

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA NO.683 OF 2016

From the judgment and order of sentence dated 21.08.2015 passed by the learned Additional Sessions Judge, Rairangpur in Sessions Trial Case No.06 of 2014 arising out of G.R. Case No.571 of 2013 (T.C. No.01 of 2014) of the Court of learned Sub-Divisional Judicial Magistrate, Rairangpur.

Ramdu Murmu

:::

Appellant.

-versus-

State of Odisha

:::

Respondent.

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

For Appellant

:::

Mr. B.K. Behera-1,
Advocate.

For Respondent

:::

Mr. Saubhagya Ketan Nayak,
Addl. 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, by filing this Appeal, has assailed the judgment of conviction and order of sentence dated 21.08.2015 passed by the learned Additional Sessions Judge, Rairangpur, in Sessions Trial Case No.06 of 2014, arising out of G.R. Case No.571 of 2013 (T.C. No.01 of 2014) of the Court of learned Sub-Divisional Judicial Magistrate, Rairangpur. The Appellant (accused) has been found guilty of commission of offence

under section-302 of the Indian Penal Code, 1860 (for short 'the IPC'). Accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- with the default stipulation to further undergo rigorous imprisonment for a period of six months.

2. Prosecution case is that the accused had married Maina (deceased), who happens to be the sister of the Informant namely, Kunaram Baskey (P.W.9), in the year, 2013. They were residing with their children in their house at village Talapati, which is separate from the house, where other members of the family of the accused were residing. On 4-5.11.2013 intervening night, the accused assaulted the deceased to death giving repeated blows on her by means of a bamboo lathi. On the next morning, he intimated the Informant (P.W.9) about the death of Maina. Hearing this news from the accused, the Informant (P.W.9), his father (P.W.11) and other relatives rushed to the house of the accused at village Talapati. They found Maina lying dead in the house with injuries all over her body. Finding the death of Maina to be under unnatural circumstances, the Informant (P.W.9) and others made inquiry. Then they could ascertain that it is the accused who had done his wife Maina to death. The Informant (P.W.9) then lodged a written report (Ext.4) before the Inspector-in-Charge (IIC), Bisoi P.S. which being treated as F.I.R., the IIC (P.W.19) immediately registered the P.S. Case No.94 of 2013 and

took up investigation. He then examined the Informant (P.W.9), visited the spot, held inquest over the dead body of the deceased, made seizure of bamboo lathi and collected other incriminating materials which he seized by preparing seizure lists. The dead body was then sent for postmortem examination by issuing necessary requisition. The IIC (P.W.19) also examined other witnesses. Thereafter, the accused was arrested and forwarded in custody to Court. The incriminating articles were also sent for chemical examination through Court. Finally, on completion of investigation, Final Form was submitted placing the accused to face the trial for commission of offence under section-302/304-B of the IPC.

3. Learned Sub-Divisional Judicial Magistrate, Rairangpur, having received the report as above, took cognizance of the said offences and committed the case to the Court of Sessions for trial. That is how the trial commenced by framing of charge against the accused for commission of offence under section-302/304-B of the IPC.

4. In the trial, the prosecution had examined in total nineteen (19) witnesses; out of whom, as already stated, P.W.9 is the Informant, who happens to be the brother of the deceased and P.W.11 is the father of the deceased. P.Ws. 6 and 7 are two brothers of the accused, P.Ws. 10 and 12 are the paternal uncles and of the deceased; whereas P.Ws.13 and 14 are two other brothers of the deceased. P.Ws.15 and 16 are the maternal uncle

and sister-in-law of the accused; whereas P.Ws. 2, 3, 4 and 5 are the co-villagers of the accused. The Doctor who had held the postmortem examination over the dead body and submitted his report as Ext.1, has been examined as P.W.1. P.Ws. 17 & 18 are two Police Constables who are the witnesses to the seizure of the incriminating articles. The Investigating Officer has come to the witness box at the end in closing the prosecution evidence as P.W.19. Besides leading the evidence through above witnesses, the prosecution has also proved several documents which include the F.I.R., Ext.5, inquest report, Ext.3/3, postmortem report, Ext.1, seizure lists, Exts.4/1, 6/2, 7/1 and 8/1.

