

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA Nos.204 and 155 of 2008

Babulal Sahu and two others
(In CRLA No.204 of 2008)

.... ***Appellants***

Kirtan Sahu
(In CRLA No.155 of 2008)

-versus-

State of Odisha

.... ***Respondent***

Appeared in this case:

For Appellants

:

Mr. Gautam Mukherji,
Senior Advocate
(In CRLA No.204 of 2008)

Ms. Geetanjali Majhi, Advocate
(In CRLA No.155 of 2008)

For Respondent

:

Mr. J. Katikia,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

JUDGMENT
4th January, 2022

Dr. S. Muralidhar, CJ.

1. These two appeals are directed against the same impugned judgment dated 10th March, 2008 passed by the learned Additional Sessions Judge (FTC) Balangir at Patnagarh in Sessions Case No.4-B/13 of 2006-07. By the impugned

judgment, the learned trial Court convicted the Appellants for the offences under Sections 302/34 IPC and sentenced each of them to imprisonment for life with fine of Rs.20,000/- each and in default to undergo further rigorous imprisonment (RI) of one year.

2. By the order dated 20th February, 2009, Kirtan Sahu, the Appellant in CRLA No.155 of 2008 was directed to be enlarged on bail by this Court. By the order dated 20th February, 2009, Appellant No.1 in CRLA No.204 of 2008 (Babulal Sahu) was directed to be enlarged on bail. Subsequently, by the order dated 17th October, 2011, this Court enlarged Appellants 2 and 3 viz., Chhotelal Sahu and Srikrishna Sahu respectively in CRLA No.204 of 2008 on bail.

3. This Court has heard the submissions of Mr. Gautam Mukherji, learned Senior Counsel appearing for the three Appellants in CRLA No.204 of 2008 and Ms. Geetanjali Majhi, learned counsel appearing for the sole Appellant-Kirtan Sahu in CRLA No.155 of 2008. The Court has also heard the submissions of Mr. J. Katikia, learned Additional Government Advocate for the State in both the appeals.

4. The case of the prosecution is that Jayaprakash Bhoi (P.W.1) reported orally at the Larambah police outpost on 27th June, 2005 that while he was taking tiffin in his house after finishing his agricultural work, he heard his sister-in-law, Sakuntala Bhoi

(P.W.2) repeatedly shouting “Pancha ku mari dele.” When he came out of his house and enquired of her, P.W.2 disclosed that the 3 Appellants in CRLA No.204 of 2008 viz., Babulal, Chhotelal and Srikrishna Sahu and their labourer, Kirtan Sahu (the Appellant in CRLA No.155 of 2008) had assaulted the deceased Panchanan Bhoi with axe in their mortgaged land. Hearing this, he immediately rushed to the spot and found the deceased lying with bleeding injuries. Brunda Badhei (P.W.9) and his niece, Reena Sahu (P.W.3) were present there providing water. However, the deceased could not even consume the water and died immediately.

5. When P.W.1 enquired of P.W.3 and P.W.9, they disclosed about the assault on the deceased by the 4 accused persons by means of axe and lathi and that, soon thereafter the 4 accused persons had fled away from the spot.

6. After sometime, Sankarshan, Shiba (P.W.5), Rudramani (P.W.6), Seshadev, Surendra etc., arrived at the spot. On the advice of Urmila Bhoi (P.W.4), wife of the deceased, P.W.1 went to the Larambah police outpost and reported the matter to the Officer-in-Charge (OIC), of the Patnagarh police station, who was present at the outpost. It was stated that the accused had committed the murder of the deceased owing to the previous grudge concerning their family land dispute. The OIC, Patnagarh police station reduced the oral version into writing and then sent the written report to the police station for registration of the FIR

and commencement of the investigation. Thereafter, PS case No.86 dated 27th June, 2005 was registered.

7. After conducting an inquest over the dead body of the deceased, seizing sample earth and blood-stained earth from the spot and a pair of sleepers lying nearing the spot, the Investigating Officer (IO) sent the dead body for Post-Mortem (PM) Examination. He apprehended the 4 accused persons, seized 3 axes from the house of the 3 accused i.e. the Appellants in CRLA No.204 of 2008 and a lathi from the house of Kirtan Sahu, the Appellant in CRLA No.155 of 2008.

8. He also found that an S.D. Entry No.378 dated 25th June, 2005 had been registered on the basis of the information of the deceased with regard to his quarrel with Kirtan Sahu for cultivation of his own land as well as the subsequent Diary Entry No.382 of the same date in the matter of that controversy with the accused persons. The IO also examined the staff of the Dangabahal Gram Panchayat (GP), seized the resolution book of the said GP as by that time P.W.4, the wife of the deceased, was the Naib Sarpanch of the said GP. The exhibits were sent to the Regional Forensic Science Laboratory (RFSL) Ainthapali, Sambalpur for chemical examination. On completion of the investigation, charge-sheet was submitted against the accused persons for the aforesaid offences.

9. On the framing of charge, the four accused pleaded not guilty and claimed trial.

10. 17 witnesses were examined for the prosecution. For the defence, Babulal Sahu, accused No.1 examined himself as D.W.1. Gangadhar Sahu was examined as D.W.2. The defence also marked exhibits A to R as documents.

11. As noted in the judgment of the trial Court, the PM report of Dr. Durga Dutta Dash (P.W.14) revealed that he found on examining the dead body of the deceased on 27th June, 2005 the following external injuries:

- “1. Incised wound over vertex area of the head 3”x1 1/2”x3” cutting skin bone covering of the brain and brain substance with a underline haematoma.
2. Four deep incised wound over the lateral aspect of left upper 1/3rd left size 2”x1/2”x1”, 2”x1/2”x2”, 2”x1/2”x1” 8-
3. There were two contusions, one of size 3 x 1cm over upper 1/3rd of left tibia, second one of size 3cm x 1 cm over the upper 1/3rd of right tibia.”

12. It is opined that the death was due to the injury to the brain and severe haemorrhage caused by sharp cutting weapon. The injuries were opined to the ante-mortem and homicidal in nature and sufficient to the ordinary course of nature to cause death.

13. In his cross-examination, P.W.14 stated that Injury No.1 mentioned in the PM report was sufficient to cause death. He remained unshaken in his cross-examination. The trial Court

examined that the prosecution had proved beyond reasonable doubt the guilt of the 4 accused persons. The trial Court accepted the eye-witness testimony of P.Ws.3 and 9 as being reliable and consistent and fully corroborated by the medical evidence. Further, from the evidence of P.Ws.1 and 2 transpired that the deceased and the 3 accused persons were related to each other. The witnesses had no inimical relation with the accused and had no reason to come out with the false and concocted theory implicating the accused. The trial Court observed that it was a normal human conduct to assume that P.Ws.1, 2, 3, 5, 6 and P.W.7 being close relations of the deceased would never miss out the real culprit although they may exaggerate and embroider the prosecution story. However, merely because they were relations of the deceased, their entire testimony should not be jettisoned. It has held that although P.W.9 had turned hostile, the evidence of P.W.3 supported by the evidence of the other P.Ws. as well as the medical evidence were sufficient to bring home the guilt of the accused.

14. Mr. Gautam Mukherji first submitted that the evidence of P.W.3 was unreliable. She was none-else the niece of the deceased and had been projected as an eye-witness by the prosecution. According to him, P.W.3, who saw the incident while cleaning herself inside a tank which had a 10 feet high embankment that she could see the occurrence from where she was, was unbelievable. From the Statement of D.W.2, it appeared that there were different trees in the area like Mango, Jack fruit

etc. on the embankment of the tank when the alleged assault took place 30 to 50 cubits away from the bank. Someone cleaning herself at the water table which was at least 10 feet below the embankment would find it impossible to see the assault unless she climbed the embankment, which is not her case. It is accordingly submitted that the version of P.W.3 was totally unbelievable and ought not to have been accepted by the trial Court.

15. In the statement before the police, P.W.3, who claimed to have seen the incident from 100 metres whereas in the Court she stated that she saw the incident from 30 to 40 cubits. Thus, according to him, P.W.3 had exaggerated her version at each stage of the proceedings. He criticized the deposition of P.W.4 as being that of the highly interested witness and who wanted to ensure that the Appellants are convicted. He pointed out that P.W.9, who was the sole independent witness failed to support the case of the prosecution and was declared hostile. From her statement it was clear that P.W.2 and P.W.3 were not present at the place of occurrence. The shifting of the dead body from the place of the occurrence to the house of the deceased was not sufficiently explained.

16. He further submitted that P.W.3 in her cross-examination stated that she could not tell specifically which accused dealt how many blows and by which weapon. Her version that they dealt blows in quick session and that they assaulted with axes and lathi

after the deceased fell down is not borne out by the PM report which showed that only there were six injuries on the dead body. According to him, if 4 persons could attack one person with axes and lathi successively, there would be much more than 6 injuries. Mr. Mukherji further submitted that Appellant No.1 was a bone T.B. patient and documents were also exhibited to that effect. A person with such a serious disease and using crutches for walking could not wield a weapon of assault and kill a person in an agricultural land which is such a distance of 20 to 30 minutes walkable distance after crossing the ridges/hedges of agricultural lands. The deceased was an inimical term with other persons of the locality and cases had been lodged against him. There could be someone else therefore behind the crime.

17. Learned counsel appearing for the Kirtan Sahu, Ms. Geetanjali Majhi, submitted that the allegation against him was that he had assaulted the deceased by means of a lathi. From the evidence of P.W.1 and P.W.4, it was proved that the other 3 accused persons were cognate brothers and had a previous enmity with the deceased. Babulal Sahu had been the Secretary whereas P.W.4 was the Naib Sarpanch of the GP; on the complaint of P.W.4, Babulal Sahu had been placed under suspension. Therefore, the 3 brothers had a common intention to cause the death of the deceased. However, Kirtan Sahu was only a labourer working for the 3 accused persons. He had no common intention with his masters and, therefore, it was erroneous for the

prosecution to allege that he shared a common intention with the other 3 accused to the murder of the deceased.

18. Ms. Majhi submitted that the ingredients of Section 34 IPC were not attracted at all in the present case. The evidence of P.W.3 was referred to and it was pointed out that according to her, the 3 brothers after assaulting the deceased “went towards the village” whereas their labourer, Kirtan Sahu “went towards Patra jungle.” According to Ms. Majhi, at best the ingredient of ‘intentional cooperation’ as defined under Section 37 IPC was established and this was not the same as ‘common intention.’ Illustration (c) under Section 37 IPC was referred to in order to plead that the overt act of Kirtan Sahu could at the highest amount to voluntarily causing grievous hurt punishable under Section 323 IPC. The PM report showed that there were two contusions—one is the upper third of left tibia and right tibia which had caused by the assault given by the stick held by Kirtan Sahu and neither of these injuries was fatal.

19. Mr. J. Katikia, learned Additional Government Advocate, on the other hand, submitted that the testimony of the sole eye-witness-P.W.3 read with the deposition of P.W.2 and the medical evidence was sufficient to bring home the guilt of the 3 accused. Merely because she was a close relative, her evidence could not be discarded since it was fully corroborated by the medical evidence. She had no reason to falsely implicate any of the accused. Reliance was placed on the decisions of the Supreme

Court in *Vadivelu Thevar v. State of Madras AIR 1957 SC 614*, *Vahula Bhushan @ Vahuna Krishnan v. State of Tamil Nadu, AIR 1989 SC 236* and *Nand Kumar v. State of Chhattisgarh, (2015) 1 SCC 776*.

20. The above submissions have been considered.

21. There is no doubt that the prosecution case hinges heavily on the testimony of P.W.3, who undoubtedly being the niece of the deceased, will fall on the category of a related witness. The case law in related witness who may also be categorized 'interested witness' is well settled. On the issue of appreciation of evidence of interested witnesses, in *Dalip Singh v. State of Punjab AIR 1953 SC 364* it was held as follows:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

In *Piara Singh v. State of Punjab AIR 1977 SC 2274* the Supreme Court held:

"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 a 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."

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

".. 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."

Again in *Ramashish Rai v. Jagdish Singh* (2005) 10 SCC 498, it was held:

"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."

22. Keeping the above legal position in view when one carefully examines the version of P.W.3, it is seen that she has clearly spoken of the important ingredients of the commission of the crime both as regards the identity of the accused as well as the role played by each of them in the crime.

23. She states that she had been to the tank near the spot to attend the call of nature and after attending the call of nature when she was cleaning herself, she saw the 4 accused persons assaulting the deceased. She clearly says, “accused Babulal, Chotelal and Srikrishna were assaulting by means of axe and accused Kirtan by means of a lathi.” When the deceased fell on the ground, the accused persons again assaulted him. The 3 brothers after assaulting the deceased went towards the village whereas Kirtan Sahu went towards the Patra jungle. The deceased was in the verge of death and was groaning. P.W.3 provided water to him and shouted saying “Kaka Ke mari dele.” She then talks of P.W.9 coming to the spot when they provided water to the deceased, he could not drink. Then P.W.1 arrived and she disclosed the incident to him.

