

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.6 of 2016

Sambaru Dhibar

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates, appeared in this case:

For Appellant

: Mr. Neelakantha Panda, Advocate

For Respondent

: Mr. Ishwar Mohanty
Addl. Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

30.09.2022

Dr. S. Muralidhar, CJ.

1. The present appeal is directed against the judgment dated 18th November, 2015 of the Additional Sessions Judge, Bonai in S.T. No.173 of 2014 convicting the Appellant for the offence under Section 302 IPC, sentencing him to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.10,000/- and in default to undergo RI for six months.

2. The case of the prosecution is that at around 6.30 pm on 8th February, 2014 one Sahadev Dhibar (PW 5) of village Belkudar Taladhipa gave a report in writing at the Lahunipada Police Station (PS) stating that on the same date at around 5.30 pm the Appellant had come to his house and started a quarrel with him

due to previous land dispute. Armed with a tangia, the Appellant started chasing him. At that time, maternal grand-father of PW 5, late Ratna Jamkia protested against the action of the Appellant and tried to prevent him from attacking PW 5. The Appellant then dealt a heavy blow with the tangia on the shoulder of the deceased, as a result of which he fell on the ground sustaining severe bleeding injuries. Thereafter, the Appellant repeatedly gave blows on the neck of the deceased till the head was completely severed from his body. The deceased died instantly at the spot. Thereafter, the Appellant left the spot with the tangia and the severed head of the deceased.

3. Upon receiving the above report, Kasinath Kujur (PW 11) who was working as the Sub-Inspector of Police took up the investigation on the direction of R.K. Sahoo, the IIC of PS Lohanipada. PS Case No.11 of 2014 was registered.

4. Then PW 11 proceeded to the spot. On receiving reliable information that the Appellant was proceeding towards Bonai carrying the cut head of the deceased and the weapon of offence, he proceeded towards Bonai and apprehended the Appellant on the way near the Fire Station, Bonai. He then seized both the weapon of offence and the cut head of the deceased.

5. When he came back to the spot, he located the dead body of the deceased without its head. On the village road Belkuda, he joined the cut head with the neck of the dead body. PW 5 then identified the dead body being that of the deceased. PW 11 prepared an inquest report and then sent the dead body for post-mortem

examination. After completion of the investigation, a charge sheet was led against the Appellant for the offence under Section 302 IPC.

6. The Appellant pleaded not guilty and claimed trial.

7. The prosecution examined 13 witnesses. PWs 1, 2 and 9 were the occurrence witnesses. PWs 3 and 4 were the seizure witnesses. PWs 6, 7, 8 and 12 were other seizure witnesses. PW 13 is the wife of the informant (PW 5). PW 10 was the medical officer, who conducted autopsy on the dead body of the deceased.

8. The case is based on direct evidence with the eyewitnesses' testimonies being unshaken. PW 5 was very much present and has spoken clearly and cogently about not only the Appellant killing the deceased but also drinking his blood with both his hands and throwing some khaini on the chest of the deceased and then going away from the spot with the cut head and weapon.

9. The only submission that learned counsel for the Appellant made in this regard is that PW 5 is a related witness and therefore, an interested witness. Therefore, his evidence had to be approached with great caution.

10. The law in this regard is well settled. In ***Hari Obula Reddy v. State of Andhra Pradesh (1981) 3 SCC 675***, the Court stated that it cannot be laid down as "an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by ***JCRLA No.6 of 2016***

independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

11. In *Arjun Marik v State of Bihar* 1994 Supp (2) SCC 372, it was held that:

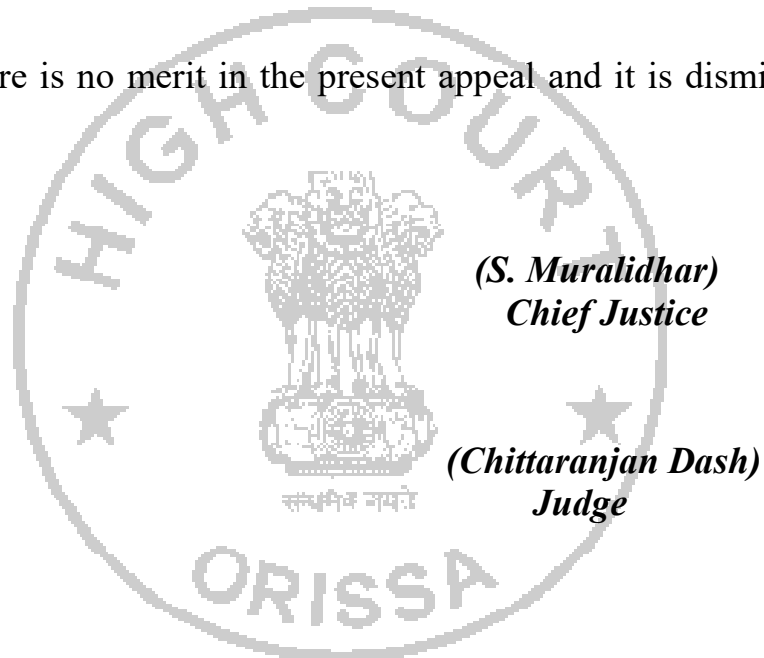
"13...mere relationship of the witnesses cannot be the sole basis to discard the evidence if it is otherwise found to be believable and trustworthy. However, when the Court has to appreciate the evidence of any interested witnesses it has to be very careful in weighing their evidence. In other words the evidence of an interested witness requires greater care and caution while scrutinising his evidence. The Court has to address to itself whether there are any infirmities in the evidence of such a witness; whether the evidence is reliable and trustworthy and whether the genesis of the crime unfolded by such evidence is probable or not. If the evidence of any interested witness or a relative on a careful scrutiny is found to be consistent and trustworthy, free from infirmities or any embellishment there is no reason not to place reliance on the same."

12. In the present case, the above eyewitness testimonies are fully corroborated by the medical evidence which talks of the head being decapitated. PW 13 the wife of PW 5 also is an eyewitness and has completely corroborated the version of PW 5. The post occurrence witness was PW 1, who found that PW 5 had come to him crying and asking to save him from the clutches of the Appellant. PW 2 stated that he found the Appellant assaulting the deceased on the neck with an axe, as a result of which, he died at

the spot. PW 2 is therefore, apart from PW 5 and 13 another eyewitness to the occurrence.

13. All three eyewitnesses are clear, cogent and consistent and their testimonies are fully corroborated by the medical evidence. They have been rightly believed by the trial Court. With the evidence being clear and unimpeachable, no error is committed by the trial Court in proceeding to convict the Appellant and sentencing him in the manner indicated.

14. There is no merit in the present appeal and it is dismissed as such.



S.K.Jena/Secy.