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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.11 of 2004

Sarathi Mohapatra and others ***Appellants***
Mr. B.K. Ragada, Advocate

-versus-

State of Odisha ***Respondent***
Mr. J. Katikia, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 14.12.2022

Chittaranjan Dash, J

1. This appeal is directed against the judgment and order dated 18th November, 2003 passed by the learned Additional Sessions Judge (FT), Bargarh in S.T. Case No.100/8 of 2001 wherein the Appellants, namely, Sarathi Mohapatra, Rajendra Mohapatra and Rajkumar @ Raju have been found guilty in the offence U/s.302 read with Section 34 IPC and sentenced to undergo imprisonment for life. Further the Appellant Sarathi Mohapatra has been found guilty of the offence U/s.324 IPC and has been additionally sentenced to RI for two years with a further direction that the sentences will run concurrently.

2. The background facts are that on 19th August, 2000 the wife of deceased Thakur Mohapatra, namely, Kamini Mohapatra asked Sita Mohapatra, wife of Appellant Sarathi Mohapatra to pay Rs.42/-

towards the credit Sita had taken from Kamini's shop. On the denial by Sita, there ensued a quarrel between Kamini and Sita. Appellant Sarathi Mohapatra having appeared at the spot abused the family members of Thakur Mohapatra and Anand Mohapatra using obscene language. Anand Mohapatra, the deceased, interfered and asked them to maintain silence and disperse whereas Appellant, Rajendra appeared on the spot and challenged Kamini as to why she asked for money and took a vow that he would do away with the lives of the members of the two families within fifteen days.

3. It is alleged that on the next day in the morning at about 6.30 a.m. while Thakur Mohapatra, the deceased was going to water his land, near a canal at Metakani square, the Appellant, Rajkumar seeing him challenged as to what money was being asked from Sita on the previous night and dealt a blow by means of spade on Thakur Mohapatra. As a result Thakur Mohapatra fell down on the ground. Kamini Mohapatra and Jayanti Mohapatra who were a little away to attend the call of nature, rushed to the spot. At this time, however, the three Appellants besides Dhulu Mohapatra and Sagar Mohapatra arrived there being armed with knife and gupti and started assaulting Thakur Mohapatra. Anand Mohapatra who too had reached by then at the spot was assaulted by means of knife, spade and gupti causing severe bleeding injuries to Thakur Mohapatra and Anand Mohapatra whereby both the brothers succumbed to the injuries at the spot.

4. It is further alleged that seeing her husband assaulted, when Kamini Mohapatra intervened, she was assaulted by appellant Sarathi by means of gupti thereby Kamini received a cut injury to her palm. Having heard about the incident, Sanu Mohapatra @ Ramesh,

the informant arrived there and after ascertaining the details of the incident from Kamini Mohapatra, his aunt, lodged a written report before the Bheden Police Station.

5. On the basis of the report, the police registered the case and took up investigation. In course of investigation, the IO held the inquest over the dead bodies and sent the same for post mortem examination. He examined the witnesses and seized the spade left at the spot and returned to the police station where the Appellants, namely, Sarathi Mohapatra and Rajendra Mohapatra were present and submitted an FIR against the family members of the deceased persons which too was registered vide Bheden P.S. Case No.50 of 2000. Both the Appellants got arrested in the Police Station where their wearing apparels were also seized.

6. Being in police custody, the Appellant Sarathi Mohapatra volunteered to point out the place of concealment of the weapon of offence which was recorded by the Investigating Officer (IO) under Section 27 of the Evidence Act in the presence of witnesses. Contemporaneous to the statement, Appellant Sarathi led the police and the witnesses to the place of concealment i.e. the rear of his house in village Thanapati Tikra and got recovered the “gupti” which was then seized. The police also arrested Dhulu Mohapatra and Sagar Mohapatra.

7. Injured Kamini Mohapatra was medically examined. The post mortem report as well as the injury report in respect of Kamini was obtained by the IO. The opinion of the doctor as regards the weapon of offence was also obtained. The IO seized the incriminating material and sent the same for chemical examination. Upon

completion of investigation, the IO submitted the charge sheet against five persons including the present Appellants.

