

IN THE HIGH COURT OF ORISSA AT CUTTACK

GCRLA No.02 of 2012

From the judgment of acquittal dated 7th March, 2011 passed by the learned Ad-hoc Additional Sessions Judge, FTC-II, Cuttack in S.T. Case No.401 of 2008.

State of Orissa

....

Appellant

-versus-

Sukalyani Mishra & Another

....

Respondents

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

For Appellant - Mr. S.S.Kanungo,
Additional Government Advocate

For Respondents - Mr.A.B.Mohanty
(Advocate)

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 16.11.2022 : Date of Judgment:18.11.2022

D.Dash,J. The State, by filing this Appeal, with the leave of the Court, has called in question the judgment dated 7th March, 2011 passed by the learned Ad-hoc Additional Sessions Judge, FTC-II, Cuttack in Sessions Trial Case No.401 of 2008 arising out of G.R Case No. 309 of 2006 corresponding to Salipur P.S Case No.156 of 2006 of the Court of the learned J.M.F.C., Salipur.

By the same, the Trial Court has acquitted the respondents (accused persons) of the charge under section 328/302/34 of the Indian Penal Code (in short, 'IPC').

2. Prosecution Case:-

Deceased Sarada Mani Dibya died on 19.05.1997 night around 10 p.m. She was then 82 years old and staying in the house of accused Achutananda at village Baliapada. For last 15 to 20 years, she was staying there. She was suffering from Asthma and colic pain. On 20.05.1997, accused Achutananda lodged a report (Ext.9) at Nischintkoili Police Outpost intimating the unnatural death of Saradamani. So an U.D Case was registered there and it was numbered as U.D Case No.05 of 1997. The Assistant Sub Inspector of Police (ASI) attached to that Nischintkoili Police Outpost (P.W.6) then enquired into the matter. He held inquest over the dead body of the deceased, prepared report to that effect and sent the same for Post Mortem Examination by issuing requisition. Report being received from the Doctor holding the Post Mortem examination vide Ext.17 as no such opinion as to cause of death could be rendered; as advised by the Doctor; the viscera of the deceased was sent for chemical examination. On completion of enquiry, the ASI submitted his report to the Officer-in-Charge of Salipur Police station (P.W.10) who in turn submitted the Final Form (Ext.17) on 10.01.2001.

3. On 20.05.1997, Bichitrananda Mishra (P.W.1) who happens to be the informant in the present case and claims of the adopted son of the deceased, received the information about the death of the deceased and had come to see her. He then had notices froth coming out of the mouth

of the deceased and had also seen some injuries on her back and body which had created suspicion in his mind as to the cause of death of Saradamani (deceased) who was in a sound state of health before the death. There was land dispute between Bichitrananda (P.W.1) and accused Achutananda. Accused Achutananda managed to obtain a Will on his favour from Saradamani (deceased) on 18.07.1995 in respect of her entire landed property and in that connection, a partition suit i.e. Title Suit No.55 of 1993 as well as Probate Misc. Case No.05 of 1999 had been filed before the Court of law. For the above enmity and suspicious circumstances; Bichitrananda (P.W.1) verified the record of the U.D Case and then could know that the viscera was found to contain poison as per the report of the chemical examiner. From that, his suspicion was further confounded that the accused persons in order to grab the property of the deceased had murdered her by administering poison. He, therefore, filed a Writ Application before this Court which was numbered as W.P.(Criminal) No.37 of 2006. Said Writ Application was dismissed giving liberty to that Bichitrananda to file the report before the police (P.W.7) or complaint in the Court of law. In view of that Bichitrananda filed the written report (Ext.1) before the police on 10.05.2021. The case was registered and investigation then commenced.

4. In course of investigation, the then Officer-in-Charge of Salipur Police Station visited the spot, prepared the spot map, examined the witnesses and arrested the accused persons. The Chemical Examination Report (Ext.6) was obtained and so also the final opinion of the Doctor (Ext.18) was taken. On his transfer, the investigation was taken up by his successor in office (P.W.9) on 21.08.2007. He also visited the spot and prepared another spot map, made seizure of the papers available

with that U.D Case record (Ext.10, 12 and 13) and also seized the Will dated 18.07.1995 (Ext.8). On completion of investigation, he submitted Final Form on 13.07.2008 placing the accused persons to face the trial for commission of offence under section 328/302/34 of the IPC.

5. Learned J.M.F.C., Salipur have taken cognizance of the offences, after observing formalities committed to the Court of Sessions for trial. That is how the Trial Court commenced against these accused persons after framing of the charge for the above offences.

