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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 158 of 2003

Balku Oram

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. Radharaman Dasnayak
Advocate

For Respondent

:

Mrs. Saswata Patnaik
Additional Government Advocate

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

**JUDGMENT
29.09.2022**

Dr. S. Muralidhar, C.J.

1. This appeal is directed against the judgment dated 3rd May, 2002 passed by the Additional District and Sessions Judge, Rourkela in Sessions Trial No.39/246 of 1998 convicting the present Appellant for the offence punishable under Sections 302 read with 34 IPC and sentencing him to undergo rigorous imprisonment (RI) for life.

2. By the impugned judgment, apart from the present Appellant, the trial Court also convicted Udai Oram (Accused No.1), who had also filed the present appeal jointly with the present

Appellant. However, the Court was informed at the hearing on 11th August, 2022 that Udai Oram had expired in 2016 itself and, therefore, the appeal by him was dismissed as having abated leaving only the present Appellant-Balku Oram in the fray.

3. The case of the prosecution is that on 17th February, 1998 at around 5 pm, the youngest daughter of Manobodha Naik of village Gundibali Luhakera, Police Station (P.S.) Sector-15, Rourkela in District Sundergarh died. The family members of Manobodha Naik claimed that she died on account of witchcraft practice by the deceased Puni Naik. The further case of the prosecution is that both the accused came to the house of Puni Naik, dragged her from her house and took her near the house of Manobodha Naik and there assaulted her severely by means of a lathi. This was witnessed by Sukra Naik (P.W.3), the daughter of Puni Naik. Sukra Naik was only 16 years old at that time. The case of the prosecution is that the accused also tried to assault P.W.3 but she managed to escape from the spot. Around 12 midnight or 1 am, the early hours of 18th February 1998, Puni Naik died. At 11 am that day, P.W.3 accompanied by her maternal uncle, Hrudananda Ganda went to the PS and gave the written complaint, which was registered as an FIR.

4. The investigating Officer (P.W.9) visited the spot, seized the wearing apparels of the deceased and the blood-stained earth and sent them for chemical examination. On conclusion of the

investigation, he laid a charge-sheet against the accused, who pleaded not guilty and claimed trial.

5. On behalf of prosecution, 9 witnesses were examined and none on behalf of the defence. On analysis of the evidence, the trial Court concluded that the conviction of both the accused for the offence punishable under Sections 302 read with 34 IPC could safely be based on the eye-witness testimony of P.W.3 and proceeded to sentencing them in the manner indicated hereinbefore.

6. This Court has heard the submissions of Mr. Radharaman Dasnayak, learned counsel for the present Appellant and Mrs. Saswata Patnaik, learned Additional Government Advocate for the State.

7. The memorandum of appeal in the present case seeks to make out a case of applicability of Section 304 Part II IPC and not Section 302 IPC, on the ground that the present Appellants had acted under a grave and sudden provocation as a result of the assumption that the deceased was a witch and that the youngest daughter of Manobodha Naik had expired as a result of witchcraft practiced by the deceased.

8. The testimony of P.W.3, who no doubt is a related witness, is clear and cogent. She witnessed both the accused beating her

mother with lathis in front of her eyes mercilessly, resulting in her death. She stood firm in the cross-examination and there was no inconsistency or contradiction elicited from her by the defence.

9. In testing the evidence of such an eye-witness, the following principles as explained by the Supreme court have to be borne in mind. In *Piara Singh v. State of Punjab AIR 1977 SC 2274* the Supreme Court held:

"4...It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

10. In *Hari Obula Reddy v. The State of Andhra Pradesh (1981) 3 SCC 675* the Supreme Court observed:

"13.. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it 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 independent evidence. All that is necessary is that the evidence of 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. Again in *Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498*, it was held:

"7....The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

12. It is also well settled that even a single eye-witness, if trustworthy, is sufficient to bring home the guilt of an accused. In *Vadivelu Thevar v. State of Madras AIR 1957 SC 614*, the Supreme Court held:

"10...On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts

and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

12.1. Quoting Section 134 of the Evidence Act, it was held in *Vadivelu Thevar (supra)* that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated." The Court proceeded to state:

"11...It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution."

12.2. The Court further noted:

"12...There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on

plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable."

13. In *Shivaji Sahebrao Bobade v. State of Maharashtra (1973)* 2 SCC 793, the Supreme Court observed:

"19...It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

14. In *Anil Phukan v. State of Assam (1993)* 3 SCC 282, the Supreme Court explained:

"3...Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an

interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

15. In the present case, the above eye-witness testimony of P.W.3 stands fully corroborated by medical evidence of P.W.6, who conducted the Post-Mortem (PM) examination of the deceased on 18th February, 1998 and found the following external injuries:

"One bruise of 2" x 1" on the right temporal area scalp. One bruise of 1 ½" x 1" on the vertex of head of left side. One mark roll 4" x 1" present on the left thigh laterally. One mark roll 6" x 1" present in the right thigh anteriorly. One lacerated wound of 1" x ¼ " in the skin deep in the middle portion of left neck anteriorly. One lacerated wound of 1" x ¼ " in the skin deep in the anterior aspect of left thigh. One bruise of 3" x 1" over the lower part of abdominal. One bruise of 1" x 2" over the lower part of chest. One bruise of 1" x 1" on the right shoulder. One bruise of ½" x 1" in the middle of the eye. All the above injuries were red in colour and ante-mortem in nature. Blood clots present on the skull bone beneath the wound No.1 and 2. Brain edematous and congested. Blood clots present over the right temporal parietal area of the brain."

16. The very nature of the multiple injuries on the vital part of the body of the deceased belies the attempt by the defence to bring it within the realm of the offence of culpable homicide not amounting to murder punishable under Section 304 Part I or Part II IPC. There can be no doubt that this was premeditated murder committed with unusual cruelty against a defenseless and

unarmed person. The suggestion to P.W.6 that these injuries could be as a result of fall from height and rolling down on a stony surface could not be substantiated by the defence. On the other hand, the evidence of P.W.3, who categorically stated that both the accused assaulted the deceased by means of a 'Badi'(Lathi) and severely, appears to be fully substantiated by the medical evidence.

17. This being a case of direct evidence where the evidence of solitary eye-witness being reliable, consistent and free from contradictions, the trial Court rightly based the conviction of the Appellant on such evidence. The Court is unable to find any error having been committed by the trial Court in coming to the above conclusion.

18. There is no merit in the present appeal and it is dismissed as such. The bail bonds of the Accused-Appellant, who was enlarged on bail, are hereby cancelled and he is directed to surrender forthwith and, in any event, not later than 17th October, 2022 failing which the IIC of the concerned PS will take steps to take him into custody to serve out the remainder of his sentence.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. K. Jena/Secy.