5. The defence case is that of complete denial. However, he has not examined any witness in support of his defence.

6. The Trial Court on going through the evidence of the Doctor (P.W.1), who had held postmortem examination over the dead body of Maina and submitted his report as Ext.1 as well as the evidence of Investigating Officer, P.W.19, who had held inquest over the dead body and has proved his report as Ext.2 and other witnesses has held the death of the deceased to be homicidal as a result of the injuries she had sustained. This aspect was not under challenge before the Trial Court and that is also the situation before us.

Proceeding to answer the culpability of the accused for commission of offence under section-304-B of the IPC, the Trial Court, upon examination of evidence and their evaluation, has held that the prosecution case on that score has not been established beyond reasonable doubt. The accused has thus been acquitted of the said charge. However, having scanned the evidence let in by the prosecution both oral and documentary, the Trial Court has held the accused guilty in so far as offence under section-302 of the IPC is concerned and he has been held to have assaulted his wife Maina to death by intentionally causing injuries on her.

7. Learned Counsel for the Appellant (accused) submitted that there being no direct evidence to implicate the accused in the commission of the offence that he assaulted the deceased to death, the finding of the Trial Court merely basing upon certain circumstances, which too have not been proved beyond reasonable doubt, and that also when being joined do not complete the chain in every respect in ruling out all the hypothesis other than the guilt of the accused, the conclusion of the Trial that the prosecution has established the charge under section-302 of the IPC against the accused beyond reasonable doubt cannot stand. He submitted that the Trial Court, in view of the evidence on record, ought not to have fastened the guilt upon the accused. According to him, merely keeping in

view the evidence that the deceased and the accused are last seen together, by taking the same with the failure on the part of the accused to provide explanation as to how his wife was found dead in the house and some of his conduct being turned as unnatural, the Trial Court ought not to have recorded the conviction. In support of same, taking much of pain, he has invited our attention to the depositions of the prosecution witnesses. He placed reliance on the decision of the Apex Court in case of *Jose @ Pappachan Vrs. The Sub-Inspector of Police, Koyilandy & another*; 2017(I)OLR (SC) 24, *Renta Nag Vrs. State of Orissa*; 2021(I)OLR 487 and *Dillip @ Sambhu Patnaik Vrs. State of Orissa*; (2021) 81 OCR 673.

It was alternatively submitted that since no motive behind the commission of such offence has not been established by the prosecution; in the surrounding facts situation as have surfaced in the evidence, the accused cannot be said to have committed the offence under section-302 of the IPC and the conviction is liable to be altered to one under section-304 Part I of the IPC.

8. Learned Counsel for the State, while supporting the finding of the Trial Court in holding the accused guilty for commission of offence under section-302 of the IPC for having murdered his wife, submitted that when the evidence on record clearly establish that the accused and the deceased were in their house in that night and then the accused in respect of that

when offering no sort of explanation as to how the deceased met her death by sustaining so many injuries on her body, which too are visible and has rather gone to suppress any such happening while intimating the same to P.W.1, the Trial Court has rightly held the chain of circumstances to be complete in ruling out all the hypothesis other than the guilt of the accused.

Placing the fact situations of the cited cases [*Jose @ Pappachan* (supra), *Renta Nag* (supra) and *Dillip @ Sambhu* (supra)], he contended that with the well settled principles as to the establishment of charge of murder through circumstantial evidence; in the fact and circumstances which are peculiar in those cases; the Court having returned the finding against the prosecution; those cannot be the basis to take the view in this case in that direction as here the factual settings which have surfaced in evidence and the circumstances which are glaring are completely different, justifying to conclude that the chain is so complete that the hypothesis of the innocence of the accused stands ruled out in absolute terms. He further submitted that the facts and surrounding circumstances as established clearly make out a case under section-302 IPC against the accused and it would not at all fall under section-304 Part I of IPC.

