

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.674 of 2017

From the judgment of conviction and order of sentence dated 5th September, 2017 passed by the learned Sessions Judge-Cum-Special Judge, Kalahandi, Bhawanipatna in C.T. Case No.95 of 2015 (Sessions).

Siba Naik

....

Appellant

-versus-

State of Orissa

....

Respondent

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

For Appellant

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Mr. S. K. Mohanty
Advocate

For Respondent

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Mr.S.K.Nayak
Additional Government Advocate

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE S.K.MISHRA

Date of Hearing : 28.11.2022 : Date of Judgment: 06.12.2022

D.Dash,J. The Appellant, in this Appeal, has questioned the Judgment of conviction and order of sentence dated 05.09.2017, passed by the learned Sessions Judge, Kalahandi, Bhawanipatna, in CrI. Trial (Sessions) No.95 of 2015, arising out of C.T No.738 of 2015 of the Court of learned S.D.J.M., Bhawanipatna, corresponding to Th.Rampur P.S Case No.121 of 2015.

The Appellant (accused) has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (for short,

‘IPC’) and accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- with default, stipulation to undergo rigorous imprisonment for 6 months.

2. Prosecution case is that on 18.08.2015, around 4.30 P.M., Kusumi Jani (P.W.8), wife of Bati Jani was in her house, when she heard her husband (deceased) screaming “BACHAO BACHAO”. She then rushed to the spot and saw the accused crushing his head by a stone. Seeing this she got frightened and came back to her house. On the next morning, she went to the place and found her husband lying dead with severe bleeding injuries on his head. She then informed the matter to one Kunia Majhi (P.W.5). The villagers then came to the spot and found Bati Jani lying dead. The accused being asked by the villagers, confessed his guilt.

3. One Handarsingh Majhi (P.W.1) then lodged a written report with the Officer-in-Charge (O.I.C) of Th.Rampur Police Station. Having received said report, the O.I.C. immediately registered P.S case No.121 of 2015 under section 302 IPC and took up the investigation.

4. In course of investigation, he visited the spot, prepared the spot map, seized the stone from the spot under seizure list Ext.3. He also held inquest over the dead body of the deceased and prepared the report Ext.1. The dead body of the deceased was then sent for post mortem examination by issuing requisition. The wearing apparels of the deceased were thereafter seized under seizure list Ext.7. The accused being apprehended, his wearing apparels also seized under seizure list Ext.8. He too was medically examined and then forwarded in custody to Court. The seized incriminating articles being sent for chemical examination through Court, the chemical examination report (Ext.13)

came to be received. On completion of investigation, Final Form was submitted placing the accused to face the trial for commission of offence under section 302 of IPC for having murder of accused Bada @ Bati Jani by intentionally causing his death.

5. Learned S.D.J.M., Bhawanipatna, having received the report as above, took cognizance of the offence and after observing the formalities, committed the case to the Court of Sessions for trial. That is how the accused face the trial after framing of the charge for the above offence.

6. In the trial, the prosecution in total has examined seventeen (17) witnesses; out of them the wife of the deceased is P.W.8 and P.W.1 is the informant who has lodged the written report, which has been treated as F.I.R. and admitted in evidence and marked as Ext.1. P.W.2 is the witness who had heard about the incident from the wife of the deceased. P.W.4 having heard about the incident from the wife of the deceased, had come to the spot and was present when the inquest over the dead body was held. P.W.5 and P.W.6 are two the witnesses, who had gone to the spot and heard about the incident from the wife of the deceased. P.W.7 is the son-in-law of the deceased, who has also stated in the same vein and he was also the witness to the inquest. The wife of the deceased is P.W.8. P.W.9 is a witness who, having heard the incident from P.W.8, had come to the spot and says that on his asking, the accused confessed before him that he had killed the deceased. Scribe of the F.I.R. has come to the witness box as P.W.10. P.W.11 is also a witness who had come to the place hearing the incident from the wife of the deceased P.W.8. The Doctor, who had conducted the post mortem examination over the dead body of the deceased, has been examined as P.W.12. P.W.13, P.W.14,

P.W.15 and P.W.16 are the witnesses to the seizures. The Investigating Officer has come to the witness box at the end as P.W.17.

Besides, examining the eye witnesses, the prosecution has proved several documents; important of those are the F.I.R (Ext.1), Inquest Report (Ext.2), Post Mortem Report (Ext.4), Spot Map (Ext.5) and Chemical Examination Report (Ext.13).

The plea of defence is that of complete denial and false implication. The accused has examined himself as D.W.2 and a co-villager as D.W.1.

7. The Trial Court, on going through the evidence of the Doctor, who had conducted the post mortem examination over the dead body of the deceased (P.W.12) and vide his report Ext.4, noted several injuries on the head and face, and further taking into account, the nature of the injuries as ante mortem as stated by the said witness and so reported, as well as the evidence of the Investigating Officer P.W.17, who had held inquest over the dead body of the deceased and other evidence, has concluded that the death of the deceased Bada @ Bati Jani was homicidal. In fact, this aspect was not under challenge before Trial Court. The same is also the state of affair before us.

The Doctor (P.W.12), conducting the post mortem examination over the dead body of the deceased, has stated to have noticed lacerated wound of the size of 2 x ½ x ½ inch over the right fore head and had seen the face of the deceased to have been compressed and other such injuries on the head etc. The injuries have been opined to be ante mortem in nature and to have led to the death of the deceased. The Investigating Officer (P.W.7), while holding inquest over the dead body, had also noticed such injuries that have also been stated by other witness, including P.W.8, the wife of the deceased. With all these

evidence on record, We are of the clear view that the prosecution has proved that the death of Bada @ Bati Jani was homicidal in nature.

8. Learned counsel for the Appellant (accused) submitted that the most important witness for the prosecution is P.W.9, who happens to be the wife of the deceased and although she has stated to have seen the accused assaulting the deceased on his head by a stone; her evidence to that effect is not believable when her conduct, which is wholly unnatural, is taken into account in its proper perspective. He further submitted that the evidence of other two witnesses that the accused had confessed to have committed the crime before them is not at all believable when the same is taken into account with and the circumstances emanating from evidence. He, therefore, submitted that the finding of the Trial Court that the prosecution has proved its case against the accused beyond reasonable doubt cannot be sustained.

9. Learned counsel for the State on the contrary, submitted that P.W.8 who happens to be the wife of the deceased, although can be said to be a related witness but not an interested one and she having narrated the incident in specifying the role of the accused in causing the injuries on the head of her husband by a stone, there being no such surrounding circumstances to raise any doubt over her testimony, the Trial Court has rightly accepted her version. He further submitted that here even the other and above the evidence of P.W.8 is that the accused had confessed before him to have assaulted the deceased to death and, therefore, the finding of guilt of the accused, as has been recorded by the Trial Court, has to stand.

10. Keeping in view the submissions made, We have carefully read the judgment passed by the Trial Court. We have also extensively travelled

through the depositions of the witnesses P.W.1 to P.W.17 and have perused the documents admitted in evidence and marked as Ext.1 to Ext.13.

11. The star witness for the prosecution here is P.W.8, who is the wife of the deceased. She has stated that on that relevant day, around 4 O’Clock, she was in her house and at that time, she heard the hullah of her husband that accused Siba Naik was killing him. She rushed to the spot and found her husband lying dead. She then states to have seen the accused killing her husband. This witness, however, during cross-examination, has said that on going to the spot, she found that her husband dead when again to say that she had seen the accused killing her husband; both part of her statement appear to be irreconcilable as she is not stating that having come out from the house, she saw the accused assaulting the deceased and then having rushed to the spot, saw her husband lying dead. She again states that being afraid of the accused, she came to house and only in the next morning, she went to see her husband and saw her husband lying dead. When she does not say anything that she had been threatened by the accused, it is quite unnatural on the part of the wife to have come back to the house without informing anyone of the village or calling anybody and yet, again going to see her husband only in the morning without expressing any such anxiety to know as to what was happening on her return and how was her husband lying.