8. The Appellants denied the charges but alleged that in the quarrel had ensued in the evening of 19th August, 2000 Sita (wife of the Appellant Rajendra Mohapatra) was assaulted by the members of family of the deceased as a result of which Sita fell down on the ground and got senseless and that this triggered the intensity of the quarrel. It was claimed that since it was late in the night no FIR could be lodged by either party.

9. It was further case of the Appellants that in order to wreck vengeance, on 20th August, 2000 in the morning at 6.30 a.m. while the son of the Appellant Sarathi Mohapatra namely Appellant Rajendra Mohapatra @ Raju was brushing his teeth, Thakur Mohapatra, the deceased having appeared and hurled abuse challenging him as to why he initiated a quarrel the previous night; he gave fist blows and soon thereafter Anand Mohapatra having reached the spot dealt a blow on the head of Rajendra by means of an iron rod, as a result of which Rajendra sustained bleeding injury to his head. Being informed, the Appellants, Dhullu Mohapatra and Sagar Mohapatra came to the rescue of Rajendra whereas the deceased Thakur Mohapatra and Anand Mohapatra assaulted Sarathi who got injured. They also assaulted his son Rajendra by means of sharp cutting weapons.

10. In sum, the Appellants denied their complicity in the murder of Anand and Thakur Mohapatra. The trial Court then proceeded to frame the charges to which the Appellants pleaded not guilty and claimed trial.

11. To prove the culpability of the Appellants, the prosecution examined 18 witnesses in all. The defence, on the other hand, examined DW 1 Sarathi Mohapatra (one of the Appellants) as the sole witness. Amongst the 18 witnesses P.W.1 is the Informant. PWs 2 & 3 are the post occurrence seizure witnesses. PW 4 is witness to the discovery. PWs. 5, 6 and 7 are the seizure witnesses. PW 8 is witness to the inquest over the dead bodies of the deceased. PW 9 is the wife of the deceased Anand Mohapatra and PW 10 is the daughter of the deceased Thakur Mohapatra stated to be the post occurrence witnesses. PW 11 is injured Kamini Mohapatra, the wife of the Thakur Mohapatra, the occurrence witness who sustained injury during the incident. PWs 12 and 13 are the two doctors who conducted post mortem examinations over the dead bodies of Thakur and Anand Mohapatra respectively. PW 14 is the daughter of Thakur Mohapatra and an eye witness to the occurrence. PW 15 is an independent witness who did not support the case of the prosecution. PW 16 is the doctor who examined the injured Kamini Mohapatra and PWs.17 and 18 are the two IOs.

12. The learned trial Court believing the evidence of the eye witnesses held the same to be beyond reproach and worthy of credence. The three Appellants were accordingly found guilty. The trial Court, however, did not find the evidence to be sufficient to bring home the charges against Dhulu Mohapatra and Sagar Mohapatra and acquitted them of all charges.

13. Learned counsel for the Appellant submitted that the case of the prosecution is unsustainable in law primarily on the ground that the case has been foisted against the present Appellants; the so-called

eye witnesses were never present at the spot and they have been tutored to make out a case. Further according to learned counsel, in absence of corroborative evidence of an independent source, the versions of the so-called eye-witnesses PW 11 and 14 are tainted and full of embellishments; they cannot be accepted as truthful and beyond reproach. It is further case of the Appellants that the prosecution witnesses being close relatives of the deceased have the tendency to falsely implicate the Appellants on account of the strained relations that had ensued the previous night.

14. It was further submitted that the medical evidence was inconsistent as to the time of death of the deceased. There was also discrepancy as regards place of occurrence. It was accordingly contended that the prosecution had failed to prove the case against the Appellants beyond all reasonable doubt and accordingly the impugned judgment of the trial Court ought to be set aside. Reliance was placed on the decisions in *Reddy Ramesh Chandra v. State of Odisha (2001) 21 OCR 516*, *Charanjit Singh Chandal v. Sudhir Meher (2001) 21 OCR (SC) 520*, *Thanedar Singh v. State of Madhya Pradesh (2002) 22 OCR (SC) 335*, *Snehalata Sahu v. State of Orissa (2002) 23 OCR 57* and *Bir Singh v. State of Uttar Pradesh (1997) 4 SCC 420*.

