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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.444 of 2016

Mahendra Dora

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates appeared in the cases:

For Appellant

:

Mr. Sarat Ch. Mekap, Advocate

For Respondent

:

Mrs. Saswata Patnaik,
Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

15.09.2022

सत्यमेव जयते

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the judgment dated 11th February, 2016 passed by the learned Sessions Judge, Kalahandi, Bhawanipatna in C.T. Case No.19 of 2012 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.5000/- and in default to undergo RI for two months.

2. The case of the prosecution is that on account of differences with her husband, the deceased Phulmati Majhi was staying at the

house of her mother at her village San Jamkiheju. On 2nd October 2011, the deceased went to Patrabudha Dangar to collect firewood along with some co-villagers including her two sisters-Pramila Majhi (P.W.3) and Sanja Majhi (P.W.7). At around 11.30 am, P.Ws.3 and 7 came to the village and informed her brother Satrugna Majhi (P.W.1) that the present Appellant, who was the husband of the deceased, dealt blows on her head, neck and back with an axe, and that she was lying at the spot in a pool of blood; the Appellant had fled away leaving the axe at the spot.

3. On hearing this, P.W.1 along with Gouranga Majhi (P.W.12), Lachhaman Majhi and Abhi Majhi rushed to the spot, and found the deceased in a pool of blood and immediately shifted her to Biswanathpur hospital. While shifting her further to the DHH, Bhawanipatna, she died. P.W.1 then lodged an FIR (Ext.1), which was scribed by Gadan Majhi (P.W.4) at the Lanjigarh Police Station (PS).

4. Mr. S. K. Nanda, the Inspector-in-Charge (IIC), Lanjigarh PS registered case No.83 of 2011 under Section 302 IPC and directed Sanjay Kumar Mandal (P.W.13), working as a Sub-Inspector of Police (SI) attached to the said PS, to take up the investigation. P.W.13 then examined the informant i.e. P.W.1 and other witnesses and recorded their statements. He held an inquest over the dead body of the deceased on 3rd October, 2011 and sent it for Post-Mortem (PM) Examination. He then visited the spot and was

informed that one of the relatives of the deceased, Sanja Majhi (P.W.7), had kept the axe used to commit the crime. He then seized the weapon of offence in the presence of witnesses of the village. In the same day, he apprehended the Appellant and seized his wearing apparels in the presence of witnesses upon being produced by him under a proper seizure list.

5. It appears that in the midnight of 3rd / 4th October, 2011 at around 2 am, the accused escaped from the custody on the pretext of attending call of nature and another Lanjigarh PS case No.84 of 2011 was registered in this regard. The Appellant was again apprehended on 8th October, 2011 and was forwarded to the Court. On completion of the investigation, a charge-sheet was laid against the Appellant, and he pleaded not guilty and claimed trial.

6. For the prosecution, 13 witnesses were examined and the Appellant examined himself as D.W.1. On analysing the entire evidence, the trial Court came to the conclusion that the prosecution had proved the case against the Appellant beyond all reasonable doubt.

7. The case was based on eye-witnesses testimonies of P.W.2 (Lalita Majhi), Pramila Majhi (P.W.3), Daimati Majhi (P.W.6) and Sanja Majhi (P.W.7). The evidence of Gouranga Majhi (P.W.12) to whom the deceased was stated to have made an oral dying declaration was also considered, but not believed.

Nevertheless, the trial Court found this did not have any bearing on the merits of the case since the evidence of four eye-witnesses was “not only inspiring, but also cogent, clear and trustworthy.”

8. The trial Court disbelieved the evidence of the Appellant, who examined himself as D.W.1 and claimed that he was working as a mason in Vedanta Limited, Lanjigarh and could not say how his wife had died. He claimed that the P.Ws. who had deposed for the prosecution were not pulling well with him. This evidence was disbelieved by the trial Court in the face of the clear, cogent and trustworthy testimonies of the four eye-witnesses.

9. Their testimonies were fully corroborated by the medical evidence of Dr. Malaka Kumar Tripathy (P.W.10) as well as the presence of human blood on the axe (M.O.III). As far as the motive for the crime is concerned, it was the refusal of the deceased to accompany her husband. It was held that this was a premeditated murder and not on account of sudden fight or provocation. Consequently, the trial Court convicted the Appellant and sentenced him in the manner indicated hereinbefore.

10. This Court has heard the submissions of Mr. Sarat Ch. Mekap, learned counsel for the Appellant and Mrs. Saswata Patnaik, learned Additional Government Advocate for the State.

11. It was first sought to be contended that there were contradictions in the testimonies of P.Ws.2, 3, 6 and 7 as regards the number of persons who had gone to the jungle for collection of firewood with the deceased. While P.W.2 stated that 12 women had gone to the jungle, the prosecution had only examined relatives of the deceased as witnesses and left out the other independent witnesses. On the other hand, the evidence of the Appellant, who examined himself as D.W.1, was clear and cogent and his plea of alibi viz., that he was working in Vedanta Limited, Lanjigarh as a mason at the time and date of occurrence ought to have been accepted. It was further submitted that the trial Court failed to consider the absence of any motive for the crime being proved by the prosecution. Finally, it was submitted that if at all the case of homicidal death is accepted then it should be considered to be an act of grave and sudden provocation attracting Section 304 Part II IPC.