12. P.W.1 is the informant of this case. She states to have heard from P.W.8, who happens to be his elder mother, about the incident that accused had killed the deceased by assaulting him by a stone. He does not say as to whether P.W.8 had gone to inform him or as to when he

had the occasion to meet with P.W.8 and it was told by P.W.8 to him. P.W.2, the other witness, simply says that P.W.8 came and told him that accused had assaulted the deceased by stone and caused his death. The same is the evidence of P.W.3 that P.W.8 told him about the incident and the role of the accused. But this witness is not stating that whether P.W.8 had gone to his house to tell him or how and when he came there and it was so told. Evidence of P.W.4 is in the same direction. P.W.5, however, has stated that P.W.8 came in a crying condition and told him that accused had killed her husband where after he had gone to the place with other villagers and found the deceased lying dead with injuries with a stone lying nearby. P.W.7 also states to have been told by his mother-in-law (P.W.8) about the incident that accused had murdered his father-in-law. P.W.9 on the score has also stated to have been so told by P.W.8. Cumulatively, viewing the evidence as above discussed, when We find the evidence of P.W.8 to be not of that unimpeachable character and thus above board and when other witnesses as afore stated are simply saying to have heard from that P.W.8, We are in a position to say that the evidence of all the above witnesses are not sufficient to establish the fact that it is the accused who had assaulted the deceased to death by means of that stone beyond reasonable doubt.

Having said as above, let us now proceed to see the evidence with regard to the extra judicial confession said to have been made by the accused. On this score, We find that the prosecution relies upon the evidence of P.W.8 and P.W.9. When P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6, all who claim to have reached the spot after hearing the incident from P.W.8, and also P.W.7, who is the son-in-law of the deceased, do not say that on reaching the spot, they had seen the accused to be there. It is stated by P.W.8 that the villagers came to the spot and

found her husband dead and they having asked the accused Siba Naik, he confessed to have assaulted the deceased to death. Interestingly, this P.W.8 does not state that when in the morning she went to see her husband and found her lying dead whether the accused was there. She is also not stating that how the accused came there when the villagers asked him or whether the accused was called by the villager to come there. P.W.9 also when states that having seen the deceased, he asked the accused who confessed to have killed the deceased, he, however, does not state that as to whether the wife of the deceased P.W.8 had told him to have seen the accused either standing or sitting near the deceased or that the accused came on seeing the villagers arrived there or was called by the villagers to come there. It is wholly unexpected that a person committing the murder in the night would be waiting there till the next morning for the villagers to arrive so as to disclose his guilt before them. Moreover, when P.W.8 and P.W.9 state that accused told on being asked that he had killed the deceased, other villagers who arrived there as already discussed, are not stating so. In the above state of affair in the evidence as discussed; We are unable to accept the version of P.W.8 and P.W.9 that the accused, on being asked, had confessed to have done the deceased to death as according to us, those are unsafe to be relied upon to hold that the prosecution has establish the fact that the accused has confessed to done the deceased to death beyond reasonable doubt. On a conspectus of the foregoing analysis of evidence, We are constrained to say that the prosecution has not been able to establish its case against the accused to be the author of the fatal injuries upon the deceased leading to his death beyond reasonable doubt. The Trial Court, in our view, having nor properly appreciated the evidence on record in the light of all the surrounding circumstances as pointed

out, is not right in holding the accused guilty for commission of offence under section 302 IPC.

13. In the wake of aforesaid, the Appeal stands allowed. The impugned judgment of conviction and order of sentence dated 5th September, 2017 passed by the learned Sessions Judge-Cum-Special Judge, Kalahandi, Bhawanipatna, in C.T. Case No.95 of 2015 (Sessions) are hereby set aside. The accused be set at liberty forthwith in case his detention is not required in any other case.

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

S.K.Mishra, J.

I Agree.

***(S.K.Mishra),
Judge.***



True Copy

Jr.Steno

Gitanjali