

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.198 of 2022

(An appeal U/S.374 of the Code of Criminal Procedure, 1973 against the judgment passed by Sri. Prabir Kumar Choudhury, 1st Additional District & Sessions Judge, Baripada in S.T. Case No.140 of 2014 corresponding to G.R. Case No. 67 of 2014 arising out of Baisinga PS Case No.27 of 2014 of the Court of learned JMFC, Betenoti)

Kanda Majhi ...

Appellant

-versus-

State of Odisha ...

Respondent

For Appellant : Mr. S. Sourav, Advocate

For Respondent : Mr. S.K. Nayak, AGA

CORAM:

HON'BLE MR. JUSTICE D. DASH

HON'BLE MR. JUSTICE G. SATAPATHY

DATE OF HEARING :05.12.2023

DATE OF JUDGMENT:08.01.2024

G. Satapathy, J.

1. The appellant, having been convicted by the learned 1st Additional District & Sessions Judge, Baripada in ST Case No.140 of 2014 for offence punishable U/S.302 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced to

undergo imprisonment for life with payment of fine of Rs.5,000/- in default whereof, to undergo Rigorous Imprisonment (RI) for further period of six months, has assailed his conviction and sentence in this appeal.

An overview of prosecution case:

2. On 15.02.2014 at about 8.30 AM in the morning, while PW6 Shyama Marandi was working in the house of PW2 Laxman Hansdah, the appellant reached there and told something in the ear of PW2 and, thereafter, PW2 told PW6 that the health condition of his wife Srimati Marandi (hereinafter referred to as the "deceased") is serious and asked him to go to his house, but PW6 did not find his wife-the deceased in his house and some person informed him that his wife was lying at Raipita pond and then, PW6 went there and found his wife-the deceased lying dead. At that time, PW7-Salga Hansdah informed PW6 that the appellant has committed murder of his wife.

On receipt of such information, PW6 went to Baisinga police station on the same day i.e.

15.02.2014 and lodged the FIR (Ext.9) at about 10.30 AM against the convict and three others suspecting them to be involved in this case. Accordingly, PW13-Niranjan Das registered Baisinga PS Case No.27 of 2014 against the appellant-convict and three others for offences punishable U/Ss.302/34 of IPC, and took up the investigation of this case. PW13 accordingly conducted investigation by examining the witnesses, preparing the spot map under Ext.10, conducting inquest over the cadaver of the deceased under Ext.1 and dispatching the dead body of the deceased for PM examination. PW13 then also seized blood stained & sample earth from the spot under Ext.4 and, thereafter, arrested the appellant who gave the recovery of the weapon of offence "Katuri(MOI)" pursuant to his disclosure statement and, accordingly, PW13 seized MOI under seizure list Ext.3. PW13 also seized the wearing apparels of the appellant under Ext.7. Further, PW13 sent all the incriminating materials including the wearing apparels of the

appellant vide MOII and III as well as MOI along with the wearing apparels of the deceased vide MOIV and V to RFSL, Balasore for chemical examination and, subsequently, the chemical examination report under Ext.15 was received and on conclusion of investigation, PW13 submitted charge-sheet against the appellant for commission of offence U/S.302 of IPC resulting in trial in the present case after denial of appellant to the charge for aforesaid offence. This is how the trial commenced.

3. In order to prove the charge, the prosecution examined altogether 13 witnesses vide PWs.1 to 13, proved certain documents under Exts.1 to 16 and identified material objects vide MOI to V as against no evidence whatsoever by the defence. Of the witnesses examined in this case, PW6 is the informant, whereas PW7 is the sole eye witness to the occurrence. PW5 is the doctor who had conducted autopsy over the dead body of the deceased and PW13 is the IO. In addition to these witnesses, PWs.1 to 4 and PWs.8 to 12 are

examined to prove the inquest report, seizure list and the occurrence in this case.

4. The plea of the appellant in the course of the trial was one of the complete denial and false implication.

5. After appreciating the evidence on record upon hearing the parties, the learned trial Court convicted the appellant mainly on the basis of evidence of sole eye witness-PW7 and other circumstantial evidence such as finding of blood stain of the deceased on the half pant of the appellant as well as human blood on MOII.

Rival Submissions:

6. In assailing the impugned judgment of conviction, Mr. S. Sourav, learned counsel appearing for the appellant has submitted that the evidence of sole eye witness PW7 is not of sterling quality and, thereby, her evidence cannot be used to convict the appellant, unless the same is corroborated by the evidence of other witnesses and in this case, there is

hardly any corroboration to the evidence of PW7. Further, Mr. Sourav has also contended that there are discrepancies in the evidence of PW7 with regard to visibility of the transaction from the place where she was standing at the time of occurrence and there being no evidence to indicate the presence of any house nearby the place of occurrence, the evidence of PW7 cannot be believed to convict the appellant. Mr. Sourav, however, without disputing the homicidal death of the deceased has submitted that the recovery of MOI pursuant to the disclosure statement of the appellant was not in conformity with the requirement of Section 27 of Indian Evidence Act and, thereby, such evidence is of no avail for the prosecution. Accordingly, Mr. Sourav has prayed to allow the appeal by setting aside the impugned judgment of conviction and order of sentence.