9. 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 i.e. P.Ws.1 to 19, examined from the side of the prosecution witnesses and have perused the documents admitted in evidence and marked Exts.1 to 10.

10. The prosecution case here is not based on direct evidence. In order to establish the charge under section-302 of the IPC as against the accused, the circumstances relied upon are the followings:-

- i. the deceased was in the company of the accused and they were in the house in the night of occurrence;
- ii. the accused in the next morning simply informs about the death of the deceased without further stating as to how it happens, what was the cause or may be the probable cause;
- iii. the accused does not offer any explanation that when he with the deceased were together in the house in the night, as to how the deceased sustained such number of external injuries on her person which has resulted on her death;
- iv. the unnatural conduct of the accused in the morning;
- v. extra judicial confession of the accused;
- vi. the recovery of the bamboo lathi from near the dead body, which was seized; and
- vii. availability of the patches of human blood of the same group on the wearing apparels of the accused and the deceased.

11. Before proceeding to discuss the evidence on record, the settled position of law be stated that in a case resting on circumstantial evidence, there must be complete chain of evidence which would lead to a conclusion that it is accused alone who could committed the offence and

none else. The Court has to consider the total cumulative effect of all the proved facts, each one of which reinforce the conclusion of guilt and the combined effect of these facts, being taken together, is conclusive in establishing the guilt of the accused, for securing a conviction even though it may be that one or more of those facts by itself or themselves is/ are not decisive. Caution remains that the facts established should be found to be consistent only with the hypothesis of the guilt of the accused excluding all the hypothesis except the one sought to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must be seen that all human probability, the act must have been done by the accused and when various links in chain are in themselves complete, then the false plea or false defence may stand to add in lending assurance to the Court.

Bearing the aforesaid in mind, let's first of all proceed to take into account the evidence with regard to the extra judicial confession of the accused. It is the settled position of law that the extra judicial confession can be considered and accepted as the basis of conviction, if it is established to be true and made voluntarily in a fit state of mind and it passes through test of credibility / reliability of the witnesses before

whom, it was so made in showing that the accused had all the reason to repose confidence on them to so confess.

P.Ws. 9, 11, 12 and 15, on receiving the information from the accused about the death of the deceased, arrived at the house of the accused. They found dead body of the deceased and noticed several injuries on her person. It has been stated by them that at the time of their arrival, the accused and his villagers were present. P.Ws. 12 and 15 have deposed that having asked the accused-Ramdu Murmu, he confessed to have killed the deceased. P.W.12 is the paternal uncle of the deceased and the P.W.15 is the maternal uncle of the deceased. When all those P.Ws. i.e. P.Ws. 9, 11, 12 and 15, were together present at the scene of crime; it is seen that only P.Ws. 12 and 15 state about the accused to have confessed before them, whereas the other witnesses such as P.Ws. 9, 11 and others present there are not breathing a word on that score. They are wholly silent on that aspect.

P.W.9 is the brother of the deceased and the Informant. He simply states that on inquiry, he came to know from the villagers that the deceased had been killed by the accused and then accused was present at that place. He further states that having so ascertained from the villagers, he went to the police station. The father of the deceased, P.W.11 has stated in the same vein that they could know from the villagers that

accused had killed the deceased. P.W.12 however says that the accused being present at the place, on their arrival on being asked, confessed to have killed Maina by beating; whereas P.W.15 is stating that on being asked, consistently the accused confessed before them to have killed Maina. When these two witnesses are stating about the confession of the accused, the other witnesses including the brother and father of the accused who are P.Ws.9 and 11, do not state anything about that. Thus under the circumstance, it is extremely unsafe to rely upon the evidence of P.Ws. 12 and 15 to hold that the accused had confessed to have committed the crime at any time after their arrival in his house where the deceased was found lying dead.

12. Now coming to the last seen theory, the settled position of law holding the field need be first noted. Law is well settled that a conviction cannot be based only on the circumstance of last seen together. The conduct of the accused and the fact of he being last seen with the deceased has to be looked with other circumstances and the same comes into play, when the time gap between point of time when the accused and deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible to think of. It becomes difficult in some cases to positively establish that the deceased was last

seen with the accused when there is a long gap when the possibility of other persons coming in between is not ruled out.

