

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.48 of 2011

From the judgment of conviction and order of sentence dated 24.07.2006 passed by the learned Additional Sessions Judge (FTC-I), Bhadrak in Sessions Trial No.5/19 of 2004.

Durga Murmu

....

Appellant

-versus-

State of Odisha

....

Respondent

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

For Appellant

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Mr.Chittaranjan Sahu
(Advocate)

For Respondent

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Mr.Soubhagya Ketan Nayak
Additional Govt. Advocate

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 01.11.2022 : Date of Judgment:18 .11.2022

D.Dash,J. The Appellant, by filing this Appeal, from inside the jail, has assailed the judgment of conviction and order of sentence dated 24.07.2006 passed by the learned Additional Sessions Judge, (FTC-I), Bhadrak in Sessions Trial No.5/19 of 2004 arising out G.R. Case No.1072 of 2003 corresponding to Bhadrak Town P.S. Case No.150 of 2003 on the file of the learned S.D.J.M., Bhadrak.

The Appellant thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (for short, 'the IPC') and sentenced to undergo imprisonment for life and pay fine of

Rs.2,000/- (Rupees Two Thousand) in default to undergo rigorous imprisonment for two six months.

2. On 07.10.2003 at about 10.30 p.m., one Prasanna Kumar Das (P.W.1) submitted a written report (Ext.1) before the Inspector-in-Charge of Bhadak Police Station stating therein that when he was in his house at about 10.00 p.m., the labourers, who were staying in the house of Sudarsan Patri came and informed that accused (Durga Murmu) inflicted blows upon his wife with one piece of brick and has done her to death. Hearing the news, he went to the place of occurrence and saw the dead body of Srimati Hansda was lying in a small room with bleeding injuries from her ear and head. He learnt from Baidynath Hembram (P.W.6) that the accused had been restrained and detained in the house.

3. On receipt of the above information, Bhadrak Town P.S. Case No.150 of 2003 under section 302 of IPC has been registered and the investigation was taken up. The Inspector-in-Charge of Bhadrak Town Police Station proceeded to the place of occurrence. He examined the Informant and other witnesses at the spot in that night. He saw the dead body of the deceased in the house. He then took accused to his custody and arrested him. The wearing apparels of the accused were seized under seizure list (Ext.3). He also held inquest over the dead body of the deceased and prepared the report (Ext.2). Sample earth and blood stained earth from the spot as well as the brick bat stained with blood lying there were seized. He also seized a bed sheet, one thin mattress (kantha) as well as one saree in presence of the witnesses and prepared the seizure list. On police requisition, post mortem examination was held over the dead body of the deceased and report of the Doctor

(P.W.4) under Ext.4 was obtained. The wearing apparels of the deceased were seized. In course of investigation, on 14.10.2003, on the prayer of the Investigating Officer, the statements of the witnesses, namely, Baidyanath Hembram (P.W.6) and Rina Hembram (P.W.4) were recorded by the learned S.D.J.M., Bhadrak under section 164 Cr.P.C. Finally, on completion of the investigation, charge sheet was submitted against the accused placing him to face Trial in the Court of law for commission of offence under section 302 IPC for committing the murder of his wife, namely, Srimati Hansda.

4. Learned S.D.J.M., Bhadrak, having taken the cognizance of the said offence, after observing legal formalities, committed the case to the Court of Sessions. That is how the trial commenced by framing the charge.

5. In the trial, the prosecution examined in total seven witnesses and has proved the FIR (Ext.1), the inquest report (Ext.2), post mortem report (Ext.4), spot map (Ext.6) and the seizure lists as well as the Chemical Examiner's Report (Ext.12) concerning the seized incriminating articles.

6. The accused took the plea of complete denial and false implication in further stating that his wife Smt. Hansda, when had gone to work as a labour, had received the injury on her head as the piece of brick had fallen on her head, which has resulted her death.

He has neither examined any witness nor proved any documents in support of his plea.

7. The Trial Court, on going through the evidence of the Doctor conducting the post mortem examination, i.e., (P.W.5) and his report (Ext.4) as well as other evidence, has arrived at a conclusion that the deceased Srimati Hansda met a homicidal death. This in fact was not at all challenged by the defence.

Having said so, the Trial Court, proceeding to examine the other evidence as obtained during the Trial, has held the accused guilty for committing the murder of his wife and as such, he has been convicted under section 302 IPC and sentenced as aforesaid.

8. Mr.C.R.Sahu, learned counsel for the Appellant submitted that there being no direct evidence to establish the authorship of the injuries upon the deceased in attributing the role to the accused therein, the Trial Court has gone wrong in holding the accused guilty for the offence under section 302 IPC. He further submitted that the evidence of P.Ws.4 & 6 ought not to have been accepted as the witnesses are not trustworthy. He also submitted that the circumstances appearing in the evidence let in by the prosecution are not enough to conclusively say that it is the accused, who had caused the injuries on the head of his wife, which had led to her death.

9. Mr.S.K.Nayak, learned Additional Government Advocate for the State, while supporting the finding of the guilt returned by the Trial Court against the accused placing the evidence on record, submitted that the Trial Court has rightly appreciated the evidence and did commit no error in holding the accused to be the author of the crime.

10. Keeping in view the submissions made, We have carefully read the judgment passed by the Trial Court. We have also perused the

evidence of the prosecution witnesses and have gone through the documents admitted in evidence and marked Exts.1 to 7.

11. Before proceeding to judge the sustainability of the finding of the Trial Court holding the accused to be guilty of committing the murder of his wife, in addressing the rival submission and rule upon the complicity of the accused; it be stated that here the evidence of the Doctor (P.W.5), his report (Ext.4) and the evidence of other witnesses clearly establish that the death of Srimati Hansda was homicidal one and that has not been questioned by the defence before the Trial Court. Before us in this Appeal that is not challenged. On going through the evidence of the Doctor (P.W.5) and the Post Mortem report (Ext.4) as well as other evidence of witnesses including the evidence of the Investigating Officer (P.W.7) who had held inquest over the dead body of the deceased and prepared the inquest report (Ext.2); We are wholly in agreement with the finding of the Trial Court on the nature of death of the deceased as homicidal.

12. The FIR in the given case has been lodged by P.W.1. It has been indicated therein that on 07.11.2003 around 10.00 p.m., P.W.1 was in his house, when some persons knocked at his door and so he came out. They then told that while accused and his wife were sleeping in the house, the accused has killed his wife Srimati Hansda by assaulting on her head by means of a brick and when thereafter, he went to the place, he saw the deceased lying on a bed with profuse bleeding from her right nostril and head. He also then saw two (2) to three (3) pieces of bricks stained with blood lying near her head. One Baidyanath Hembram then told him (P.W.1) that they have detained the accused. This P.W.1 then

instructing them to guard the accused went to the Police Station and lodged the FIR (Ext.1). Said Baidyanath Hembram has been examined as P.W.6.

13. P.W.1, in his evidence, has, however, stated that when he came out of his house, being called by few persons, he was told by two women folk that a couple of their Tribe were staying with them in their house as they could not catch the bus and they also stated that it was around 10.00 p.m., they heard groaning sound and found that the accused has thrashed the head of his wife by brick-bat for which they closed the grill gate of the house to prevent the escape route for the accused. He has also stated that he had seen the accused near the grill gate of the house when he went there.

P.W.6, in his evidence, has stated that the accused with his wife (deceased) had come to their house and stayed in the night with their permission. The accused and his wife, as stated by this P.W.6 were initially sleeping on the verandah and later on, moved to another room. He states to have heard some sound, which discarded his sleep and then he saw accused assaulting his wife on her head by brick-bat. He states to have caught hold the accused and tied him in a rope against the grill and then went to the Police Station and orally reported the incident. During cross-examination, this witness has stated that he too had seen the accused and his wife shifting from verandah of the house of the room and sleeping there.