7. On the contrary, Mr. S.K. Nayak, learned Additional Government Advocate, however, taking this Court through the evidence of eye witness has

submitted that the evidence of eye witness is not only of sterling quality, but it also inspire confidence to act upon it and the appellant having not been able to explain the presence of blood stain of the deceased on his half pant vide MOII, it can be safely said that the prosecution has established its case against the appellant for commission of murder of the deceased beyond all reasonable doubt and, thereby, the conviction of the appellant cannot be questioned in this appeal.

Analysis of law and evidence

8. After having carefully bestowed an anxious consideration to the impugned judgment of conviction keeping in view the rival submissions vis-à-vis the evidence on record to test the sustainability of the conviction and sentence of the appellant, this Court apparently finds that the learned trial Court has based the conviction of the appellant primarily on the evidence of eye witness PW7 together with the circumstantial evidence of finding of blood stain of the

deceased on MOII as well as finding of human blood stain of MOI which was recovered pursuant to the disclosure statement of the appellant, but before delving upon such evidence to re-evaluate as well as re-appreciate to examine the legality of the impugned judgment of conviction, this Court by relying upon the unchallenged evidence of the doctor, PW5-Asutosh Mohapatra who had conducted autopsy over the cadaver of the deceased, concurred with the finding of the learned trial Court with regard to the homicidal death of the deceased, which was not challenged by the appellant in this appeal. Thus, the prosecution is found to have established the homicidal death of the deceased by adducing cogent and clear evidence.

9. It is axiomatic, once the homicidal death is established, the next question comes for consideration is as to who is responsible for such homicidal death of the deceased. In this case, the prosecution has strongly relied upon the eye witness account of PW7-Salga Hansdah who in the course of her evidence has

clearly stated that her house is adjacent to the Raipita Gadia and she was cooking rice on the hearth outside and while she was cooking, she heard the deceased telling that "Mo Hata Chad (leave my hand)" and then she saw that the appellant had caught hold of the hand of the deceased and, thereafter, the appellant inflicted Katuri(MOI) blow to the back side head of the deceased. It is her further evidence that she had also seen the brain matters of the deceased coming outside of his head and out of fear, she ran towards the village and intimated the villagers. The defence has of course elicited some materials in the cross examination of PW7 which deserves consideration such as the ridge of the pond is about 5/6 feet height from her house level and her house is situated towards the eastern side of the pond and the hearth is situated in front of her house. Further, it is elicited from the lip of PW7 that the distance from the ridge of the pond to her house is about 20/25 feet and the back side of her house facing towards the pond, but strangely enough the defence at

the same vigor has brought out from the lip of PW7 in cross-examination that the accused(appellant) had assaulted the deceased on the ridge of the pond. At the same time, the defence has tried to contradict the witness with regard to her not stating before the IO that the deceased had told to the appellant "Mo hata Chada", but that is not significant since it is found from the statement of the PW7 before the IO in her statement that the deceased had told to the appellant "Chada Chada"(leave leave). However, the dispute with regard to the visibility of the place of the occurrence from the house of the eye witness, it appears that the learned trial Court has given sufficient reasoning for this, such as PW7 saw the incident by standing in front of hearth of her house, which was situated outside her house. Additionally, the IO PW13 has proved the spot map under Ext.10 which reveals that the occurrence place was on the embankment of Raipita pond located on the northern side of the village Angarua and the house of PW7 was

situated on the southern west corner of the embankment. There is nothing substantial elicited from the lip of IO PW13 to dispute about Ext.10. Further, the cross examination of PW7 discloses that the embankment was at height from her house and, thereby, it cannot be said that the spot which was on the embankment of the pond Raipita cannot be seen, especially when the occurrence took place in the morning at about 8.30 AM at broad day light and there is no intervening houses between the ridge of the pond and the house of PW7. Besides, it was never suggested to PW7 that the spot was not visible from her house.