15. Mr. Katikia, learned AGA submitted that merely because Kamini Mohapatra (PW 11) and Jayanti Mohapatra (PW 14) are relatives of the deceased, it cannot be a ground for discarding their testimony. It is submitted that both of them have undergone cross examination and nothing material could be elicited from their cross examination to the advantage of the Appellants. He further submitted that ocular

testimonies of Kamini and Jayanti are duly corroborated by the recovery of incriminating material on the basis of memorandum under Section 27 of the Evidence Act. The evidence of the eye witnesses was corroborated by the medical evidence as well by the evidence regarding recovery of the weapon of offence as well as the seizure of incriminating material. According to the learned AGA in view of the law laid down by the Supreme Court in *Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259*, *Sadakat Kotwar v. State of Jharkhand, 2021 SCC OnLine SC 1046* and *Ramvilas v. State of Madhya Pradesh, (2016) 16 SCC 316*, the testimony of the injured eye witness will have a special evidentiary status.

16. Before delving into merits as to the authorship of the murder and further the worthiness of the testimonies of the eye witnesses and that of others, it is imperative to see if the alleged deaths of the deceased are homicidal in nature attracting the offence under Section 302 IPC. On this score the evidence laid down by the prosecution through the doctors conducting post mortem examination assumes importance.

17. PW 12 Dr. Satya Narayan Mishra of DHH Bargarh in his evidence on oath stated that while he was a Surgery Specialist in the District Headquarters Hospital at Bargarh on 20th August, 2000 on the basis of requisition from the police he conducted the post mortem examination on the dead body of Thakur Mohapatra son of Tikelal Mohapatra village Thanapati Tikra under Bheden P.S. and found as follows:

“The body was of stout male aged about 45 years, rigor mortis present over all the limbs, eyes closed, mouth half

open, frothy blood coming from nose and mouth, following external injuries were found on the person:-

(i) incised wound, margin regular, reddish, 2" x ½" in to bone deep size on right poster parietal region obliquely.

(ii) Incised wound, margin regular reddish , 2" x 1/4" x 1/4 size posterior to left mid-ear with tallying .

(iii) Incised wound, margin regular, reddish, 1' x 1/4" x 1/4 size at medial margin of left scapula.

(iv) Penetrating wound with inverted edges, bruise and elliptical 1/2" x 1" x deep in to phorax on right anterior chest wall. It was the wound of entry.

(v) Punctured wound inverted as 1" x 1" at medial aspect of right mid scapula.

(vi) Punctured wound with sharp cutting edge 1/2 x ½" in to deep on right deltoid.

(vii) Incised wound 1" x 1/2" x 1/2" over left medial shoulder.

(viii) Multiple small incised wounds posterior aspect of nape of neck.

18. According to the doctor the injuries were ante mortem in nature and the cause of death is due to asphyxia due to penetrating injuries. The time since death was within 24 to 30 hours at the time of his examination at 5.30 P.M. He proved the report vide Ext. 14. The doctor was subjected to cross examination by the defence. Though an attempt was made to confront the doctor with the jurisprudence as regards the time of rigor mortis to establish that the death of the deceased had taken place prior to one projected by the prosecution, the doctor remained firm in his opinion.

19. PW 11 Dr. Subal Kishore Kar in his evidence on oath stated that he was an Eye Specialist working in the DHH, Bargarh and on police requisition he conducted post mortem examination over the dead body of Anand Mohapatra son of Tikelal Mohapatra of Thanapati Tikra under Bheden P.S. and found as follows:

“i. One penetrating injury on the left side of chest 5’ left to the xiphisternum, size 3 x 1.2 Cms with 1.2 cms at the centre of the wound and tapering to either end. The ends are placed vertically. The direction of the wounds goes behind and slightly upwards cutting across the heart at the level of the ventricles, bisecting the heart up to the apex. Posteriorly the wound connects through and through to a wound, back of the deceased from the back 5 cms left to the mid line.

ii. One penetrating wound on the left side of abdomen 6 cms. left to the umbilicus size 3 x 1.2 cms and width been taken at the centre of the wound and tapering to either end. A loop of small intestine found protruding through the abdomen wound and lying on the abdominal wall.

iii. Penetrating wound present on the right side of the chest below the nipple size 1 cms x 1 cms. The wound going posteriorly and outwards obliquely along the side of chest wall between the chest cage and the fascial layers up to a depth of 3 cms.

iv. One lacerated wound present on the left side of the scalp left to the sagittal suture running almost antero posteriorly size 8.5 cms x 3 cms bone depth.

