He further submitted that the main circumstance, which has been projected against the accused that the deceased was last seen in the company of the accused is not believable in the facts and circumstances, which has emerged out of evidence when the relationship between the deceased and the accused is taken into account. He further submitted that said circumstance is a weak piece of evidence and, therefore, when there is no such strong corroboration from other evidence on record, the same ought not to have been taken by the Trial Court to be completing the chain in every respect to say that it is leaving no reasonable ground for a conclusion consistent with the innocence of the accused and from that, it could not have been said that with all human probability, the act must have been done by the accused.

7. Mr.S.S.Kanungo, learned Additional Government Advocate for the Respondent, on the other hand, while supporting the finding of guilt against the accused, as has been returned by the Trial Court, submitted that the evidence on record, being clear, cogent, acceptable and believable on the score that in the relevant night, the deceased and the accused were there in the house and when further evidence has come to surfaced that the accused in the morning came out of the house and told the witnesses (P.Ws.4 & 5) that thieves, having entered into their house, had killed her husband Bhikari; the same coupled with the recovery of that “Langala Luha” , at the instance of the accused pursuant to her statement before the police while in police custody, being cumulatively viewed conclusively establish the guilt of the accused and those are consistent only with the hypothesis of the guilt of the accused and exclude every hypothesis except the one sought to be proved.

8. Keeping in view the submissions made, We have carefully read the judgment passed by the Trial Court. We have also extensively travelled through the evidence of the prosecution witnesses as well as the defence witness, i.e., P.Ws.1 to 11 and D.W.1. We have perused the documents admitted in evidence and marked Exts.1 to 22.

9. Before going to discuss the evidence and ascertain as to whether the prosecution has established the charges against the accused beyond reasonable doubt through the circumstantial evidence, in addressing the rival submissions, We feel it proper to take note of the settled principles of law holding the field:-

“In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined

effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved.

There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the Court.”[(2010) 8 SCC 593]

10. In the backdrop of the above settled principles of law, let us now proceed to examine the evidence on record.

P.W.1 was brought to the witness box from the side of the prosecution to prove the fact that the accused had called Haras (P.W.4) in the night and told that some thieves having entered into their house, had killed her husband and he then being told by that Haras (P.W.4), she had gone to the house and found the deceased lying in a pool of blood. This witness has not supported the prosecution case and had resiled from her previous version. The prosecution, having cross-examined this witness with the permission of the Court; except drawing the attention of that witness to the previous statement, as aforesaid before the police, who had recorded the same under section 161 Cr.P.C., which she had denied to have so stated, nothing more has been elicited.

P.W.2 is the other witness, who had been examined by the prosecution to say that having got the information about the murder of the deceased Bhikari, he had been to his house and found Bhikari lying in a pool of blood. He has also not so stated in the Trial. He has also not supported the case of the prosecution as have witnessed to the witness to

the recovery of that “Langala Luha” pursuant to the disclosure statement of the accused before the Investigating Officer. The prosecution, having been permitted to cross-examine said witness, has simply drawn his attention to his previous statement recorded by the Investigating Officer under section 161 Cr.P.C., which he has denied. During cross-examination, he has only admitted his signatures to be there in the seizure list and so-called statement of the accused while leading the police and witnesses in giving discovery of that “Langala Luha”. So, the evidence of these two witnesses are of absolutely no avail in so far as the case of the prosecution is concerned.

11. The next important witness for the prosecution is P.W.4. Prosecution had examined this witness to prove that she being the next door neighbor of the deceased, in the night of occurrence had seen the accused and their two year old child together in their house. However, this witness has not so stated in the trial. The prosecution, having sought for permission to cross-examine the witness, the Trial Court has so permitted. But, again no such material is found to have been elicited from her to provide any support to the case of the prosecution. The attention of the witness, having been drawn to her previous statement before the Investigating Officer under section 161 Cr.P.C., she has flatly denied to have so stated. Although, the prosecution has proved through the Investigating Officer (P.W.11) that all these witnesses had stated the facts, as narrated above before him; yet from the same, it can only be said for a moment that these witnesses are not witnesses of truth. But then also the prosecution is deriving no aid from their evidence in support of its case to prove the complicity of the accused.

P.W.5 is the son of P.W.4. His evidence is also in that vein. When it is said that he had stated before the police that the accused had informed her mother (P.W.4) about the killing of her husband by some thieves, who had entered into the house, which indirectly on the score that the accused was there in the house with the deceased, he has denied to have so stated before the Investigating Officer. She has rather expressed her ignorance like all other four witnesses to have any knowledge about the case.