24. The version of P.W.1 as well as P.W.2 broadly supports the above version of P.W.3.

25. She was subjected to cross-examination extensively by the defence. The precise statements she makes in her cross-examination reads thus:

“xxx. I saw the assault on the deceased by remaining at a distance of 40 to 50 cubits from the place where I was cleaning. The place of occurrence was visible from the place of my standing.xxx”

26. The crucial expression she uses is “place of my standing.” In the absence of any site map which may have been confronted to her, the mere submission that it was impracticable for her to have witnessed the incident from where she was standing is not sufficient to disbelieve her. She appears to be a natural witness. She obviously could not have counted the number of blows rained on the deceased. However, her version is fully corroborated by the medical evidence and the injuries as noted in the PM report as reproduced hereinbefore. The mere fact that she had told the police that she saw the incident from 100 metres whereas in the Court she talked about seeing it from 40 to 50 cubits is not a material discrepancy that should discredit her testimony entirely. It must be stated that the cross-examination of P.W.3 by the defence could not yield much.

27. The Court finds that the trial Court has discussed in great detail the very point urged before us by Mr. Mukherji about the probability of the P.W.3 witnessing the incident from where she was. Likewise, the evidence of P.Ws.1 to 7 was fully found to corroborate the testimony of P.W.3 as regards the sequence of the events. P.Ws.1 and 2 did prove the presence of P.W.3 at the spot.

28. The contention that because PW 9, the other eye witness has turned hostile, it weakens the testimony of PW 3 cannot be accepted. The evidence of PW 3 has to be tested on its intrinsic strength. No doubt it is the testimony of a related witness, but it has withstood rigorous cross-examination. It is trite that even a single witness, whose testimony is trustworthy and truthful, is sufficient to sustain a conviction. In *Mohamed Sugul Esa Mamasan Rer Alalah v. The King*, AIR 1946 PC 3, Lord Goddard, speaking for the Board stated:

"Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence."

29. In *Vadivelu Thevar v. State of Madras* AIR 1957 SC 614, referring to *Mahomed Sugul*, the Supreme Court stated:

"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.

29.1. 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 held:

"It is not seldom that a crime had 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."

29.2. The Supreme Court in *Vadivelu Thevar (supra)* further noted:

“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.”

30. In the face of the clinching evidence of P.W.3, all other objections by the defence have to fail. The trial Court too has discussed the issue regarding accused Babulal Sahu (DW 1) suffering from bone T.B. and not being able to move except with the help of crutches. It is pointed out how in his cross-examination DW 1 stated that he was Secretary of the Dangabahal GP and was attending his office during his ailment prior to suspension on 20th July, 2005. It is revealed from his evidence that he was attending the block office concerning panchayat work with the help of the people and also attending the

Court with the help of the crutch. The Trial Court therefore concluded as under:

“xxx. In view of the fact that he was moving from place to place with the help of crutch, his presence at the spot cultivable land by covering ridge which is one cubit width is not unbelievable when his presence at the time of occurrence and holding of axe and after the offence running with the axe is established by the prosecution witnesses.xxx”

31. The contention of Ms. Majhi on behalf of the accused Kirtan Sahu that he did not share the common intention is completely belied by the clear and cogent testimony of PW 3, who names him as being part of the group of four that rained blows on the deceased. The fact that they continued raining blows on him even after he fell down reveals clearly the common intention shared by Kirtan Sahu with the other three accused. This is certainly not a case of ‘intentional cooperation’ as contended by Ms. Majhi but that of sharing of a ‘common intention’. Consequently, the submission of Ms. Majhi in that regard is not acceptable. Further, merely because he went towards Patra jungle and not towards the village will not disprove the fact that he was very much present along with the three others raining blows on the deceased. The fact that he shared the common intention is more than abundantly proved by the unshaken testimony of PW 3 and, therefore, he was rightly convicted with the help of Section 34 IPC. The plea that his conviction should be under Section 323 IPC and that the illustration (c) under Section 37 IPC would apply is hereby rejected.

32. For all of the aforementioned reasons, the Court finds that no grounds have been made out for interference with the well reasoned judgment of the trial Court. The appeals are accordingly dismissed.

33. The bail bonds of the Appellants are cancelled and they are directed to surrender forthwith to serve out the remainder of their sentences. If they failed to surrender within two weeks, the IO of the concerned PS will take steps to have them apprehended forthwith and sent to judicial custody.

(S. Muralidhar)
Chief Justice

(A.K. Mohapatra)
Judge

M. Panda