In the case at hand, We find the evidence of P.W.3, the neighbor of the accused, to be on the score that the accused with his deceased-wife, Maina and their children were residing in the house of the accused. P.Ws. 6 & 7, who are the elder brothers of the accused, have also so stated. The incident had taken place in the intervening night of 04/05.11.2013 and it is in the house of the accused. On the very next morning, the accused has informed P.W.9 and others about the death of his wife without any further narration as to how she died and what was the cause or even what according to him might have been the circumstance leading to her death. Although, from the time when the relations of the deceased including her father and brothers arrived and the time they left the place, the accused has not offered any such explanation whatsoever much less to say any plausible explanation. Even by not saying as to when and under what circumstance, he first saw his wife dead. This in our view stands as the strong circumstance pointing at the guilt of the accused in view of the proved facts from the evidence that the deceased and accused were staying together on that night in that house. The death of the deceased, as has been proved from the side of the prosecution, was on account of the blows on her by the bamboo lathi. P.W.2 and P.W.5, two co-villagers of

the accused, have stated that the death of deceased took place in the house of the accused on Kalipuja day. It has been further stated by P.W.2 that the house of the accused consists of one room. They state that the accused came to them in the morning in a perturbed mode, informed about the death of his wife and requested them to inform the fact to the villagers who then called P.W.2 to come to the house of the accused and therefrom accused, using the mobile phone set of P.W.5, informed his in-laws about such death of his wife. Such evidence on record having not been impeached on any material aspect, are suggestive of the fact that the accused was very much present in the house in the night of occurrence as otherwise, he could have immediately disclosed before them that having come from outside in the morning, he saw his wife lying dead with injuries. In addition to this, when in one room of the house both were staying and the deceased received those injuries, the accused has not even shown his natural conduct in raising any hullah so as to draw the attention of others. That apart, in the morning he too has not stated before the villagers that his wife was beaten to death by someone else in the previous night in their house. Such conduct on the part of the accused also lead to take a view against the possibility of any outsider to have gone to the house in that night. The accused has also remained silent in giving any such explanation during his examination under section-313 Cr.P.C. In the

proven fact, when all these facts leading to the death of the wife of the accused on receiving the injuries was specially within the knowledge of the accused, his silence provides every reason to comprehend or arrive at a strong presumption as to his involvement.

13. The provision of section-106 of the Evidence Act is not intended to shift the burden of proof in respect of crime upon the accused but to take care of the situation that where the fact is known only to the accused and it is extremely difficult for the prosecution to prove that fact, in that situation, upon consideration facts and circumstances of the case, the said provision comes into play to find out the guilt of the accused.

14. The burden of proof of guilt of an accused is on the prosecution, but there may be certain fact pertaining a crime that can be well known to the accused or virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based upon those facts.

15. It has been held by the Hon'ble Apex Court in case of *Dasani @ Shanti Bai Vrs. State of Chhattisgarh*; (2015) 4SCC 186 that:-

“While dealing with issue of cases resting on circumstantial evidence, where the presence of special knowledge is with the accused, this Court has reiterated time and again that “in a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden

placed on him by Section-106, that itself provides an additional link in the chain of circumstances proved against him.”

In that case, the accused and the deceased were in the house which had been proved through evidence and the death of the deceased having taken place, the accused had not offered any explanation indicating the circumstances of the happening of the incident in the house during the night.

16. Thus, when We find that here the prosecution has proved through clear, cogent and acceptable evidence that the accused and deceased were together in that night in that one roomed house and it is seen that the death of the deceased had taken place on account of several injuries caused by lathi upon her and the accused has remained silent all through after the incident and even during the trial, providing any explanation whatsoever as to how his wife was found dead in the house, the same in our considered view stands as strong circumstance pointing at the guilt of the accused to be the author of the injuries on the person of the deceased.