14. The evidence of P.W.4 reveals that on that day, the accused, with his wife, came to the place where she was living with her brother-in-law Baidyanath (P.W.6) and requested to permit them to live in the house

and they having been so permitted, went to a room in that house where they slept. These two witnesses were neither having any soft corner for the deceased, who happens to be the wife of the accused nor bearing any sort of grudge against the accused and they having accepted the request of the couple had permitted them to stay in their house. So, they had exhibited friendly terms with couple in helping them at the time of need. It has been stated by P.W.6 that the incident took place when the accused and his wife were sleeping together. His version is that the accused assaulted his wife on her head by a brick-bat to his seeing and for that, he had caught hold of the accused and tied him with a rope against the grill gate to prevent escape.

15. P.W.7, the Investigating Officer, having arrived at the spot after receiving the FIR, has taken the accused to his custody and then has arrested him.

P.W.1, having gone to the house after hearing about the incident is said to have found the accused near the grill gate of the house. So, on such material aspects, the evidence are consistent and free from any blemish. The Doctor, having conducted the post mortem examination over the dead body of the deceased, has opined that the injuries, which he found on the head of the deceased are possible by that brick-bat, which has been seized in course of investigation and being produced has in the trial has been marked as a Material Object (M.O.I). The evidence on record reveals that B-Group of human blood was sticking to the shirt of the accused and that is of the same group, which was detected on the brick seized in connection with the case from near the dead body as well as the wearing apparels of the deceased. These evidence are found to

have not been impeached in any manner nor any eyebrows can be raised on those for any reason.

16. The witnesses (P.Ws.4 & 6) are found to have described the entire scenario in a very natural manner and that also finds corroboration from the evidence of P.W.1 and other evidence as already stated. Even with the acceptable evidence coming from the lips of those two witnesses that the accused and his wife were sleeping together in their house, no such explanation is coming from the side of the accused as to how his wife sustained injuries on her head and he rather stated that as if during the day time, his wife had received such injuries on her head. But it is not stated by P.W.4 that when the accused and his wife came to them, the deceased was having any such injury on her person.

The evidence, as discussed above, are found to be wholly trustworthy and, therefore, We fully subscribe to the view of the Trial Court that the accused had caused the injuries on the head of his wife (deceased) by means of a brick-bat during that night.

The injuries noted by the Doctor (P.W.5) are:-(a) lacerated injury over right ear with complete separation of the lower part of the pinna of the ear; and (b) lacerated injury over right temporal area of the scalp with crushing of temporal bone into pieces and loss of one piece of temporal bone on the right side anterior to right ear making one hold admitted two fingers inside. Those are clearly suggestive of the fact, that such was not the result of a single blow but those are on account of multiple blows, dealt successively. It appears therefrom that the assault with the brick-bat, has continued for quite some time to achieve the end objective. So, the evidence of P.Ws.4 and 6 that they having heard the sound, woke up and saw the accused assaulting the deceased stand

fortified and have the ring of truth. The death, having taken place for the above noted injuries, We thus hold that the Trial Court has rightly found the accused guilty of commission the offence under section 302 IPC for committing the murder of his wife.

17. In the result, the Appeal stands dismissed. The judgment of conviction and order of sentence dated 24.07.2006 passed by the learned Additional Sessions Judge, (FTC No.I), Bhadrak in Sessions Trial No.5/19 of 2004 are hereby confirmed.

The accused, who is stated to be on bail, by order dated 11.11.2014 passed by this Court in Misc. Case No.128 of 2014, is directed to surrender before the Trial Court forthwith to undergo the sentence.

The Trial Court is directed to take all such effective steps immediately in accordance with law to secure the presence of the accused to undergo the sentenced as imposed.

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

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

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

Basu