10. Be that at it may, the evidence of PW7 also transpires that she had been to the occurrence place for washing something just few minutes before the occurrence and she had seen the deceased in such pond at that time. The conduct of PW7 was also normal, since after the occurrence, PW7 ran towards village to intimate the villagers, which is the normal

conduct of a lady after seeing such an occurrence. Law is well settled that the evidence is to be weighed, but not to be counted and Section 134 of Indian Evidence Act provides that to prove a fact, no particular number of witness is required and even the evidence of solitary witness is enough to prove a fact in issue. In a case of murder, if the evidence of solitary eye witness is truthful, credible and free from blemishes or infirmities, it can certainly be relied upon. A careful scrutiny of evidence of PW7, this Court finds it to be credible and acceptable.

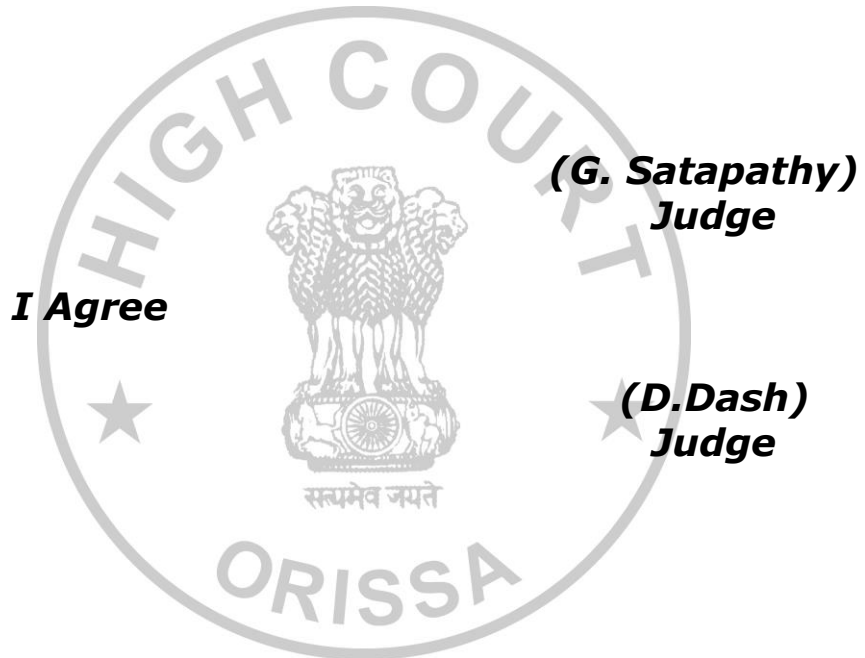
11. It is, however, true that the appellant seriously challenges the recovery of weapon of offence MOI and its use in commission of the crime as well as the opinion of PW5 to the query as to the possibility of injuries by said MOI. Adverting to the circumstantial evidence in this case, it appears that the prosecution has examined PW3 to prove the disclosure statement of the appellant and recovery of MOI, but the evidence of PW3 does not satisfy the requirement of Section 27

of Indian Evidence Act and, thereby, the evidence of PW3 is of no avail with regard to recovery of MOI. On the other hand, the other witness to the disclosure statement namely Biswanath Hembram has not been examined by the prosecution and, therefore, the only evidence of PW13 is remaining with regard to prove of disclosure statement of the deceased, but the evidence of PW13 also does not fulfil the requirement of Section 27 of Indian Evidence Act and, therefore, the concealment of MOI to the exclusive knowledge of the appellant cannot be attributed to him, but the seizure of MOI has never been disputed by the defence and it is also not disputed by the defence that MOI as well as the wearing apparels of the appellant vide MOII and III and wearing apparels of the deceased vide MOIV and V were sent to RFSL, Balasore along with other incriminating materials for chemical examination and the chemical examination obtained vide Ext.15 discloses the presence of human blood on MOI as well as the presence of human blood of Group-

A on MOII which is the half pant of the appellant and presence of human blood of Group-A on MOIV and V and, therefore, it is clear that the deceased's blood was of Group-A which was found on the half pant (MOII) of the appellant, but the appellant has failed to explain as to how the blood stain of the deceased was found on his wearing apparels which is definitely a strong circumstance against the appellant unerringly pointing towards his guilt.

12. A careful conspectus of the evidence on record, it goes without saying that the prosecution has established its case against the appellant for commission of murder of the deceased through eye witness (PW7) account, which was further strengthened by the circumstance of non-explanation of the accused-appellant with regard to presence of blood stain of the deceased on his half pant and it can safely be said that the charge against the appellant has been squarely established by the prosecution beyond all reasonable doubt.

13. Resultantly, the appeal sans merit stands dismissed on contest, but in the circumstance, there is no order as to costs. Consequently, the impugned judgment of conviction and order of sentence as recorded on 18.01.2022 by the learned 1st Additional District & Sessions Judge, Baripada in ST Case No.140 of 2014 are hereby confirmed.



*Orissa High Court, Cuttack,
Dated the 8th day of January, 2024/Subhasmita*