20. According to the doctor the cause of death was shock due to injury to heart and the time since death was within 24 hours of his post mortem examination at 4.15 p.m. He too proved the report submitted by him vide Ext. 15. In course of his cross-examination, the defence sought to disprove the injuries as not having been inflicted by the weapon of offence. However, it was reaffirmed by the

doctor that the nature of injury detected by him were indeed caused by the weapons seized.

21. The nature of injuries detected by the doctors in the dead bodies as discussed above, and their opinion as to the cause of death, leave no room for doubt that the deaths were homicidal in nature.

22. Coming to the authorship of the murder, this Court has carefully examined the testimonies of the eye witnesses in the light of the arguments advanced. As stated, the prosecution case rests primarily on the evidence of P.Ws.11 and 14, they being the injured eye witnesses to the occurrence.

23. In her sworn testimony P.W. 11 Kamini Mohapatra wife of deceased Thakur Mohapatra stated that the incident took place two years and five months prior to the date of her deposition. It was a Saturday. In the evening while she asked Sita, the wife of Appellant Sarathi Mohapatra, to pay Rs.42/- which she had taken on credit from her shop, she replied that she would pay only Rs.22/-. At this, Appellant Sara @ Sarathi came there and without understanding anything shouted and abused. Immediately thereafter the Appellant Rajendra too arrived and challenged her as to why she had asked for money. At this point her elder brother-in-law being the elder brother of her husband Anand Mohapatra, having appeared there, with a view to pacify the matter asked everyone to disperse without quarreling. With this Appellant Rajendra Mohapatra took a vow touching the ground that he would do away with the lives of the entire family.

24. It was further stated by P.W. 11 that on the next day morning while her husband was going to water the land and she along with her daughter Damayanti were behind him at a distance going to attend the call of nature, near Metakani square, Appellant Rajendra was standing holding Kodi (spade) and seeing her husband abused him stating as to what money his wife was asking the previous night, to which her husband pleaded his ignorance whereupon Appellant Raju dealt blow by means of a Kodi on the right side head of her husband. As a result of which he fell down with bleeding injury. Seeing the above she and her daughter Damayanti rushed to the spot and made the injured to stand but the Appellant Rajendra arrived there holding a knife so also the Appellant Sarathi holding a gupti. Both Dhulu and Sagar also arrived there and seeing her elder brother-in-law Anand Mohapatra reached at the spot all the three Appellants hurling abusing started assaulting Anand Mohapatra. The Appellant Rajendra dealt blow by means of Kodi on the head and also started assaulting by means of knife and the Appellant Sarathi dealt blows by means of gupti. On their interference Appellants Rajendra and Sarathi pushed them away. Her elder brother-in-law fell down having sustained severe bleeding injuries whereafter the three Appellants came near to her husband and started giving blows by means of knife and gupti and once again on their intervention Appellant Sarathi gave blow by means of gupti whereby she sustained a cut injury to her right palm. She further stated that her cloth and the body of the Appellant were stained with blood, her other family members arrived there. The Appellant threw the kodi there and saying that they have murdered her husband and elder brother in law, that they would do way with the lives of the persons

who would give evidence against them and left towards the village. Her husband and elder brother in law died at the spot.

25. P.W.14 corroborated the evidence of P.W. 11 in all material particulars.

26. Admittedly, P.W.1, the Informant, who is the son of the deceased Anand Mohapatra, P.W. 9, the wife of the deceased Anand Mohapatra were not present at the spot. However, they being the post occurrence witnesses who arrived at the spot just after the incident deposed in a manner consistent with the versions of P.Ws.11 and 14 thus strengthening the case of the prosecution.

27. As far as the evidence of P.W. 4 is concerned, he is a witness to the recovery of the weapon of offence at the instance of Appellant Sarathi pursuant to the statement volunteered by him recorded under Section 27 of the Evidence Act. This witness fully supported the case of the prosecution. Similarly, the witnesses to the seizure both official and independent clearly stated as regards the seizure of the incriminating articles in their presence.

