

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 124 of 2005

Abhimanyu Pattnaik

....

Appellant

-versus-

State of Orissa

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. B.S. Dasparida, Advocate

For Respondent

:

Mr. Janmejaya Katikia,
Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

JUDGMENT

30.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 9th March 2005, passed by the learned Sessions Judge, Dhenkanal-Angul in S.T. Case No.8-D of 1998, convicting the Appellant for the offence punishable under Section 302/34 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of

Rs.5,000/- and in default to undergo Rigorous Imprisonment (RI) for a period of one year.

2. At the outset, it requires to be noticed that in this present writ appeal, there were originally two Appellants, i.e., Chhabi Pattnaik and his son Abhimanyu Pattnaik, the present Appellant. The Court is informed on 4th August, 2014 that Chhabi Pattnaik had expired on 3rd October, 2008 itself and the appeal has abated as far as he is concerned. It requires also to be mentioned that another son of Chhabi Pattnaik, namely, Santa @ Santosh Kumar Pattnaik had filed a separate appeal being CRLA No.291 of 2005 against the same impugned Judgment of the trial Court. This Court was informed on 12th August, 2022 that he had been prematurely released by the order of Government of Orissa and accordingly the said appeal was disposed of permitting him to revive the appeal in the event he wishes to have the appeal decided on merits.

3. As a result, there is only one Appellant, i.e., Abhimanyu Pattnaik in the fray, as far as the present appeal is concerned. He was enlarged on bail by this Court by an order dated 22nd August, 2014 after noting that he had been in jail since 9th February, 2005.

4. The case of the prosecution is that on 19th July 1997, elections for the post of the Chairman of Kamakhyanagar Notified Area Council (NAC) took place. The accused party was supporting one

candidate belonging to one political party and the deceased Khirod Behera was supporting another candidate who had won the election and had been declared elected as the Chairman.

5. Thereafter, the deceased came to their village Puruna Rekula situated one and half kilometers away from Kamakhyanagar town. There, in front of the house of Chhabi Pattnaik, the deceased was blocked by the three accused, i.e., Chhabi Pattnaik and his two sons, Santa @ Santosh Kumar Pattnaik and Abhimanyu Pattnaik while the deceased was moving in a scooter driven by Surjyakanta Nayak (PW-6). The accused persons challenged the deceased. Thereafter, Chhabi Pattnaik and the present Appellant Abhimanyu Pattnaik gave blows to the deceased Khirod with lathis, whereas Santosh gave blows by means of a sword causing severe injuries.

6. PW-6 fled away from the spot by starting the scooter. He then disclosed the occurrence to others. At the village itself, one Trilochan Behera (PW-1) lodged a report to the Police. One Lokanath Mallick (PW-12), who was at that time attached to the Kamakhyanagar Police Station (PS) as the Sub-Inspector (SI) with one Pravash Kumar Patel (not examined) being the Officer-In-Charge (OIC) stated how after receiving the information, he and the OIC proceeded to the spot at around 8.20 pm on 19th July, 1997. There, PW-1 orally reported to the OIC that the deceased had been murdered by the three accused. That information was reduced to an FIR and registered as PS Case No.87.

7. PW-12 seized the chapals of the deceased lying in front of the verandah of the house of Chhabi Pattnaik. He noticed a mercury light burning on an electric pole near the spot. Bloodstains were found a few feet away from the pair of chapals. The Executive Magistrate, Biranchi Narayan Mishra (PW-9) arrived there at 9.30 pm and in his presence an inquest was held. Thereafter, the dead body was sent for postmortem examination.

8. The next morning, Chhabi Pattnaik was arrested by PW-12 and from him, a sword was seized. On 27th July 1997, PW-12 arrested the accused Santosh Pattnaik and seized his pant worn at the time of the occurrence as well as the shirt. On 7th October, 1997 the accused Abhimanyu Pattnaik surrendered in the Court. The material objects were then sent to the S.F.S.L., Bhubaneswar for examination. At the end of investigation, a charge sheet was laid against the three accused. They pleaded not guilty and claimed trial.

9. Twelve witnesses were examined on behalf of the prosecution, whereas for the defence, there were two witnesses examined. One Mayadhar Behera (DW-1) had originally been cited by the prosecution as a witness to the seizure of the shirt purportedly worn by Santosh but, was struck off from the list of witnesses. He stated how the Police had forced him and three others to sign a

blank form and how Tapan, the brother of the deceased gave a shirt to the Police, whereas PW-1 gave a chadar.

10. Satyananda Sahoo (DW-2) stated how he had noticed the dead body of the deceased and how the father of the deceased and his brothers were holding the dead body and crying. He purportedly asked PW-1 who had killed the deceased but, PW-1 could not tell the name of the assailants. He claimed that he had signed on the inquest report at the instance of the Police without knowing its contents. He noticed a sword lying at the spot itself.