P.W.6 has also not supported the prosecution case in saying that the accused, deceased and their two year son were present in the house in that night. He has also stated to have no knowledge as to how Bhikari died and what had happened to him. The prosecution despite examination, except bringing out the material to show that he is also not a witness of truth and suppressing something, has not been able to elicit any other material in support of its case. That is also the state of affair in the evidence in so far as P.W.7 is concerned.

P.W.8, being a witness to the seizure, has also expressed his ignorance about any such seizure to have been made by the Investigating Officer in his presence.

12. The mother of the deceased has come to be examined as P.W.9. Admittedly, she was not present in the night of occurrence in the house. She, having seen his son lying dead in front room of the house, stated to have submitted a report before the Police to that effect at the spot, which she has proved as Ext.10 and that is said to have been scribed by his daughter (P.W.10).

The evidence of P.W.10, the sister of the deceased is simply on the score that she and her husband came to their house and found the

deceased lying dead in the front room of the house and had written Ext.10.

These two witnesses have also not stated that during that night, accused, deceased and their two year old son together were the occupants in the house.

13. With the above discussion of evidence on record, We find that the Trial Court, having noted as to what all these witnesses have stated during the trial in denial of their previous statement stated to have recorded by the Investigating Officer, has gone to say that when the prosecution has drawn the attention of these witness to their previous statement and the Investigating Officer (P.W.11) has deposed that those witnesses had so stated before him, the facts so stated stand proved that their recorded statement by the Investigating Officer are acceptable as evidence. Having said, as above, the Trial Court has concluded that the evidence of P.W.9 establish the fact that deceased, accused and their two year old son were present in the house in the night of occurrence and as the accused has not given any satisfactory explanation as to how the deceased died receiving head injury, which was within her special knowledge, the chain of events is complete that it rules out all the hypothesis other than the guilt of the accused when further taken with the evidence as to the recovery of that “Langala Luha” at the instance of the accused.

We are constrained to say that the approach of the Trial Court in the matter is wholly erroneous. When the circumstance that he deceased, accused and their two year old son were staying together in the night of the occurrence has not been proved through positive evidence during trial, the Trial Court is not at all right in accepting the version on that score as said to have been made before the Investigating Officer, who

had recorded their statement under section 161 Cr.P.C., which too have been denied by all those witnesses.

14. Having said all these above, We find the important circumstance has not at all been proved by the prosecution by leading any such clear, cogent and acceptable evidence. With this, We come to the evidence as to the recovery of the weapon of offence, i.e., “Langala Luha” at the instance of the accused. It is seen that the Trial Court had taken the inadmissible part of the statement of the accused into account, which finds the narration of the entire prosecution story right from the beginning till the end. Be it stated here that two independent witnesses have not come forward to state anything about this aspect of any statement being given by the accused and recovery of that “Langala Luha” at her instance pursuant to the said statement. The Trial Court has fallen in grave error by relying upon those documents and accepting the discrepancies made therein as the gospel truth and as substantive evidence simply because the witnesses have admitted their signatures appearing in those documents. It is true that the Investigating Officer (P.W.11) has stated that the accused, while in police custody, has given a disclosure statement that she kept conceal a plough share (Langala Luha) behind a stone pot at the corner of kitchen and having said so, she gave recovery of the same by leading them to that place but that is not being supported by the other witnesses examined in that behalf. Be it stated here that connection of that “Langala Luha” with the commission of crime is also not established in any manner. Simply for the detection of some human blood, the same is of no avail to the prosecution. But, even if it is accepted for a moment that said “Langala Luha” had been recovered at the instance of the accused pursuant to her statement of disclosure, that itself, in the facts and circumstances of the case, cannot

form the basis of a finding that it is the accused, who is the perpetrator of the crime.

In view of all the aforesaid, We have the least hesitation in saying that the finding of the Trial Court in holding the accused guilty for commission of the offence under section 302/201 IPC is wholly vulnerable and thus, is liable to set aside.

15. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 08.02.2012 passed by the learned Adhoc Additional Sessions Judge, FTC, Khurda in S.T. No.53/129 of 2011-2009 are hereby set aside.

The Appellant (accused person) being on bail, the bail bonds shall stand discharged.

Dr.S.K Panigrahi, J I agree.

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

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

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