6. In the trial, the prosecution in total has examined 11 witnesses; out of whom the informant as already stated is P.W.1. One Sachidananda Mishra has been examined as the eye witness to the occurrence and he is P.W.2 who happens to be the brother of accused Achyutananda. P.W.3 and 4 are the witnesses to have heard about the incident from that eye witness P.W.2. The inquest witness has been examined as P.W.5. The ASI of Police who had conducted inquest in U.D. Case No.05/1997 has come to the witness box as P.W.6. The two Investigating Officers have been examined as P.W.7 and 9 and the chemical examiner as P.W.8. The then O.I.C of Salipur Police Station, who had submitted the Final Form in the U.D Case, has been examined as P.W.10 and the Medical Officer who, on going through the post mortem examination report of the deceased Saradamani, had given the opinion on receipt of the chemical examiner's report has come at the end as P.W.11. Besides the above, prosecution has also proved certain documents which have been admitted in evidence and marked as Ext.1 to 19. Those are the written report (Ext.1), inquest report (Ext.3), chemical examination report (Ext.6), post mortem report (Ext.17), final

form of the U.D Case (Ext.16), final opinion of the Doctor conducting post mortem examination (Ext.18), chemical examination report (Ext.6) and U.D Case F.I.R (Ext.19), seizure list and zimanamas etc.

7. The defence having been taken the plea of denial and false implication, has also examined two witnesses in support of their plea.

8. The Trial Court with the above evidence on record has proceeded to ascertain as to whether the death of the deceased was natural or homicidal in further answering the point as to whether these accused persons have not hand causing said death of the deceased.

9. On detail examination of evidence and their evaluation, the Trial Court's conclusion is that the prosecution has failed to prove that the death was homicidal. Not only that, it has held that there has been failure to connect the accused persons in causing the murder of the deceased beyond reasonable doubt. Accordingly, he has acquitted all the accused persons of the charges under section 328/302/34 IPC and has set them at liberty.

10. It be stated, at this stage, that during pendency of these appeal, Respondent No.1 and 3 having died, the appeal had abated against them and it now survives in respect of Respondent No.2 and 4.

11. Mr. S.S.Kanungo, learned Additional Government Advocate submitted that the Trial Court, on some flimsy grounds, has rejected the evidence of P.W.2 who is the eye witness to the incident. He further submitted that keeping in view the fact that deceased Saradamani was not happy with the accused Achutananda who was in a mood to grave her entire property in not parting the same with others even by an inch

which is evident from the fact that he had obtained Will from Saradamani without her knowledge and consent which has been stated by the prosecution witnesses, the evidence of P.W.2 when is free from any such infirmity, the Trial Court has held the same to be untrustworthy simply for the reason that he disclosed the fact as to the happening of the incident and the role of the accused persons therein after long lapse of time. He further submitted that when the evidence of P.W.2 finds corroboration from the evidence of P.W.3 and 4 that he had immediately disclosed the fact before them, the Trial Court had all the reason to accept the positive version of P.W.2 and according to him, that is enough to fasten the guilt of the accused persons, which is the material irregularity committed by the Trial Court. He, therefore, submitted that, there stands compelling and substantial reason to differ with the finding of the Trial Court and hold that the order of acquittal is unreasonable as relevant convincing evidence have been unjustifiably eliminated in the process. He further submitted that keeping in view the age of the deceased at that time as she was then 82 years of old and she was leaving with the accused persons in their house and when it is not stated by the accused persons as to how the death has taken place by in take of poison, the conclusion of the Trial Court that the prosecution has failed to establish the charges against the accused persons is not at all the possible one and as such it is perverse and infirm and pulpably erroneous which warrants interference.

12. Learned counsel for the Appellant Nos.2 and 4 submitted all in support of finding of the Trial Court. He submitted that the non-disclosure of the incident by P.W.2 for such a long period and the first time disclosure after more than 8 years or so is itself to enough to hold

the evidence that P.W.2 as wholly unbelievable when he is not whispering a word as to why and for what reason, he resorted to sphinx like silence. He further submitted that when P.W.2 is the brother of accused Achyutananda, he even not disclosing the incident before anybody and even before that informant (P.W.1) when he was enquiring about the cause of death has to be taken as a highly disturbing and disbelieving feature in further taking his conduct into account and the Trial Court is right in entertaining grave doubt on the version of this P.W.2. He further submitted that P.W.1 having lodged the FIR on 10.05.2006 when he has not written anything as to have been so told by this P.W.2, who claims to have seen the incident, his evidence has to be held on the standing of the base of falsehood and the same also renders the evidence of P.W.3 who is the son of P.W.2 vulnerable. He further submitted that the Trial Court has committed no such error in the matter of appreciation of the evidence and it is not a case where the Trial Court has taken into consideration, some circumstances wholly in consequential and has acted with material irregularity. He therefore contended that this appeal does not merit acceptance.

13. At this juncture, before addressing the rival submission and examine the evidence in order to ascertain the position as to if the order of acquittal warrants interference, it would be apt to take note of the settled principles of law as to the scope of interference with an order of acquittal passed by the Trial Court in seisin of an appeal as against the acquittal.