28. The sole witness who turned hostile to the prosecution case is PW 15. However, in light of the overwhelming evidence in support of the prosecution through the other PWs, this does not weaken the case of the prosecution.

29. From the evidence of PWs 11 and 14 it clearly emerges that they were right behind Thakur Mohapatra who was going to water the land in the morning. They had the occasion to witness the incident from close quarters. They rushed spontaneously to his rescue. All

that is narrated by these two witnesses can only suggest their presence at the scene of occurrence. Further, the injury sustained by PW 11 receives corroboration by medical evidence proved through P.W.16. This reinforces her evidence as to her presence at the spot at the time of incident. The cross examination from the side of the Appellants during trial could not shake the testimony of these witnesses in respect to their presence at the time of occurrence. The tenor of their evidence narrating the sequence of events from inception i.e. the time the quarrel took place in the evening on Saturday i.e. 19th August, 2000 till the Appellant left the spot appears in no way to be unnatural but reaffirms that their testimony is not only truthful and natural but also beyond reproach.

30. Similar is the version of P.W. 4, the witness to the recovery of the weapon of offence at the instance of Appellant Sarathi. It absolutely supports the prosecution case. The evidence as to recovery of weapon of offence pursuant to the statement recorded under Section 27 of the Evidence Act is consistent with the manner in which such evidence could be led from the side of the prosecution.

31. In this context, the following observations in *Abdul Sayeed v. State of Madhya Pradesh* (*supra*), are relevant:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit

an injured witness". (Vide *Ramlagan Singh v. State of Bihar*, AIR 1972 SC 2593, *Malkhan Singh v. State of U.P.*, AIR 1975 SC 12, *Machhi Singh v. State of Punjab* (1983) 3 SCC 470, *Appabhai v. State of Gujarat* AIR 1988 SC 696, *Bonkya v. State of Maharashtra* (1995) 6 SCC 447, *Bhag Singh* (1997) 7 SCC 712, *Mohar v. State of U.P.* (2002) 7 SCC 606 (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* (2008) 8 SCC 270, *Vishnu v. State of Rajasthan* (2009) 10 SCC 477, *Annareddy Sambasiva CRLA No.188 of 2016 Page 6 of 9 Reddy v. State of A.P.* (2009) 12 SCC 546 and *Balraje v. State of Maharashtra* (2010) 6 SCC 673).

29. While deciding this issue, a similar view was taken in, *Jarnail Singh v. State of Punjab* (2009) 9 SCC 719, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29).

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained

injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4) has rightly been relied upon by the courts below."

30. The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

32. In the case in hand the testimony of the injured eye witness P.W. 11 who did not deviate from what she deposed being present in the scene of occurrence assures her truthfulness to the factum of incident. The very fact that she tried to intervene the assailant on the assault being made to her husband is not only a natural but spontaneous reaction in the given circumstance and the retaliation of the assailant Sarathi giving a blow by means of gupti resulting injury to the palm reassures her presence at the scene of occurrence besides the conduct of the Appellant. The argument of the Appellants, therefore, to the effect that the eye witnesses have been planted is far from truth and deserves to be rejected.

33. Further, as narrated above, the weapon of offence recovered at the instance of the Appellant Sarathi and seized from the spot that received affirmation in the opinion of the doctor to the effect that the injuries could be possible by such weapons is a strong link. Consequently, the evidence of the injured eye witness that is fully corroborated by the medical evidence and further the evidence of other witness (P.W.1 and 9) proves beyond reasonable doubt the case of the prosecution that the authors of the murder are the Appellants.

34. The sole evidence of D.W.1 was to no avail as it was neither substantiated by the defence nor was it in itself intrinsically believable. The decisions cited by the learned counsel for the Appellants being factually and circumstantially distinguishable cannot be applied to the present case.

35. Cumulatively, therefore, the irresistible conclusion would be that the prosecution has proved the case against the Appellants beyond all reasonable doubt. This Court finds no ground to interfere with the well reasoned judgment of the trial court.

36. The appeal is accordingly dismissed, but in the circumstances with no order as to costs.

(Chittaranjan Dash)
Judge

(Dr. S. Muralidhar)
Chief Justice

KC Bisoi /Secretary