11. As far as the PWs are concerned, PW-6, the star witness for the prosecution, turned hostile. He was initially examined on 4th December, 2002 and in his chief examination, stuck to the original version about the three accused attacking the deceased as described by the prosecution. Nearly two years later, on 21st July, 2004 when he was cross-examined, he completely changed his version. He now said that when he was coming with the deceased on the scooter; they found a gathering of 30 to 40 persons and the deceased remained there but PW-6 went away to Kamakhyanagar. He then said “I cannot say what happened thereafter. I told about the occurrence having heard that but I had not seen anything. At the time of occurrence, I was at Mahabir road”. In effect, therefore, PW-6 turned hostile.

12. Nevertheless, the trial Court relied on the evidence of PW-6. The trial Court noted how in the cross-examination, PW-6 in fact wrongly identified Santosh Pattnaik as Abhimanyu Pattnaik and claimed that what he had stated in the examination-in-chief two years earlier, was only on the threat of the Police. Nevertheless, the trial Court accepted the version of PW-6 in his examination in chief because:

- (a) Not a single contradiction had been pointed out with respect to his statement recorded under Section 161 of Cr.P.C. during the investigation;
- (b) The medical evidence had stated that the injuries found on the body could be possible by a weapon like the sword which, therefore, corroborated the testimony of PW-6.
- (c) He had been gained over by the defence with a gap of two years between the examination-in-chief and the cross-examination.
- (d) Applying the principles explained in *Sat Paul v. Delhi Administration* AIR 1976 SC 294 and *Gangadhar Behera and others v. State of Orissa* (2003) 24 OCR (SC) 265, the trial Court decided to accept the evidence of PW-6.

13. The trial Court then proceeded to analyze the remaining evidence. Janaki Behera (PW-8), while rushing to the spot, found Chhabi Pattnaik standing in his verandah who told her to go and see her son sleeping on the road. This conduct of Chhabi Pattnaik,

in light of the previous enmity with the deceased, according to the trial Court, lent corroboration to the prosecution case.

14. The trial Court relied on the fact that the dead body was found about 20 to 22 cubits away from the house of the accused Chhabi Pattnaik. The crutches used by Chhabi Pattnaik containing human blood of Group-A and the lathi seized also revealed stains of blood. The chadar seized from Chhabi Pattnaik also had human blood of Group-A. The trial Court disbelieved the evidence of DW-2 in this regard.

15. As regards the seizure of the shirt at the instance of Santosh, the trial Court disbelieved DW-1. The chemical examination report was stated to have lent corroboration to the main evidence of the prosecution. The trial Court then proceeded to convict the three accused and sentenced them in the manner indicated hereinbefore.

16. This Court has heard the submissions of Mr. B.S. Dasparida, learned counsel appearing for the Appellant and Mr. Janmejaya Katikia, learned Additional Government Advocate (AGA) for the State.

17. The fact that there was political rivalry between the deceased and the accused might lend motive for the crime but, it can be double-edged. It can also throw doubts on the witnesses closely

related to the deceased who might use the political rivalry to falsely implicate the accused who belonged to a rival political camp. In a case as the present, where the attempt at projecting the case of the prosecution as based on direct evidence fails, motive assumes significance. In ***Khurshid v. State of State of Jammu and Kashmir*** (decision dated 15th May, 2018 in Crl A No. 872 of 2015) the Supreme Court observed:

“It is appropriate to observe that in Halsbury’s Laws of England, 3rd Edition, with regard to ‘motive’, it is stated that “the prosecution may prove, but it is not bound to prove the motive for a crime”. ‘Motive’ is an emotion which compels the person to do a particular act. But in all the cases, it will be very difficult for the prosecution to prove the real motive. Motive is a double-edged weapon when there is a direct and reliable evidence available on record, motive loses its importance. In a case of circumstantial evidence, motive assumes greater importance than in the case of direct evidence. In a case of direct and compelling evidence, even assuming that no motive is attributed, still the prosecution version has to be examined.” (emphasis supplied).

18. What was projected by the prosecution as the case based on direct evidence of PW-6, could not have been converted into a case of circumstantial evidence. The fact of the matter was that PW-6 turned hostile. He was subjected to the cross-examination by the prosecution but, it could not be demonstrated that he had been won over by the accused. On the contrary, he now stated how his deposition during the examination in chief was under threat of the police. In analyzing eye-witness testimony, the question to be asked is whether the testimony is truthful and

consistent and, reliable. Early on, the Supreme Court cautioned in *Dalip Singh v. State of Punjab AIR 1953 SC 364* as follows:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

19. In the present case, a reading of the entire testimony of PW-6 does not lend assurance that he is speaking the truth. He cannot be a person trusted to speak the truth.

20. An important piece of evidence that has been relied upon is the recovery of the weapons. PW-3, Babula Dehury was one of the witnesses in whose presence, the accused Santosh led the Police party to a culvert and gave discovery of the shirt hidden inside that culvert. The other witness to this discovery was Tapan Behera who was not examined. It appears that there was a third witness, Mayadhar Behera who was cited as a witness for the prosecution but his signature was struck off after he contradicted the above evidence of discovery.

21. One Sanjeeba Sahoo (PW-4) was a witness to the quarrel between the accused and the deceased on the evening of the incident. He was witness to the seizure of the blood-stained sword and the two lathis from the house of Chhabi Pattnaik. He stated how at 5 pm, while he was at the Rekula Chhak, he could see the deceased abusing Chhabi Pattnaik in an intoxicated state. They consoled Chhabi Pattnaik not to abuse further and thereafter made the deceased sit in a trekker and proceeded towards Kamakhyanagar. In the cross-examination, he stated how he disclosed in the Court for the first time regarding exchange of words between the deceased and the accused Chhabi Pattnaik. The fact remains that these witnesses are the witnesses to the seizure of the blood-stained sword from the house of the accused Chhabi Pattnaik.

22. One Satchidananda Bihari (PW-5) was a witness to the inquest. Bijaya Kumar Behera (PW-7) spoke about the deceased driving his scooter around 4.30 pm on the date of the occurrence and how the deceased had started abusing Chhabi Pattnaik in filthy language. PW-7 begged apology on behalf of the deceased to Chhabi Pattnaik. He was unable to be broken down in his cross-examination. Janaki Behera (PW-8) stated how she had heard from one Sesadev Khuntia about a person being murdered and thrown away on the road and then she rushed to the spot. She identified the wearing apparels of her son in the Court. She

confirmed that there were ill-feelings with the family of the accused even before the killing of the deceased.

23. As far as the medical evidence is concerned, Dr. Madhusudan Jena (PW-10) found as many as fourteen cut injuries and confirmed that many of them were on the vital parts of the body with the brain being cut and the brain matters expelled. That it was a homicidal death and the injuries could have been caused by the sword shown to him has been confirmed by him. One Balaram Samal (PW-11) turned hostile. He was supposed to be the witness to the seizure of the two crutches and the chadar.

24. The chemical examination report requires to be discussed. The Blood group of the deceased was Group-A. The extract of the crutch seized from Chhabi Pattnaik did contain the human blood of having Group-A. The iron sword had contained human blood and the chadar also had contained human blood of Group-A. The full pant and the half shirt also contained human blood of Group-A. The Serological report, therefore, links Chhabi Pattnaik and Santosh Pattnaik to the crime. As far as Abhimanyu Pattnaik is concerned, there were no recoveries whatsoever at his instance. What was therefore, significant as far as the other two accused were concerned, i.e., Chhabi Pattnaik and Santosh Pattnaik in terms of the recovery of the weapons and the Serological report is completely absent as far as Abhimanyu Pattnaik is concerned.

25. Analyzing the circumstances culled out by the trial Court as having been convincingly proved, the first is the political rivalry between the accused and the deceased and the abuse by the deceased in a drunken state at Chhabi Pattnaik. This circumstance can be said to have been proved. However, there is no role attributed to Abhimanyu Pattnaik in this.

26. The next is the conversation between Chhabi Pattnaik and the mother of the deceased, PW-8, before she proceeded to the spot which purportedly also implicates him. Importantly, the crutches seized from the possession of Chhabi Pattnaik contained human blood of Group-A which was the blood group of the deceased. This circumstance could be said to have been proved as far as accused Chhabi Pattnaik is concerned but not from the point of view of Abhimanyu Pattnaik. As already noted earlier, while there were seizures from both Chhabi Pattnaik and Santosh Pattnaik, there was none from Abhimanyu Pattnaik. This coupled with the fact that PW-6 turned hostile results in there being absolutely no evidence whatsoever against the present accused Abhimanyu Pattnaik.

27. To sum up the analysis of the prosecution evidence, even keeping aside the testimony of the hostile witness PW-6 on one side, while the role of Chhabi Pattnaik and Santosh Pattnaik can be said to be established by means of the recoveries and the chemical examination report, there is no evidence other than the

unreliable evidence of PW-6 to connect Abhimanyu Pattnaik to the crime.

28. The role of the High Court in analyzing the judgment of the trial Court has been emphasized in more than one decision. Illustratively, in *Padam Singh v. State of Uttar Pradesh 2000 SCC (Cri) 285*, the Supreme Court explained as under:

“2...It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court like the trial Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubts as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding conviction.”

29. In that view of the matter, granting Abhimanyu Pattnaik the only remaining Appellant in the fray the benefit of doubt, the Court allows the appeal and sets aside the impugned judgment of

the trial Court only as far as he is concerned. The bail bonds furnished by Abhimanyu Pattnaik are hereby cancelled.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera/ Jr. Steno