The Appellate Court considering the judgment of the acquittal can interfere only when there are compelling reasons for doing so in holding

the judgment is clearly unreasonable, wherein the relevant and convincing materials have been unjustifiably eliminated in the process. ***(Syed Peda Aowila) versus Public Prosecutor High Court of A.P; AIR 2008 SC 2573.***

Where the findings recorded by the Trial Court are not perverse or contrary to material on record and there is no infirmity in the reasons signed by the Trial Court for acquitting the accused, no interference is warranted. ***State of Gujarat V. Jamabhai Ramabhai Chauhan Solaji Tal 2006 CRI. L. J. 2392 and Braham Swaroop & Another Versus State of Uttar Pradesh; (2011) 6 SCC 288.***

As stated in a catena of decisions of Supreme Court that in an appeal against acquittal certain cardinal rules are required to be kept in mind namely, (a) that there is a presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial court (b) if two views are possible, a view favourable to the accused should be taken, (c) that the trial judge had the advantage of looking at the demeanour of the witnesses and (d) the accused is entitled to a reasonable benefit of doubt. Two views being reasonably possible; one favouring the accused is possibly preferred.

14. With the above settled principles in mind, let us now proceed to examine the evidence. The star witnesses for the prosecution are P.W.2, 3 and 4. P.W.2 is the younger brother of accused Achutananda and deceased is his Aunt. The death of the deceased took place on 19.05.1997. This witness says that in the night, he heard accused persons abusing the deceased and then a sound. He further states that when he came out, the door was closed and after giving a push to the

door when it got opened, he could see accused Aruna catching hold of the two hands of Saradamani and her waist and accused Niranjana (Dead) catching hold her head. He also says to have seen accused Achutananda (Dead) pressing the two side of the jaw of Saradamani (deceased) and then accused Sukalyan was administering something kept in a glass. He states to have shouted that accused persons were trying to kill the deceased and thereafter Pratap Mishra (P.W.5), and Kamalakanta Mishra (Not Examined) and some others came. Alekha Malik (Not Examined) also came there and told that as to why he was shouting when the accused persons were administering medicine to the deceased as per his evidence. Pratap and Kamalakanta and others pushed him outside the house and remained in that very house. This incident having taken place on 19.05.1997, this witness is said to have stated to P.W.3 and P.W.4. P.W.3 is his son. He states that hearing from Saradamani as “MARIGALI MARIGALI”, his father went there and pushed the door and went inside the house and then his father told him that accused Aruna had caught hold of two hands and waist of Saradamani, accused Niranjana (Dead) had caught hold of the head and accused Achyutananda (Dead) had pressed her mouth and thereafter he (P.W.2) shouted that accused persons were trying to kill Saradamani. He then was told by one Alekh Malik that why he was shouting as the accused persons were administering medicine. P.W.4 says to have been told by P.W.2 about the forcible administration of poison by the accused persons. P.W.1 after filing the Writ Application before, this Court has gone to lodge the FIR on 10.05.2006 and thereafter, all these witnesses have been examined by police in the year 2006 in connection with the incident which had taken place in the year 1997. None of the witnesses have said as to why and

for what reason they remained silent in not disclosing about the incident when the death of Saradamani according to them had been caused by these accused persons. On going through the evidence, it is also seen that they were knowing that information about the death of Saradamani having been given police enquiry was going on. But still then they have not stated anything before them and what was such compelling reason. More interestingly when P.W.1 has lodged the FIR on 10.05.2006 which is a typed one where he has signed in English he has nowhere indicated about these witnesses; that P.W.2 had seen this incident and P.W.3 to have been told by P.W.2 and they in turn to have told him anything about that. In the FIR he says that he had the reason to believe that his mother was administered poison by these accused persons. It is true that poison has been detected on the viscera of the deceased but no such evidence is forthcoming that the Doctor who conducted the post mortem examination had noticed any such external injuries on the body of the deceased nor had it been so found in the buccal cavity suggestive of forcible administration of substance much less the poisonous substance upon the deceased. Such belated disclosure by all these witnesses about such a startling facts when having remained silent for such a long period after finding the opportune moment, they have so disclosed after about a decade is by itself enough to disbelieve the version of all those witnesses. Their conduct is highly suspicious, which has gone unremoved by any such explanation. It also does not stand to reason that when there was no threat from any side; they even would not tell to that P.W.1 and would wait for such a long period of a decade for the police to come after lodging of FIR by P.W.1 in the year 2007 about the incident is of the year 1997. We, therefore, are of the clear view that the

Trial Court has rightly held these witnesses to be wholly untrustworthy and thus did commit no such mistake in refusing to rely upon their evidence. We accordingly find no reason at all much less, any compelling reason to interfere with the order of acquittal against these two surviving accused persons as has been returned by the Trial Court so as to hold the impugned judgment as the outcome of perverse appreciation of evidence in unjustifiably eliminating any material evidence.

15. In the result, the Appeal stands dismissed.

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

Dr.S.K.Panigrahi, J. I Agree.

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

True Copy

Jr.Steno

Gitanjali