17. In this case, patches of human blood were found on the wearing apparels of the deceased as well as the accused. The Investigating Officer, P.W.19, having arrested the accused, has seized his wearing apparels on his production under seizure the list Ext.7/1 which is receiving the support from the evidence of P.W.8, who is a signatory to the said seizure list and

was present at the time. The wearing apparels of the deceased have been seized under seizure list under Ext.8/1. The accused had admitted the factum that seizure of his wearing apparels by P.W.19. The seized wearing apparels being chemically examined through Court, the report Ext.10 reveals that the wearing apparels of the deceased such as blouse and saya as well as the half pant of the accused were found traces of human blood of one group that is Group-B.

18. In the cited case of *Jose @ Pappachan* (supra), the Hon'ble Court on examination of evidence having arrived at a conclusion that the evidence adduced by the prosecution constituting circumstantial evidence in support of the charge does not furnish an unassailable basis to hold the accused guilty of the charge of murder leveled against him and then further holding that the facts and circumstances admit of a reasonable doubt in favour of the accused, has concluded that the circumstances brought forth by the prosecution do not rule out in absolute term, the hypothesis of the innocence of the accused.

19. In case of *Renta Nag @ Shyam Sundar Nag* (supra), this Court having found the prosecution to have failed to establish the fact that the accused and the deceased, these two, were only present in the house in the intervening night of 9th to 10th January, 2006 and then having discarded the evidence on the score of extra judicial confession as not reliable has

acquitted the accused of the charge. Similarly, in case of *Dillip @ Sambhu Patnaik* (supra), the Court on analyzing the evidence of the prosecution has arrived at a finding that the circumstances relied upon by the Trial Court have not been established beyond reasonable doubt. Accordingly, the conviction has been set aside.

With the obtained factual settings as well as the glaring circumstances which have surfaced in evidence as discussed in the foregoing para standing as circumstances unerringly pointing at the guilt of the accused and completing the chain in every respect admitting no reasonable doubt in favour of the accused as to his innocence; in our considered view, these above cited case laws in no way stand for taking a view in favour of the accused.

20. On a conspectus of analysis of evidence made above with regard to the evidence of last seen theory, unnatural conduct of the accused and his not providing any explanation with regard to the death of his wife in one room of the accused and the opinion of the Doctor, P.W.1, that the injuries are possible by lathi, which too has been seized in course of investigation and examined by the P.W.1, as well as the finding of traces of human blood of the same group the wearing apparels of the deceased and the accused; We are of the considered view that the chain of circumstances is so complete that it unerringly point that it is the accused

who is the author of the crime of causing murder of his wife by assaulting her to death by means of that lathi, furnishing an unassailable basis to hold him guilty without admitting any reasonable doubt in his favour.

21. Coming to address the alternative submission of learned Counsel for the Appellant that the conviction of the accused ought to be one under section-304 Part I IPC; We have carefully gone through the cited case of *Gardi Singh @ Nagabansi @ Sukura Singh @ Nagabansi* (supra). In that case, the Court has noted certain circumstances that the deceased had consumed liquor at the time of occurrence; there was a petty quarrel between the deceased and the accused, the occurrence taking place in a spur of moment without any preparation and deliberation and that the accused had no motive to commit the murder of the deceased who happens to be his sister. Having noted all these, the Court found the case to be not culpable homicide amounting to murder punishable under section-302 of the IPC and has held the accused guilty of offence of culpable homicide not amounting to murder punishable under section-302 Part I of the IPC. None of the above circumstances or any such other circumstances of akin or like nature appear in the case at hand as would be seen from the evidence discussed by us. In that view of the matter, the above cited case is of no help for holding the accused guilty of offence under section-304 Part I of the IPC. Therefore, We are of the unhesitant

opinion to reject the contention of the learned Counsel for the accused that the act committed by the accused would amount to commission of the offence under section-304 Part I of the IPC.

In that view of the matter, the judgment of conviction and order of sentence impugned in this Appeal are hereby confirmed.

20. The Appeal is accordingly dismissed.

Mr.S.K.Mishra, J.

I Agree.

*(D. Dash),
Judge.*

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



Narayan