12. Mrs. Saswata Patnaik, learned Additional Government Advocate for the State, on the other hand, supported the impugned judgment of the trial Court and pointed out that this is a case based on direct evidence with four eye-witnesses speaking clearly and consistently about the occurrence. The minor contradictions in their testimonies were but natural and were not on the material aspects. Moreover, the eye-witnesses' testimonies were fully corroborated by the medical and forensic evidence in the form of the chemical examination report. In a case of direct evidence,

motive was not of much importance and the absence of proof of motive would not weaken the case of the prosecution.

13. The above submissions have been considered. Indeed, this is a case based on direct evidence and the 4 eye-witnesses, who have spoken clearly and cogently about the occurrence, are P.Ws. 2, 3, 6 and 7.

14. P.W.2 was Lalita Majhi, who had accompanied the deceased for collecting firewood. She heard a *hallah* from the deceased and found her lying on the ground and she saw the Appellant “running away from the spot.” She has stated how the Appellant had inflicted blows on the deceased with a tangia on her head, neck and other parts. This witness was subjected to a searching cross-examination but stood firm that she saw the Appellant from a very close distance and when she saw him, he ran away. To the same effect is the evidence of P.W.3 (Pramila Majhi). It was in fact P.W.3 and P.W.7, who had come to the village after the Appellant fled away from the spot. They informed P.W.1 and other villagers about the incident.

15. Again P.W.3 has been subjected to extensive cross-examination, but far from throwing up any inconsistency that could cast a doubt on the credibility of her version, she affirmed it by clearly explaining how the crime had occurred at the hands of

the present Appellant. Likewise, the evidence of P.Ws.6 and 7 inspires confidence that they are speaking the truth.

16. Turning to the evidence of P.W.10 (Dr. Malaya Kumar Tripathy), the injuries found by him while performing the Post-Mortem (PM) of the deceased were as under:

“i. Chop wound of size 5 cm. x 1 cm. x 2cm. present on the left parietal skull with fracture of underlined parietal bone of size 5 cm. x 1 cm. x 5 cm. The injury was ante mortem and grievous in nature. Age of the wound was within 12 hours from the time of P.M. Exam.

ii. Chop wound of size 5 cm. x 1 cm. x 2 cm. present on the left cheek causing fracture of left zygomatic arch and maxillary bone opening into the mouth cavity. It is ante mortem in nature, age of wound within 12 hours from the time of P.M. Examination;

iii. Chop wound of size 2 cm. x 2 cm. x 1 cm. on lateral aspect of left eye brow. It is ante mortem in nature. Age of injury was within 12 hours from the time of P.M. Examination;

iv. Chop wound of size 5 cm. x 1 cm. x 3 cm. present on the left upper neck obliquely situated. It is ante mortem/simple. Age of injury was within 12 hours from the time of P.M. Examination;

v. Chop wound of size 6 cm. x 1 cm. x 2cm. present on the left shoulder with fracture of lateral part of clavical. It is ante mortem in nature, grievous in nature and age of injury was within 12 hours from the time of P.M. Exam;

vi. Chop wound of size 8.5 cm. x 2 cm. x 2 cm. present on the back over left scapula causing fracture of the scapula, it is

grievous/ante mortem in nature, age of injury was within 12 hours from the time of P.M. Exam.;

vii. Chop wound of size 5 cm x 2 cm. x 1.5 cm present obliquely on the medial aspect of mid right arm, ante mortem in nature, simple in nature and age of injury was within 12 hours from the time of P.M. Exam;”

17. PW 10 was clear that the axe which was shown to him could have caused the above wounds. The cause of death was due to haemorrhage and shock due to injuries to the brain and the nature of death was clearly stated to be homicidal.

18. As far as the injury on the Appellant was concerned, he examined the Appellant on 3rd October, 2011 and found a laceration of size 1 cm. x .3 cm x .3 cm. on the scalp over the occipital. This injury was stated to be simple in nature. The doctor was also subject to cross-examination. He was clear in ruling out the possibility of chop wounds being possible by “any sharp-edged stone.” In other words, the medical evidence fully corroborated the eye-witness testimonies.

19. The chemical examination report also revealed human blood of ‘O’ group on the tangia.

20. Where the eye-witnesses’ testimonies are clear and cogent, there is no reason for the trial Court to have not believed and to have based the guilt of the Appellant on such evidence. This is not a case of grave and sudden provocation but of premeditated

murder in an unusual cruel manner by means of a deadly weapon on a totally defenceless and unarmed person. In cases of this type, motive is not necessarily a relevant factor and the failure to prove the motive may not necessarily weaken the case of the prosecution. The law in this regard is well settled. In ***Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91*** it was held:

“24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance.”

21. For all of the aforementioned reasons, the Court finds no ground has been made out to interfere with the well-reasoned judgment of the trial Court.

22. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge